

DECISION

School Bus Operations

LAMERS BUS LINES, INC., }
 }
 Complainant, }
 }
 v. }
 }
 CITY OF GREEN BAY, WISCONSIN, }
 }
 Respondent }

I. Introduction

This decision is the conclusion of an investigation by the Federal Transit Administration (FTA) commenced as the result of a complaint received from Lamers Bus Lines, Inc. (Lamers) against the City of Green Bay which operates the Green Bay Transit (GBT) in Green Bay, Wisconsin. As a result of our investigation FTA has concluded that certain portions of GBT's operation fail to comply with the requirements of the tripper service provision (49 CFR Part 605.3). Therefore, GBT is ordered by this decision to correct practices that do not comply with FTA's requirements.

II. Background

Lamers filed a complaint with this office July 15, 1994. They submitted additional information on October 12, 1994 and a videotape on December 16, 1994. The complaint alleges that respondent, GBT, is engaging in school bus operations that are prohibited by FTA's regulations (49 CFR Part 605).

Specifically, Lamers alleges that GBT is providing service to the Green Bay Area School District (District), under a service agreement that is designed to compete directly with Lamers operations. In support of this allegation Lamers complains that the service in question only operates on school hours during the time of year that school is in session, that no public riders are carried on the service, that the routes are not advertised as part of the regular bus system, that school children board the buses at nondesignated bus stops and that the service is patterned to operate essential the same service that Lamers provided to the District prior to it contracting with GBT. In addition Lamers alleges that GBT has failed to execute a school bus agreement as required under 49 CFR part 605.14 and 605.15 and is therefore in violation of the regulations and its grant agreement with FTA.

In support of these contentions Lamers has also provided a videotape of GBT's operation of the buses used to provide the service complained of.

III. Response to the Complaint

GBT filed its response to the complaint on August 12, 1994. GBT replied that the service it was providing is "tripper" service as defined by 49 CFR Part 605.3 and that the service is therefore permitted under FTA's school bus regulations (See 49 CFR Part 605.3 and 605.13). GBT further alleges that the service being provided is essentially the same as the service provided at the time of a previous complaint filed by Lamers that was eventually denied by FTA on August 24, 1993, and therefore this service has already been reviewed and approved by FTA as operating in conformity with the school bus regulations. While FTA agrees that the service complained of in this complaint is basically the same service provided by GBT in the previous complaint in 1993, Lamers has, under this complaint brought forth substantial additional evidence to support its claim that warrants a second review of GBT's tripper service by FTA.

IV. Findings and Determinations

In order to determine whether the service is impermissible, it is necessary to compare the current operations of the tripper service with the tripper service criteria contained in 49 CFR Part 605.3. We have established the following findings and determinations on the basis of such an analysis.

A. Regularly Scheduled Service Open to the Public

Lamers asserts that the service is not available to the general public as is evidenced by the fact that there is little or no non-student use made of the tripper service even though the service goes through residential areas generally served by GBT.

In order to satisfy this requirement it is only necessary that the buses be available to the general public. The volume or level of public use is not controlling. However, it is necessary to ascertain from the operating circumstances whether or not the service is, in fact, open to the public, i.e. could members of the public use the tripper service if they so desired?

GBT publishes a general route map and timetables for all of its routes, however, the timetables for the tripper service are printed separately and are referenced on the general route map only by the need to call a number for additional information. Lamers alleges that in order to get a copy of the special service you must give a local address for which the schedule may be mailed and that the information for the tripper service is not as available as the information for the regular routes. Therefore, the tripper service is not as open to the public. Furthermore, while the GBT system maps identify the existence of special service they do not show the route extensions or deviations therefore further limiting the public's access to the information.

While specific timetables may be supplied separately, we do not see why the routes themselves cannot be identified as part of the general service map of GBT. Thus we find that while the tripper service provided by GBT is regularly scheduled, it needs to be more adequately incorporated into the public route schedules and must be made generally available in the same manner in which regularly scheduled system route information is made available to the general public.

