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The changing roles played by various transportation providers and the changing balance among different components of the urban public transportation sector, coupled with changing federal policy toward the public subsidization of both different modes and competitive modes have created two significant conflicts: (a) the competition between different conventional and paratransit modes for a limited market and (b) the competition among different labor forces. This paper focuses on the implications for the development of paratransit services of statutory labor protections and prevailing labor standards. The paper examines the recent evolution of federal policy in the labor-protection area and then seeks to identify the broad implications of current arrangements and philosophies. The present policy and practices serve as serious constraints to the natural development of paratransit. The paper concludes that several legislative options are open that would clarify and define key labor protection issues.

The development of paratransit as a separately identifiable family of services has taken place within a context of several important social, political, and demographic trends, and these trends have influenced this development from experimental to more mature concepts. Foremost among these trends are:

1. Increasing national concern for and attention to the needs of elderly and handicapped persons—particularly their transportation needs—and increasing awareness that this population segment is frequently physically unable to use conventional transit services,
2. Increasing pressure on regional transit authorities to provide services in low-density areas not well suited to conventional transit services but falling within those authorities' geographic bases of taxation, and
3. Continuing decentralization of land-use patterns in urban centers (urban sprawl) and the resulting increased dependence on the private automobile—the superior good in the transportation marketplace, which is also currently the most expensive, most energy-intensive, and most environmentally degrading modal option.

The last of these trends (increasing dependence on the automobile and the emergence of that mode as the superior good for many individuals) has altered the fundamental nature and role of all urban public transportation modes (commuter rail, heavy rail, light rail transit, bus, and exclusive ride taxi, as well as paratransit) and created two simultaneous and intertwined trends: (a) a changing role for all forms of urban public transportation (taken collectively) and (b) a changing balance among the different components of the urban public transportation sector.

Given these two intertwined trends, it is quite understandable that those groups that have major vested interests in the maintenance or improvement of the status quo of the urban transportation marketplace will be concerned with and dedicated to the protection of their personal interests in the course of any transition period. Thus, as paratransit concepts have emerged and evolved, existing private transit and taxi operators, who have vested equity concerns, and existing transit and taxi labor, who have recognizable job security and working condition concerns, have used all available resources to ensure that this developmental process will work to their advantage (or to at least protect themselves against any negative effects). Although there are limited actions that these two interest groups could take in a purely private-sector marketplace (other than innovation-oriented actions aimed at increasing or maintaining their market share), the fact that urban public transportation has evolved into a public service that is heavily subsidized by the public sector has created a special set of problems and possibilities that are not resolvable by the normal private-sector market-clearing mechanism of free competition.

The allocation of public subsidy funds in competition with unsubsidized private services has raised important philosophical concerns, and the allocation process for subsidy funds has served as the locale for the resolution of these concerns and conflicts. The heavy predominance of federal subsidy funds in urban public transportation has caused the programming and allocation process controlling distribution of these subsidy dollars to become an important theatre in which the resolution of two fundamental conflicts are acted out: (a) the competition between different conventional and paratransit modes (both operators and labor) in a limited marketplace and (b) the competition of different labor forces—one relatively well paid and well organized and the other considerably less paid and less well organized—representing conventional transit and private paratransit, respectively.

This paper focuses on the implications of labor-protection devices and labor standards for the paratransit implementation process. The existence of labor-protection clauses in federal mass transit-assistance legislation has profoundly influenced the ways in which both conventional and paratransit services have developed. Similarly, the nature of prevailing labor prac-
ties and standards in the conventional mass transit industry is now also affecting the paratransit sector, creating a strong contrast to the different standards and practices that prevail in the private paratransit (taxi) sector; this is a contrast that has important economic implications for the future development of both existing and (potential) new paratransit services. The paper reviews the recent developments in federal policy and chronicles the recent labor-protection arrangements that have accompanied the implementation of certain prototype or demonstration projects undertaken under federal auspices. It then seeks to identify the broad implications of current federal policies that may be anticipated and to structure basic policy issues or questions that must be addressed in the near future.

