It is for this reason that the protection arrangement is "labor's price for the enactment of the Urban Mass Transportation Act of 1964." On the contrary, it represents labor's request that there be something that would recognize that the worker in the industry had some legitimate interests and certain rights that had been badly damaged in the process of transition from private to public employment before 1964. The movement of the transit industry from the private to the public sector affected union representation, collective bargaining, and pension rights.

The transition from federal labor law to state labor law resulted in extreme losses by the workers in jobs, pension rights, and bargaining rights. The industry was in decline, system after system went into abandonment or bankruptcy, and more and more jobs were lost. People who had worked in transit their entire working lives suddenly found themselves on the street at a time when they could neither pursue employment in their trained professions nor obtain other employment.

When Congress enacted the Urban Mass Transportation Act of 1964, labor welcomed federal money into the industry. It felt that the federal dollars should be beneficial to the transit workers in terms that would be fair and equitable to labor.

The recent resurgence of employment in the industry is largely a result of the increase in federal aid, both capital grants and operating assistance. The program is designed to create jobs and provide more financial aid within the system so that there will be additional funds for wages. Capital assistance may be helpful to the worker, just as operating assistance is helpful to the worker.

A factor that distinguishes operating assistance from capital assistance is that there is no assurance that operating assistance is going to be used for conventional transit. The original theory of Congress was that this sort of program might result in incidental effects on the working force as a result of improved technology or the other uses to which federal funds might be put that could cause job losses or reductions in earnings. Operating assistance may be used to provide taxi service or some other transportation service that will not benefit labor. It is for this reason that the protection arrangement is to be put in place in advance. Then, in the event that someone is hurt by the advancement of technology in the field and losses of jobs occur, there is a remedy available.

In recognizing the need for fair and equitable treatment of labor, Congress recognized that the transit workers have certain rights that must be considered by the federal government and that they should be protected. Because labor is receiving a fair share in the transit industry, which is receiving federal funds, it is felt that it should share some of the benefits that flow from federal dollars.

Section 13c should be put into its proper perspective. Because of the increasing political fervor surrounding it today, transit labor is under heavy attack. The basic thrust of the forces against section 13c seems to be based on the fact that we have moved into the public sector and have been the focus of a much broader dispute about the structure for wage determination in state and local public employment in general. Unfortunately, it appears that transit employment is setting the precedent for decision making in state and local public employment. Local government officials are suddenly concerned that what they do for transit will be expected by the rest of their employees. Because of this, there is a great deal of opposition to collective bargaining from local governments.

The progress that has been made since 1964 in transit labor has recently come to a halt. General acceptance of a basic statutory provision administered and interpreted since 1964 is now in question. Today everything is open to question; it is not known what Congress and the Carter administration may do. It is even very difficult to predict what the industry will do.

The original section 13c agreement for operating assistance was only in place for about 6 months before certain segments of the industry began attacking it. It was never properly administered and put into place at the U.S. Department of Labor. It is certainly still an open question whether the U.S. Department of Transportation feels there is any need for section 13c protection in the area of operating assistance. Such uncertainty makes it difficult for industry and the worker to know what to do. There are no accepted ground rules or guidelines, and the levels of protection are uncertain. There are legitimate differences of opinion as to the structure and application of section 13c. It can be used constructively to promote transportation, or it can be used as a weapon to assure that transportation innovation does not occur or that it occurs in ways that will be detrimental to the general public.

**Employee Protection: Paratransit and Its Impact on the Operator**

Leo Cusick, Regional Transportation Authority, Chicago

The overriding fear regarding paratransit in the regular business of mass transportation is that operators will continually be in the position to eliminate routes and say that paratransit vehicles can handle the riders; perhaps the operator will phase out enough routes to put himself out of business. If the basis for the decision on route extension or existence is economic, the operator will continue to eliminate lines. What has been done tradi-
tionally in the industry is to extend the lines into various areas, providing public transportation to outlying areas and helping in the development of the area. This function of mass transit would no longer exist with most paratransit vehicles.