Lamers also has complained that the tripper service does not stop at regular bus stops. The videotape provided by Lamers supports this contention and reveals that many of the stops along the tripper route are not designated as GBT bus stops. GBT has indicated that it is their policy that customers may flag down a bus at any corner along a designated route and FTA notes that this policy is contained on their system route map. However, a view of the information submitted as well as the videotape provided by Lamers indicates that bus stop signs are located at some of the points along the routes and that drivers are passing the bus stops and picking up students at locations other than at the corner. It appears that GBT's policy for bus stops is not being consistently applied throughout the system and therefore is hindering the ability of the public to use it.

Finally it has been argued by Lamers that the buses providing the special service run express to the point in the regular route for the deviation or extensions and therefore are not available to the general public in the same fashion as the regular service. This activity constitutes a violation of the regulations and should be eliminated. Buses that provide the special service should not bypass the usual bus stops as part of the service.

The absence of appropriate bus stops or proper use of the bus stop policy as indicated by the bypassing of regular bus stops along with the failure to provide appropriate information in the general route schedule, and an apparent lack of non-school ridership on the buses makes GBT's claim that the service is available to the general public unpersuasive. Therefore, we are unable to find that the tripper service is adequately known to and therefore open to the general public.

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

As stated in 49 CFR Part 605.3, GBT is permitted to design special routes to accommodate the needs of students as long as the routes are open to the public and are a part of Green Bay's regularly scheduled service. The special service operated regularly during the times when school was in session. Further, the routes were extended at hours calculated to coincide with school opening and closing times. Both of these activities are legitimate modifications.

Lamers argues that the service is subject to modification if school is let out early or if a student is missed. In support of this contention they refer to the agreement between GBT and the District which indicates that GBT will accommodate a request to provide additional service. Lamers does not indicate whether GBT has actually modified its service, but it would appear that this provision is intended to address unusual situations that may occur relatively infrequently. FTA does not generally question the day to day operating decisions of the grantee with regard to the need to adjust service temporarily to address unusual circumstances. GBT has the right to add additional

unscheduled buses for unexpected demand whether it is do to and unannounced early dismissal or the early release of factory workers due to a pending snowstorm.

With regard to the missed student requirement, the agreement does not appear to require GBT to pick up missed students but appears, from the plain reading of the language, to indicate a students obligation to be at the bus stop (or corner) within the scheduled times for the arrival of a bus. There is nothing in the plain reading of the document to give the impression that GBT has an obligation to provide a special trip for a student who misses their bus.

Lamers has not suggested that either of these situations has occurred on a regular basis to justify a permanent unannounced modification that would warrant the usual notice requirements associated with the tripper service as a whole. GBT's actions appear to be based on its desire to meet the transportation needs of the school students in unusual situations which, in isolated incidents, would not constitute a violation of our regulations.

C. Clearly marked as open to the public

Lamers provided videotape that showed that GBT buses had secondary signage, which consisted of a piece of paper, located in the front windshield, with the name of the school that the bus was going to. This signage is in addition to the regular destination sign identifying the bus route. FTA has in the past ruled that secondary signage that contains the word "school or "School bus" is in violation of the requirements, however, in this case GBT is not specifically identifying the bus with signage using the words "school" therefore we believe that the secondary signage does not violate FTA requirements.

There are other characteristics of tripper service contained in the term's definition in the rule such as the permission to use various fare collection or subsidy systems. Lamers has not raised these issues as part of their complaint. Therefore, FTA offers no opinion as to whether GBT's service complies with these features.

V. Other matters

Lamers has raised a number of other issues regarding the impact of the contract between GBT and the District and concerns that they have regarding the operation of the service under the contract. However, to the extent that these issues go beyond whether GBT is engaging in improper tripper service, FTA is not vested with the authority to adjudicate private contracts which our grantees enter into with third parties and we will not comment on the contract as it relates to the rights and obligations between GBT and District. However, to the extent, that GBT's services under the contract do not comply with the Federal Transit Act, the implementing regulations, and this decision, that service may not be provided.