In choosing this broad focus, many important issues have been largely ignored; it is to be hoped, however, that many of these issues will be more easily addressed, once a fundamental policy orientation or philosophy has been firmly identified.

URBAN MASS TRANSPORTATION ADMINISTRATION AND PARATRANSIT:
BACKGROUND AND DEFINITIONS

Before 1974, the interest of the Urban Mass Transportation Administration (UMTA) in paratransit was largely confined to research and demonstration projects, mostly focused on the dial-a-ride concept. However, since 1974, UMTA interest in paratransit has grown significantly. Through a series of policy memoranda and speeches by the Administrator(s) and Associate Administrator(s) for Policy and Programming over the past three years, a new UMTA policy with respect to paratransit has been evolving.

This policy change has resulted in the opening of doors to UMTA assistance funds for those paratransit services that satisfy the test of meeting the definition of mass transportation given in Section 12c5 of the Urban Mass Transportation Act of 1964, as amended by Section 702 of the Housing and Urban Development Act of 1968. The definition states that

The term "mass transportation" means transportation by bus, rail, or other conveyance, either public or privately owned, which provides to the public general or special service (not including school buses or charter or sightseeing service) on a regular and continuing basis.

Services that meet this definition are eligible for federal assistance under Sections 3 and 5 of the 1964 act regardless of whether they are publicly or privately operated. (More discussion of this definition, and its implications, will be given below.) UMTA has, in the past two years, received and funded Section 5 grant requests to support private paratransit services; the principal stipulations for such grants are that

1. They must be included in the normal Section 5 grant application process and reflected in the transportation system management, transportation improvement, and long-range plans for the metropolitan area;
2. The services must meet the definitional test of "mass transportation" under the 1964 act, as amended; and
3. Protective provisions with respect to private enterprise and labor rights are observed.

More discussion on the last point, which refers to Sections 3e and 13c of the 1964 act, is given later in this paper. In addition, Sections 3 and 5 grant programs contain administrative requirements that pertain to satisfying the conditions of making a finding of minimal environmental degradation, holding public hearings during the planning process, and (for Section 5) providing half fares for elderly and handicapped persons during off-peak periods.

In addition to the Sections 3 and 5 programs, UMTA has two other programs that are directly involved in provision of paratransit services. The so-called Section 16b2 program (also under the 1964 act) provides capital assistance to nonprofit agencies for provision of service to handicapped and elderly persons. Although the program is not service-concept oriented, paratransit services represent the core of these agency programs.

Funds under Section 6 of the 1964 act have been used by the Service and Methods Demonstration Program for a number of exemplary and experimental paratransit projects.

Paratransit has been defined by Kirby (1) as "the range of services falling between conventional fixed-route bus service and the private, individually occupied automobile". The definition is a broad one and includes such diverse service concepts as

| Dial-a-ride | Vanpooling |
| Shared-ride taxi | Carpooling |
| Route deviation | Exclusive-ride taxi |
| Point deviation | Automobile rental |
| Jetney | Livery and limousine services |
| Multiuser automobile service |

A key issue is, Which paratransit services constitute "mass transportation" under the UMTA definition? This is of particular concern because of important underlying issues of basic equity and property rights (fundamental to American legal tradition) and protective concerns with respect to labor. These issues are legally manifest in Sections 3e and 13c of the 1964 act, respectively.

In reviewing the UMTA definition of "mass transportation" and its interpretation by UMTA policymakers over the past years, several points should be noted:

1. To fall within the definition, service must be available to the general public on a continuing basis. Potential riders must be guaranteed service.

2. To qualify as "mass transportation", the service must be operated so as to allow ride sharing and must effect this ride-sharing policy without consent of the passenger.

