

DECISION

School Bus Operations

Travelways, Inc.

Complainant

v.

Broome County Department of Transportation

Respondent

I. Summary

This decision is the result of an investigation commenced by the Urban Mass Transportation Administration (UMTA) pursuant to a complaint filed by Travelways, Inc., against the Broome County Department of Transportation (alternately referred to as B. C. Transit or Broome County). UMTA has concluded that certain aspects of B. C. Transit's bus operations do not comply with the applicable requirements of UMTA's school bus regulations (49 CFR Part 605) and that, therefore, B.C. Transit is providing impermissible exclusive school bus operations. The respondent is ordered by this decision to correct the practices that do not comply with UMTA's requirements within 60 days of its receipt of this decision. If the corrections are not made, UMTA will bar B.C. Transit from the future receipt of UMTA funds.

II. Background

Travelways filed a complaint with this office on May 6, 1985 and submitted additional information on July 3, 1985. The complaint alleged, inter alia, that respondent was engaging in school bus operations prohibited by UMTA's school bus regulation.

Specifically, Travelways alleged that services on at least four of the "regularly scheduled" routes operated by B. C. Transit are not "tripper services" as defined in 49 CFR §605.3(b) but instead are special school bus services and therefore prohibited by UMTA's regulations. In support of its contentions Travelways has supplied certain maps, timetables and other documents to illustrate the nature of the services complained of.

III. Response to the Complaint

B. C. Transit file its responses to the Travelways' complaint with UMTA on June 21, 1985, and September 11, 1985. Broome County's response included a denial of the allegation made by Travelways that B. C. Transit is engaged in "schoolbus operations" in violation of 49 U.S.C. §1602(g) and the regulation thereunder.

Broome County submitted that the transportation services provided pursuant to a contract with the City School District of the City of Binghamton, New York, constitutes allowable "tripper service" within the meaning of the regulations (49 CFR §605.3(b), 605.13). The respondent further submits that, even if the service is not "tripper service," it does not constitute a "school bus operation" (49 CFR §605.3(b)) in violation of 49 U.S.C. §1602(g) and 49 CFR §605.11. Finally, the County submitted that, even if the service provided is a "school bus operation," Broome County is exempted from the prohibition against operation of such a service inasmuch as Broome

County qualifies for a statutory exception since it is a local public body which was engaged in the same service during the twelve-month period immediately prior to November 26, 1974.

IV. Findings and Determinations

A. To determine whether the complainant's allegations are substantiated so as to result in a finding that the services in question are impermissible the initial point of review must begin with a determination of whether B. C. Transit qualifies for exemption under §605.11(c) so that it may engage in school bus operations in competition with private school bus operators. Section 605.11, permits a grantee or applicant to engage in school bus operations in competition with private school bus operators only if it demonstrates:

- (a) ...
- (b) ...; or
- (c) That it is a State or local public body or agency thereof (or a direct predecessor in interest which has acquired the function of so transporting school children and personnel along with facilities to be used therefor) who was so engaged in school bus operations:

(1) In the case of a grant involving the purchase of buses - anytime during the 12-month period immediately prior to August 13, 1973.

(2) In the case of a grant for construction or operating of facilities and equipment made pursuant to the UMT Act as amended (49 U.S.C. 1601 et seq.), anytime during the 12-month period immediately prior to November 26, 1974.

In addition, to the assertions set forth in its submission of June 21, 1985, Broome County in its submission to UMTA dated September 1, 1985, provided a certified copy of a resolution of the Broome County Board of Supervisors

adopted on September 26, 1967, authorizing the purchase of the assets of the Triple Cities Traction Corporation and the assumption of its operations. This resolution provides evidence that Triple Cities Traction Corporation was the direct predecessor of B. C. Transit.