If paratransit is to become central in the public transportation industry, the extension of these corridors may never be realized. Historically, the central city has been extended by commuter rail lines and other mass transit lines, as in New York City and Chicago. The function of mass transit in developing land-use patterns cannot be served by the lower volumes of riders characteristic of paratransit vehicles. The development of land use and mass transportation centered around a metropolitan area must go hand in hand.

Recently there has been a trend toward the use of transportation in social services whereby social service agencies take on the responsibility of using transit as a method of developing skills. These social service agencies create transportation jobs to train people who are not qualified for other jobs. A variety of reasons but can perform some service in transit. The problem is that the public transportation agency assigned to regulate the transportation service in that area loses this patronage but must accommodate the social service agencies through providing maintenance of the vehicles and so on. In this situation, there is a competitive organization that is not recognized because it is under the guise of social services.

Another situation that affects operators and union people in regard to paratransit vehicle operations in the transit market arose in Los Angeles. People were hired as drivers in training to drive during the peak hours. It was agreed that the operator would pay the union scale wage and provide the vehicle. The driver in training would drive the vehicle to work, picking up people along the way, and at the end of 6 months would be a qualified bus driver. However, this experience was unsuccessful because the drivers in training were unwilling to become full-time bus drivers at the end of their 6-month training period; many wanted to continue to work as drivers in training for an unlimited period. The program therefore failed to produce new full-time drivers.

This touches on an aspect of productivity that has developed into a very sensitive area for management and the unions. One problem area is that of the driver who works during the peak, thereby obtaining union benefits, and also works regular hours at another job; another problem area is that of the full-time union people who moonlight for private operators for less money than they receive as union drivers. The public transit authority is paying for fringe benefits for the drivers who moonlight and are then encouraged to increase productivity. The private entrepreneur reaps the benefits, and the public authority is affected by the drivers’ susceptibility to accidents because of the long hours the driver has worked. Though safety and appearance seem to be small factors, they are important to those responsible for running the system.

Though it is a long and often arduous task, agreements can usually be reached between union and management forces. In regard to section 13c, the process of negotiation has developed from a fairly simple statement that only required union approval and protection for the worker. Section 13c now implies a much more complex relationship and has become broadened to the extent that it is difficult for a mass transit operator who is limited to a specific geographical area to accept the trends of negotiations and labor relations within the entire nation.

**Discussion**

Since discussion about the current concern over paratransit and section 13c also occurred at other times during the meeting, the following section includes some points that were contributed during discussions that followed previous papers.

Labor expressed concern that there is no assurance that operating assistance will be used for conventional transit service. It may be used to provide taxi service or, because of requirements that it be subcontracted on a competitive basis, may go to the bidder who pays the lowest wages. Because there is no assurance for conventional transit workers on how the money will be spent, there was a good deal of interest in worker protection in such cases. One person noted that section 5 contains a possibility for capital assistance; perhaps it would be easier if the funds were dedicated entirely to capital assistance or entirely to operating assistance. A labor representative suggested that whether the money is given out in operating assistance or in capital assistance seems immaterial. For example, if the requirement of the proposed paratransit policy is that conventional transit providers must offer all paratransit elements for bids before they can provide any of the services, and if they have given preference to the low-cost paratransit provider, then it seems likely that existing transit employees may lose jobs and earnings as a direct result of the federal assistance program.

Another labor representative pointed out that there are significant difficulties in dealing with competitive bidding because "the mass transit wage makes it impossible to compete with low-paid drivers, for example, cab drivers who work on a commission basis." Transit costs were mentioned as the primary item in industry negotiations. Recently, operators have had to address the issue of other services that must be provided to meet federal requirements, such as paratransit operations. If the new services take transit riders away from conventional services and have a short life span, the program has had a detrimental effect on conventional transit operations. A representative from management added that: "With competitive bidding, the service provider is only considered in terms of price; longevity of service operations, safety, and performance measures should also be considered in the final decision."