Private and public operators are not distinguished under the definition. However, certain for-hire services, those in which the vehicle remains exclusively under the direction and control of one passenger (such as exclusive-ride taxi, limousine, or automobile rental), appear to be excluded under this interpretation of the definition. Group loading of taxis does not qualify under the definition, because the first passenger has exclusive control over vehicle loading and routing. However, shared-ride taxi (in which ride sharing is accomplished as a matter of operating policy and does not require the passenger's consent) does fall within the definition of "mass transportation" as UMTA is currently interpreting it.

The official interpretation of the definition is contained in a letter of July 12, 1976, from former UMTA Administrator Robert Patricelli to B. R. Stokes, of the American Public Transit Association.

In determining what constitutes "mass transportation," the Urban Mass Transportation Administration (UMTA) is guided by Section 12(c)(5) of the UMT Act of 1964, as amended. That section defines mass transportation as "transportation by bus, rail, or other conveyance, either publicly or privately owned, which provides to the public general or special services on a regular and continuing basis." Within this definition, UMTA includes any form of collective transportation service available to...
the public, i.e., any service which cannot be reserved for the private and exclusive use of individual passengers. Services which qualify as "mass transportation" include dial-a-ride, jitney, shared-ride taxi, community minibus, and certain forms of vanpooling. Services which are not eligible for mass transportation assistance are normal and historic taxi services, individual car rental services, and for-hire limousine and private ambulance services.

This definition creates potentially explosive areas of federal concern as a result of the existence of Sections 3e and 13c of the 1964 act. As the taxi sector has become aware of the potentially competitive nature of certain paratransit services, its willingness and eagerness to provide an expanded range of services (beyond traditional exclusive-ride taxi) has grown significantly. As private taxi companies move into these services, it appears that they will fall under the protections offered by the 1964 act, at least to the degree that they meet the definitional test of providing "mass transportation".

As one reviews recent U.S. Department of Transportation (DOT) policy with respect to paratransit, one is struck by its incremental development. Although there was an attempt to develop a firm policy in late 1976, the final policy statement has yet to be issued. The attempts to revise the draft policy statement have made it clear that the concern over the best way to afford appropriate or adequate labor protections for existing labor is a major stumbling block. As the options have been studied, there has been an increasing awareness that the actions taken in the context of a paratransit policy eventually will have broad implications with respect to protections embodied in conventional transit-assistance programs.

What is at issue is a basic philosophical issue concerning the protection of labor from negative impacts of federal assistance: Should there be protection for people or should there be protection for jobs? When UMTA proposed in the draft policy statement basically to exempt paratransit assistance from the requirements and protections of Section 13c, it stimulated tremendous and well-organized resistance on several fronts—transit labor (who feared losing work to taxicab companies and nonprofit agencies) and taxi management and labor (who feared losing work and markets to nonprofit agencies).

**INTERRELATIONSHIPS BETWEEN PARATRANSIT AND CONVENTIONAL TRANSIT: COMPETITION IN THE MARKETPLACE**

Paratransit-service concepts should not, in general, pose significant problems with respect to conventional public transportation services. In general, paratransit services can and should be configured to provide complementary spatial, temporal, or market-segment coverage and should, therefore, not compete significantly for the same markets. In fact, quite the opposite is true; a well-integrated comprehensive system should enjoy complementary interactions among system components. However, several important conflicts between paratransit and conventional transit are possible. These conflicts—competition for similar markets and differential in the respective labor sectors—will be briefly discussed (the former problem in this section, the latter in the section below). As will be seen, the presence of Section 13c and the procedures developed for its administration make the issue of competition between conventional and paratransit modes an important issue with respect to federal policy.

The potential for conflict over the division of the marketplace between paratransit and conventional transit is greatest for three paratransit concepts: vanpooling, substitute demand-responsive services, and special-market demand-responsive services. These conflicts reflect head-to-head competition between different modes (operators and labor forces) operating simultaneously and competing for a limited marketplace.

Vanpooling and more generalized ride-sharing programs clearly have the potential to compete directly with conventional transit, although this potential can be minimized by the organization and administration of a program; for example, vanpool programs and ride-sharing promotion can be restricted to trip patterns not served by conventional transit. Still, the vanpooling concept can be implemented in direct competition with conventional public transit. This is particularly true in states that have deregulated vanpools from common-carrier status and cannot, therefore, legally prevent such competition.