In addition, Broome County provided a statement by Mr. Lloyd Wood, a retired employee of both B. C. Transit and Triple Cities Traction Corporation. The statement recounts that Triple Cities Traction Corporation had always transported school children using various fare collections or subsidy systems. While UMTA agrees that Mr. Wood's statement does support that conclusion, his statement does not provide any evidence that the service provided by Triple Cities Traction Corporation was exclusive school bus service. Under the statutory language of §3(g) of the UMT Act and the implementing regulations, it is prerequisite to qualifying for an exception that the applicant or its predecessor in interest provided exclusive school bus service. Since the evidence produced does not support that conclusion, UMTA is unable to find that Broome County qualifies for an exception. It is important to note that even if UMTA were to find that Broome County does qualify for an exception, the exclusive school bus service it could then provide could only be provided with 100 percent locally funded equipment. No UMTA funded vehicles could be used. The incidental use of other UMTA funded equipment such as maintenance facilities, however, could be used in that case to support that 100 percent locally funded equipment.

B. Although the UMT Act and the implementing regulations prohibit recipients from providing exclusive school bus operations with UMTA funded buses even if the recipient qualifies for an exception, the regulations do not prohibit a recipient from structuring its regularly scheduled mass transportation services to accommodate the needs of students since they are but one category of transit patrons. The regulation calls for such service "tripper service." It is defined in 49 CFR §605.3 as:

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 system. Buses used in tripper service must be clearly marked as open to the public and may not carry designations 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 operators regular route service as indicated in their published route schedules.

In order to determine whether the services in question are impermissible, as the complainant asserts, it is necessary to compare the current operations against the "tripper service" criteria (49 CFR §605.3). We have established the following findings and determinations on the basis of such an analysis.

1. Regularly Scheduled Mass Transportation Service

B. C. Transit has published route maps for services provided on its 13 fixed routes in the Broome County area with timetables for both weekday and week-end services.

Of the 13 fixed routes, B. C. Transit provides transportation services pursuant to a contract with the Binghamton City School District along the following six routes: (1) #3 Park Avenue; (2) #5 Vestal Avenue; (3) #12 Conklin Avenue; (4) #15 Leroy/SUNY; (5) #28 Robinson Street; and (6) #40 Chenango Street.

A review of the evidence submitted by Broome County shows that the buses on the routes in question are regularly scheduled. Broome County publishes routes schedules and maps for these six routes. Their formal route schedules and maps do not indicate the routes and schedules for the runs which are designed to meet student needs. This error will be discussed below. Broome County's schedules for these runs, however, appears in the August/September School District News which complainant included with its complaint. This information indicates when the special runs depart and the routes they follow. This shows that the service in question is not randomly provided, but runs at predetermined times and routes. Consequently, UMTA finds that the service in question is regularly scheduled.

2. Regular Route Service as Indicated in the Published Route Schedules

As indicated above, UMTA finds that the service in question is regularly scheduled since the service is provided at predetermined times, days and places as indicated in the School District News. The regulation's definition of tripper service, however, requires that this information be provided in the recipient's published route schedules. Compliance with

this aspect of the definition is paramount since the published route schedule is the device by which the transit authority communicates information to the public. Since Broome County does not so publish this information in its regular route schedules, UMTA finds that it does not comply with the regulation. This finding is consistent with previous UMTA school bus decisions including Lamers Bus Lines, Inc. v. Green Bay Transit System (May 10, 1982). Therefore, in order for Broome County to continue to provide the service in question, it must publish all tripper service routes and times in its schedules.

3. Designed or Modified to Accommodate the Needs of School Students and Personnel

The transit operator is permitted by the regulation to specifically design routes to accommodate the needs of students as long as these routes are open to the public and are part of B. C. Transit regularly scheduled service. There are many ways in which a transit authority can modify routes to accommodate the needs of students. A familiar type of modification would be where the route deviates from its regular path and makes a loop to a school returning back to the point of deviation to complete the path unaltered. Other common modifications include operating the service only during school months, on school days, and during school opening and closing periods.