Lamers has also raised an issue regarding the School Bus Agreement and whether GBT has executed a proper agreement. Lamers questions the validity of FTA's policy under which the school bus agreement is considered incorporated into the Grant Agreement for federal assistance,

therefore, the execution of the Grant Agreement constituted an execution of the School Bus Agreement. Lamers claims that GBT should be required to execute a separate School Bus Agreement. FTA has recently instituted a new certification and assurance process that requires all grantees to annually make certain assurances to FTA prior to receipt of federal assistance (Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements, 59 Fed Reg. 51,794 (1994)). Included in this certification is a provision entitled "School Bus Agreement" that contains the actual School Bus Agreement that each grantee must certify compliance with as part of the annual process. FTA believes that to the extent that Lamers had some question as to the validity of the previous policy it has been superseded and addressed as part of the new assurance process.

Lamers has also suggested that this is a continuing practice of school bus violations on the part of GBT dating back to 1982, and that FTA's decision and remedy should reflect and acknowledge the continuing nature of the violation. However, the record does not indicate that GBT has ever willfully or intentionally, violated the regulations at any point in time in total disregard to a request from FTA to cease the improper activity. In fact there is nothing in the record to indicate that in those instances where a violation had occurred, that GBT did not take appropriate action to correct any violation upon an appropriate determination by FTA.

Furthermore, the facts that give rise to this complaint appear to be based on the agreement between GBT and the District which was entered into on June 24, 1993. GBT has been operating under this agreement for the past two years under the assumption that it was in compliance with FTA regulations based on a previous decision by this office. Therefore, while FTA does acknowledge the history of past disputes over school bus service between the parties it does not believe, based on the facts of this complaint, that it constitutes a continuing pattern of abuse by GBT that warrants an extraordinary remedy at this time.

Finally, Lamers has questioned the validity of Mr. Gary Gretzinger to respond to the complaint. Lamers argues that only the Mayor who signs the Grant Agreement and one time certifications has the authority to respond to the complaint. FTA records indicate that while the Mayor has the authority to sign the grants and certifications for receipt of federal assistance, the Common Council of Green Bay has given the authority to Mr. Gretzinger to provide "additional information as the U.S. Department of Transportation may require in connection with the Program of Projects" (City of Green Bay authorizing resolution in Complainants Exhibit 4 and 5). Therefore FTA believes that Mr. Gretzinger does have the requisite authority to respond to the complaint filed in this matter.

VI. Conclusion and Order

GBT has conducted and is continuing to conduct tripper service that is in violation of FTA school bus regulations. Accordingly, FTA finds that GBT is conducting impermissible exclusive school bus operations.

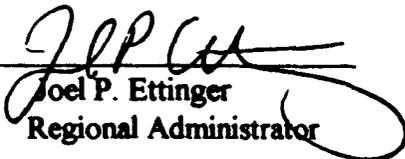
Therefore, GBT is ordered to cease and desist provision of tripper service in violation of 49 CFR Part 605.3 "tripper service."

If GBT wishes to continue to provide tripper service it shall immediately take steps to come into compliance with the regulation by doing the following:

1. Revising its system route map to identify the route deviations provided by the tripper service and to make available to the general public information on the tripper service in the same manner that similar information on the regular service is made available.
2. Immediately eliminate the practice of tripper buses running express to the route deviation points. Implement a policy that all tripper buses shall stop at all designated bus stops on the regular service route as well as the tripper route.
3. Within 30 days, submit to FTA's regional office, for its review and approval, a plan for provision of tripper service by GBT that details the nature of the service to be provided as well as implements the requirements identified in this decision. GBT shall also submit to FTA, for approval, any future revision to the plan prior to the implementation of any revisions.

In order to assure that GBT's operation remains in compliance with any new tripper service approved by FTA our office will engage in unannounced observations of the service over the next year. Should FTA determine that the bus service is not being operated in accordance with a preapproved plan, FTA reserves the right under this decision to take further action against GBT including barring GBT from the future receipt of FTA funds.

Dated this 19th day of January 1995.



Joel P. Ettinger
Regional Administrator