Although the direct competition of vanpools and conventional transit can be rationally viewed as quite harmful from the viewpoints of the transit operator and of transit labor, it may have certain virtues from a public perspective. For example, in systems that have severe peaking characteristics, the marginal costs of peak-hour services may be significantly higher than the average cost of self-amortizing vanpooling programs. The vanpool programs have the potential to help alleviate the peaking problems faced by many conventional transit systems. This is clearly not a desirable scenario for transit labor, but it may be a cost-effective public strategy. However, the opposition of transit labor (through the use of Section 13c and any other mechanisms or powers available) is a logical and rational response to a threat to job security and existing working conditions. Similarly, the opposition of public transit operators whose standards of public evaluation are measures of ridership and system coverage (rather than measures of cost effectiveness) is also predictable.

A second area of conflict is developing as transit authorities consider the concept of substitution of demand-responsive services (generally to be operated under contract by private operators) for low-productivity conventional ones. The most frequent targets for this type of substitution have been evening (owl) and weekend services. However, although conventional operators have frequently considered such substitutions, few in-system implementations have actually been observed nationally, primarily because the Section 13c agreement process has created a set of circumstances that undermines the feasibility of such actions from both procedural and economic viewpoints (as will be discussed below).

A third area of competition is that of service to special markets. The existence of the UMTA Section 16b2 program, which channels capital-assistance funds to nonprofit organizations for the purpose of aiding their direct provision of service, has created equity and labor concerns in both the conventional transit and the private for-profit paratransit sectors. The elderly and handicapped have always been viewed as a major conventional transit market, although their importance to the industry is sometimes underestimated. (Although the elderly and handicapped are more significantly dependent on public modes than are other population segments, their overall level of trip making is significantly lower; trips by persons more than 80 years old account for only 10 percent of all person trips in the United States.) The proliferation of special services (assisted by Section 16b2 funds) clearly offers a large potential for competition with conventional transit unless such services are carefully tailored and targeted to markets and populations who cannot or do not use conventional transit.

The proliferation of special services under the auspices of private nonprofit organizations, which has been stimulated by the Section 16b2 program, has created an
even larger threat to the private taxicab industry, 20–30 percent of whose ridership is elderly or handicapped. The private nonprofit organizations tend to offer heavily subsidized services that can accelerate the erosion of an already declining market for taxicab services. Federal subsidies to train labor via the Comprehensive Employment and Training Act (CETA) of 1973 further exacerbate the conflict between private nonprofit and private for-profit carriers because for-profit carriers are ineligible to use CETA labor, but nonprofit organizations may and frequently do use such workers to drive vehicles.

PROTECTION OF PRIVATE ENTERPRISE AND EQUITY

Section 3e of the Urban Mass Transportation Act of 1964 states that federal aid may not be used to acquire or compete with a private mass transportation service, with certain qualifying exceptions. The provision reflects a concern for protection of property rights embodied in the Fifth Amendment of the U.S. Constitution (that government shall not deprive individuals of property without due process of law and just compensation). Section 3e reflects the concern that subsidies to certain operators may create competition with unsubsidized private operators, drawing away business (passengers and revenues) from the private operators and undermining basic equity rights they may have vested in the operation; thus, the use of federal funds for subsidies without just compensation to competing private operators could be construed as a taking of property without due process. However, the administrative conditions for Section 3e make clear that this protection of property rights is anything but absolute.

Section 3e provides three exceptions or conditions to the protective conditions for private operators:

1. The Secretary of DOT finds that such assistance is essential to a program . . . for a unified or officially coordinated urban transportation system that is a part of a comprehensively planned development of the urban area.
2. The Secretary finds that such a program, to the maximum extent feasible, provides for the participation of private mass transportation companies.
3. Just and adequate compensation will be paid to such companies for the acquisition of their franchises or property to the extent required by applicable state or local law.