A representative of the federal government said that, although price is a key factor in paratransit policy, it is not the only factor and added:

The basic assumption being made is that there is a need for transportation services. The reason for the competitive bidding process is that there is a real effort to protect labor employed by both private and conventional carriers. There is also an effort to protect the elderly and handicapped, because current mass transit is unable to provide service to them effectively although the law requires it. Together, these requirements force us to look at some alternative form of transportation, namely paratransit.

Some concern was expressed about the precedent set by the government in proposing ordinances and regulations to which local governments must conform. The government representative mentioned that the federal government is trying to take a leadership role and "to reach some consistency in dealing with the transportation problem. Many cities and states have regulations or laws that discourage the most efficient use of transportation, such as those that prohibit taxis from offering shared rides."

It was also noted that the provision of funds by the federal government sometimes causes traditional transit operations to be more competitive with the private provider of service and that this may force the private provider of service out of business. It was observed that
in state programs funds are sometimes granted through other agencies that are not trying to be low-cost providers of service, which results in a distortion in the flow of funds. In some states, the proposed regulations have caused dismay. The transit authorities are unwilling to make a commitment until the funding has been settled. It is difficult to predict the results of the new statutes and proposed policies; it is feared that efforts to protect the private operator may in fact squeeze him or her out of the market and cause the public operator to assume a service and then cross-subsidize it from fare-box revenues.

A management representative pointed out that paratransit should complement the existing transit network because they can be mutually beneficial. For example, under certain conditions, a taxicab operation is not competitive with a bus system but can supplement the service. Paratransit can make a significant contribution to traditional transit. If, for example, a fixed-route bus is operating at a cost of $4 or $5/passenger in the late evening hours, another form of transit may be able to significantly decrease costs, especially paratransit.

A labor representative thought that one of the basic problems in paratransit is that Congress changed the definition of urban mass transportation to remove the fixed-route restriction in 1968 without any realization of what that might do to the total fabric of the Urban Mass Transportation Act. The legal and policy implications that resulted from making federal assistance available to a broader range of service providers were not realized at the time. The act was written to save a failing industry, and prime consideration was given to conventional and fixed-rail passenger service. As the Urban Mass Transportation Administration has moved toward experimenting with paratransit, it has been faced with obstacles that the act was not ready to deal with. There is a gross overemphasis on provisions of the act to take directions that Congress had not originally intended. Congress has never addressed the questions of how paratransit should be fitted into the act, what level of protection should be awarded to taxi operators or other employees, or what rights the taxi industry should have for operating assistance and capital assistance.

The issue of an overall statute to regulate bargaining had been raised previously. Labor indicated that an appropriate policy for all urban mass transportation programs is needed, and this cannot be accomplished only through section 13c. The relevant factors are spread throughout the Urban Mass Transportation Act and relate to productivity options, cost factors, and planning arrangements. Because of all these implications, a labor policy is not something that is solely within the U.S. Department of Labor's jurisdiction under section 13c.

There was a very strong difference of opinion in regard to the appropriate role for the third party in decision making in labor relations at the federal, state, and local levels, particularly at the federal level. Some participants felt that the federal government should not intrude itself in local decision making on such issues as wages. Others felt that the federal government had a right to impose certain standards. A need for national agreement on wages and hours was alluded to both directly and indirectly during the meeting. One participant stated that there has been a thread running through the meeting that suggests that labor may be in favor of a national law regulating labor in the mass transit industry. The group I represent is unalterably opposed to such a program. Both labor and management must be opposed to any concept of industrywide collective bargaining agreements because each property has different operating, financial, and managerial problems. Nationwide bargaining cannot conceivably work for local transit properties.

This statement elicited very strong opposition from labor representatives. If there is a trend toward national labor law running through the industry, it was felt, it must be clearly articulated and not indirectly referred to through such practices as grants-in-aid. A management participant mentioned that he had the feeling that the opinion of the group was being sought on industry's consideration of a national labor policy, the trend toward national data gathering, the appropriate role of the federal government, and the need to measure productivity. There was general concern by both labor and management that the meeting not indicate that the group favored a labor law relating to negotiating mass transit agreements at the national level.