Broome County's modifications include running a bus to a point, part way along its published route and expressing to school from that point and beginning a second, empty, bus at the point of express and running it part way along the rest of the route. UMTA finds that these modifications are consistent with the regulation. In a recent memorandum, UMTA found that express school bus service is acceptable tripper service. Memorandum from Joseph A. LaSala to Jeanmarie Homan, Regional Counsel, URO VII, August 26, 1985.

UMTA believes that, in addition to violating the school bus regulations, the lack of publishing the deviations in the route maps and schedules confuses the public. As a result, a patron may board a bus unaware that it will take him only part way along his journey if the point of expressing to school occurs before the patron's desired destination. These problems are serious and, as stated above, Broome County must revise its published route maps and schedules to include tripper service in order to comply with the regulation.

4. Open to the Public

B. C. Transit maintains that its tripper service is open to the public, but as a courtesy, bus drivers will typically advise non-student passengers waiting to board the bus that the bus will be carrying a number of school students and that another bus not transporting students is available or will be available shortly in the vicinity to carry non-students to their destinations.

In order to satisfy the criterion of "open to the public," it is only necessary that the buses be available to the general public; the volume or level of public (non-school) use is not controlling. However, it is necessary to ascertain from the operator's circumstances whether or not the service is, in fact, open to the public, i.e., could members of the general public use the tripper service if they so desired?

Although Travelways alleged that its personnel had been denied access to B. C. Transit buses, the respondent asserts that it is unaware of any occasions when its bus operators had denied access to any non-student attempting to board its buses. If there have been such occasions, the respondent maintains that said bus drivers acted improperly and without authority. In addition, B. C. Transit states that as a result of said allegations by Travelways' personnel, bus operators were recently reminded, and will be reminded again in the fall, that they should not refuse to serve non-students although they may continue to extend the courtesy of advising non-students of the nature of the bus and if the availability of alternate buses to transport them to their destination.

This is an issue of first impression for UMTA. Although we recognize that a member of the general public can board a bus even if the driver indicates that another bus, without as many students, will be following shortly, we believe that the statement by the driver is too susceptible to interpretation by the non-student population as, "Do not board. Students only." As a result, Broome County must cease and desist from this practice.

5. There are several other characteristics of tripper service contained in the term's definition in the rule. These include the prohibition on the use of "School Bus" as a destination sign, the permission to use various fare collection or subsidy systems, and the use of only designated service stops. Complainant has not raised these issues. Therefore, UMTA offers no opinion whether Broome County's service complies with these features.

V. Other Matters

The complainant has raised an issue concerning B. C. Transit's contract with the School District for the 1985-86 school year. It appears as if B. C. Transit and the School District entered into a one year extension of the existing contract on July 2, 1985. UMTA is not vested with authority to adjudicate private contracts which our grantees enter into with third parties and we cannot comment on the relationship of B. C. Transit with the City School District of the City of Binghamton. To the extent, however, that Broome County's services under such a contract, if entered into, do not comply with the UMT Act, the implementing regulations, and this decision, that service may not be provided.

VI. Conclusions and Order

B. C. Transit has conducted, and is continuing to conduct tripper service on its Routes 3, 5, 12, 28, and 40 in contravention to certain provisions of UMTA school bus regulations. Accordingly, UMTA finds that B. C. Transit is conducting impermissible exclusive school bus operations. Therefore, UMTA

orders B. C. Transit to revise its operations on Routes 3, 5, 12, 28 and 40 in accordance with this decision. UMTA orders B. C. Transit to accomplish these revisions within 60 days from the date it receives this decision.

B. C. Transit shall obtain the concurrence of UMTA on all modifications made to satisfy the changes mandated by this decision. If B. C. Transit does not comply with this order within the 60 day period, UMTA will bar B. C. Transit from the future receipt of UMTA funds.

Submitted by: Douglas G. Gold Date: DEC 4 1985
Douglas G. Gold
Attorney-Advisor

Approved by: Joseph A. LaSala, Jr. Date: _____
Joseph A. LaSala, Jr.
Chief Counsel