UMTA has administratively interpreted these conditions to imply that the section does not require taking, use, or compensation; rather, it requires the Secretary to make findings concerning the adequacy of local planning and the feasibility of making greater use of private operators. Section 4.2 of the 1964 act discusses the opportunity that a private operator may have to submit these administrative findings to judicial review.

A major exception to the general administrative procedures established under Section 3e is the capital-assistance program for nonprofit organizations—the Section 16b2 program. Grants made under this program were at first administratively exempted from the normal requirements of both Sections 3e and 13c; however, during the early phases of the Section 16b2 program, UMTA received significant pressure to apply the Section 3e test (requiring maximum feasible participation of private operators in the provision of service). In the more recent history of the program, the administrative planning requirements surrounding it have been tightened considerably; it is now required that all potentially impacted providers be provided an opportunity to comment on proposed grants and that Section 3e receive full consideration in programming decisions. Responsibility for carrying out these procedural requirements rests with UMTA and the state transportation agencies responsible for administration of the Section 16b2 programs in their jurisdictions.

Although Section 3e serves to protect the interests of private operators—rather than of labor—the existence of its protections has given the private taxicab sector a strong basis for expanding its historical range of services to include paratransit services meeting the UMTA definitional test. As the taxicab sector has become more aggressive in seeking out these opportunities, the contrast in working conditions of labor in the two (taxi and transit) sectors has been emphasized. Although Section 3e protections are not oriented toward labor, their existence has stimulated a direct challenge to the working conditions of transit labor; the contrast between the lower wages and less-protective work rules negotiated under the conditions of a more competitive, unsubsidized taxi sector and the higher wages and more-protective work rules of the transit sector has been spotlighted.

Thus, although Section 3e is not intended to protect labor, but rather the equity (property) interests of private operators, the fact that UMTA and the U.S. Department of Labor (DOL) have administratively chosen to view taxicab operation as within the zone of interests protected by Section 3e—while traditional exclusive-ride taxi labor is viewed as outside the zone of interests protected by Section 13c—has, ironically, made Section 3e the primary area of existing protection for taxi labor (whose interest in paratransit in any conflict with the conventional mass transit industry is generally coincident with that of taxicab management).

The existence of Section 3e has set the stage for the entry of the private taxicab sector into the "mass transportation" marketplace; however, the simultaneous existence of Section 13c, which serves to protect the prevailing wages and work rules of conventional transit labor, may imply that prevailing working conditions in each sector will ultimately converge. This thought is distressing to transit labor and to transit and taxicab management, because the convergence is likely to occur at the higher level of transit workers, rather than at some middle ground.

Although UMTA has administratively interpreted exclusive-ride taxi operations as being ineligible for compensation under Section 3e (because exclusive-ride taxi is not viewed as mass transportation), there clearly exists a strong overlap between the markets served by paratransit services and taxi services. All available evidence to date indicates that exclusive-ride taxi operations are clearly affected by implementation of subsidized demand-responsive paratransit. There is a strong underlying recognition of this fact in UMTA's gradual policy shift with respect to the future role of the taxi sector in providing paratransit services. As Altshuler stated at the 1975 Williamsburg Paratransit Conference (2, p. 95),

The emergence of paratransit poses the issue of taxi-transit competition in a direct manner; it brings into question the legal and policy definitions of the term "transit" that have guided federal policy over the past dozen years; and it raises a host of extremely difficult questions about how to integrate taxicabs into transit planning, transit subsidy, policy, and publicly subsidized competition.

Unfortunately, it is not clear whether we are any closer to answering these questions today than we were then.
LABOR PROTECTION IN FEDERAL LAW AND ITS IMPORTANCE TO PARATRANST IMPLEMENTATION

The development of paratransit services has brought to the forefront a number of issues relating to labor that must be faced as these services play an increasing role in the urban public transportation delivery system. From a federal perspective, and in the context of existing federal legislation and programs, protection of labor rights has been a principal concern. Section 13c of the Urban Mass Transportation Act of 1964 (as amended) embodies this concern and creates a number of conditions that must be met in order to access federal (UMTA) assistance funds for either (eligible) paratransit services or conventional transit services.

In brief, Section 13c states,

It shall be a condition of any assistance under section 3 of this Act that fair and equitable arrangements are made, as determined by the Secretary of Labor, to protect the interests of employees affected by such assistance. Such protective arrangements shall include, without being limited to, such provisions as may be necessary for (1) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise; (2) the continuation of collective bargaining rights; (3) the protection of individual employees against a worsening of their positions with respect to their employment; (4) assurances of employment to employees of acquired mass transportation systems and priority or reemployment of employees terminated or laid off; and (5) paid training or retraining programs. Such arrangements shall include provisions protecting individual employees against a worsening of their positions with respect to their employment which shall in no event provide benefits less than those established pursuant to section 5(a) or 5(b) of the Act of February 4, 1957 (24 Stat. 370), as the contract for the granting of any such assistance shall specify the terms and conditions of the protective arrangements.

Labor-protection clauses in federal legislation that affects the transportation sector have had a lengthy history in the chronicles of the U.S. railroads. The inclusion of Section 13c in the 1964 act reflected the strength of organized labor during the early years of the Johnson Administration and clearly has continued from the protective approaches developed in the rail sector. As Congress developed the first federal-assistance program for urban transit, organized labor recognized two special areas of concern that might arise as public subsidies spurred evolution in the transit sector. Very rapidly, two particular areas of concern came to predominate:

1. As private companies were being taken over by public authorities in the early 1960s, many labor rights (e.g., work rules and vested pensions) were not carried over to the public operation, nor were the employees of the private company guaranteed employment. In fact, as many private companies became governmental subunits, the rights of affected employees in certain states to bargain collectively would have been eliminated by state laws affecting public employees. [The so-called "Memphis formula" was developed to deal with these situations, in which private management companies were created to operate transit properties under a contract to a public authority. Employees of these companies were thus considered employees of a private company and were then able to continue collective-bargaining rights and maintain benefits as guaranteed by the Labor Management Relations Act of 1947 (as amended in 1959 and 1974).]

2. As publicly subsidized operations proliferated, continuing private operators found the competition with subsidized operators severe, which—combined with generally changing travel behavior and preferences nationwide—caused further deterioration of their financial base, curtailment of operations, and resulting labor layoffs.

Section 13c is a rather general, broadly constructed protective clause. In certain ways, it thus might be considered a flexible instrument intended to meet the test of time. However, it is now clear that its protective language is being extended to applications far beyond the conceptual limits of the original authors. Its language is being extended in ways that clearly constrain both the pace and character of evolution in urban public transportation. (The extension of Section 13c protections to paratransit services has, of course, paralleled and been negotiated by the flexible interpretation of the definition of "mass transportation" that has made certain paratransit services eligible for federal assistance. At issue is not whether Section 13c should be extended in some parallel way, but how it should be extended.)

The responsibility for administering Section 13c lies with the Secretary of Labor, not with DOT. The actual administrative process through which the section is effected has involved the development of mutually satisfactory arrangements that are fair and equitable to both parties in the process: management (i.e., the grant recipient) and labor (i.e., the U.S. Department of Labor). DOL has sought to base Section 13c determinations on the existence of actual agreements that are the product of local bargaining and negotiation (i.e., Section 13c agreements) and set down the terms of the protective arrangements—identification of affected employees, compensation levels for adverse impacts, and appeal or arbitration procedures for disputes—between the affected parties. In practice, this has meant that unions representing potentially affected employees are afforded the opportunity to sign off on every federal grant using UMTA funds. (Section 16b2 funding has been excluded by administrative decision.) Where no organized union exists (for example, where service is being initiated for the first time in a city that does not have existing unionized mass transportation), the Secretary of Labor issues the terms and conditions of protections that are then incorporated into the grant contract. In the case of an impasse, the Secretary has the authority to issue a determination detailing fair and equitable protections. The protections of Section 13c are (by definition) applicable to employees affected and not merely to mass transportation employees. DOL has administratively interpreted this provision to apply only to employees falling within the UMTA definition of "mass transportation". (This decision has never been adjudicated and is potentially subject to legal challenge.) As stated by James Perlmutter of DOL on October 24, 1978, the basis for this restrictive interpretation lies with a review of the committee hearings preceding passage of the statute and with the DOT interpretation of legislative intent.

Some of the most difficult issues to be resolved in paratransit development are whether, and under what conditions, employees of private, for-profit companies (e.g., taxicab companies) can be considered as affected employees under Section 13c. As noted by Altshuler (2, p. 98),

In order for Section 13c to apply, it is necessary only that employees be potentially affected. It is not necessary to show that they will be affected. Indeed, the normal objective of Section 13c bargaining is to ensure that they are not affected in practice. Thus, any determination that a new group of employees may potentially be affected by specific types of projects—e.g., taxicab employees by paratransit projects—would tend to require their involvement in Section 13c bargaining prior to the award of all such project grants.

The determination of whether an employee has been adversely affected by a project is a finding of fact, to be made by an arbitrator. The question of whether a given change was caused by the project or by other factors—e.g., changes in general travel patterns, fiscal austerity—frequently admits of no definitive answer. The guiding principles under Section 13(c), however, are (a) that the burden of proof is on the grant recipient.
and (b) that the recipient is liable if the project is found to bear any part of
the blame. In short, where ambiguity is present, Section 13c applies.

However, it is probable that, as taxi operators move into provision of paratransit services that fall within the UMTA definition of "mass transportation", basic protections reflected in Section 13c will be extended to at least a portion of the private-operator labor force. This would create a new set of important issues that would affect the feasibility of implementation of new paratransit services and potentially threaten the stability of existing privately operated paratransit services. Taxi labor and taxi operators have competed into areas that fall under the definition of "mass transit", an important confrontation with transit labor has been developing. The battleground for this confrontation, where federal (UMTA) funds are involved, has been the negotiation of Section 13c agreements. Transit labor is highly unionized and well compensated (relative to other public-sector employees). Taxi employees are significantly less well organized and compensated, on the average. The prospect of paratransit developing largely outside the domain of traditional transit operations, provided by the private taxi sector, is (understandably) frightening to transit union leadership, because it implies using labor at significantly lower wage rates and less-generous working conditions and, therefore, serves to undermine existing labor standards established through years of collective bargaining.

Equally or more important, both conventional transit operators and transit labor view paratransit provided by the private sector as potential competition for (scarce) public-subsidy resources and, therefore, a threat to their long-run growth and survival.

A Brief History of Paratransit Section 13c

Negotiations

Transit labor has generally enthusiastically supported paratransit—particularly dial-a-ride (DAR)—when such paratransit was to be provided by union personnel under existing, prevailing working conditions. However, the Section 13c sign-off-privilege process has been forcefully used by organized labor either to try to ensure that service is union provided and existing terms of employment are maintained or that protective barriers are placed between conventional transit and paratransit services to limit direct competition and assure the protection of the existing bargaining-unit size (or both).

The recent history of Section 13c negotiations is important because it creates important precedents for dealing with future issues. This history of arrangements that have been developed in conjunction with a variety of new paratransit programs is briefly reviewed here, with limited editorial comment.

1. Rochester Service and Methods Demonstration (1977): The Rochester service and methods demonstration (SMD) project called for implementation of three suburban DAR zones to be integrated and coordinated with the central-business-district-oriented line-haul bus services. The original Section 13c agreements (negotiated in 1975) called for DAR services operated by the conventional transit operator at the prevailing wage rates and work rules; minor work-rule modifications were negotiated to accommodate DAR service requirements. The original agreement was negotiated with little difficulty, and union support for the demonstration was strong and cooperative at the time the service was initiated.

In September 1977, the Rochester-Genesee Regional Transportation Authority (RGRTA) sought to renegotiate the Section 13c agreement with the Amalgamated Transit Union (ATU) to cover an extended SMD project. The authority sought the ability to award contracts to operate new service areas based on a competitive bid between public and private providers. RGRTA initially offered an agreement that would have guaranteed that service in the existing service areas be provided by union labor through the conventional transit property and requested that a set of wage and work rules similar to those adopted in Cleveland (which had created a new job classification with a lower wage base and more flexible work rules) be applicable; it was the authority's intention to compare the cost of providing (union-shop) services in all four sectors under revised (wage and work) rules with the costs of two sectors operated at existing (union) wages and work rules and of two (new) sectors operated by private contractors.

In reviewing the situation in the fall of 1977, DOL indicated that, from its perspective, a valid and binding Section 13c agreement for the demonstration project already existed and that any desire on the part of RGRTA to modify that agreement (as a result of changes in the intended scope of the demonstration) could be undertaken only with the consent of the ATU. The ATU did prove itself a willing partner to renegotiation, and an agreement permitting the competitive bid was reached in late 1977; however, the amended agreement did not allow for a relaxation of work rules (which had been sought by the authority) and also protected the (union) jobs in the original paratransit service areas.

The ATU proved, in both the original and amended Section 13c agreements in Rochester, that it is willing to negotiate in good faith concerning protective arrangements under a variety of service scenarios. In fact, the national leadership of the ATU has appeared generally supportive of paratransit projects—albeit with strong protections for their membership—occasionally in contrast to local inflexibility in these negotiations. The ATU decision to hold firm on the issues of wages and work rules for paratransit reflected an obvious concern that maintenance of good work conditions for existing members is more important than creating expanded job opportunities under less-favorable working conditions.

2. Knoxville Service and Methods Demonstration: The Knoxville transportation brokerage demonstration included the provision of federal seed money to implement a city-administered vanpool program. The Section 13c agreement was reached after achievement of two other agreements involving the city, the transit operator, and the union. The first agreement was a contract between the city and the transit operator for performance of major maintenance (by union employees). The second was an understanding between the grant recipient (the city) and the union that vanpools would be targeted for areas that did not have conventional transit services and that subscription buspools, if formed, would be served by the present public operator. Based on these two agreements, the grant recipient, the union, and the public transit operator executed a Section 13c agreement that had the additional condition of guaranteeing the size of the existing bargaining unit with respect to potential effects of the project for a period of four years after implementation of the demonstration project.

3. Norfolk (Tidewater Transit Commission) Service and Methods Demonstration: The Norfolk SMD project, which is essentially a vanpooling demonstration oriented toward government employees, incorporates a Section 13c agreement that formalizes all the agreements reached outside the context of the Section 13c agreement in Knoxville. The vans are to be maintained by the transit property; van contracts are to be executed only to provide service to ridership "for routes and distances not in competition with transit service presently rendered by...Tidewater Transit." The existing bargaining-unit sizes are to be guaranteed, but only for the life of the project. In addition, it is recognized that van lessees are independent contractors and not employees of the transit commission.

Thus, the Knoxville and Norfolk Section 13c agreements were based on a strategy of creating an artificial fence to prevent competition between paratransit (vanpools) and conventional transit. This fence is designed to prevent the marketing and availability of the potentially competitive vanpooling programs in areas that are currently served by conventional transit services. The creation of such fences has become a key element in many subsequent Section 13c negotiations for paratransit projects.

The recognition in the Norfolk Section 13c agreement of vanpool drivers and organizers as independent contractors establishes an important precedent for transit authorities wishing to sponsor vanpooling programs; any alternative type of classification of vanpool operators might bring those operators under the protective umbrella of Section 13c.
4. Greater Cleveland Regional Transit Authority - Community-Responsive Transit Program: The Greater Cleveland Regional Transit Authority (GCRTA) community-responsive transit (CRT) program provides demand-responsive services to elderly and handicapped persons residing in Cuyahoga County, Ohio. Although the project was initially funded with local funds (and thus did not require a Section 13c agreement), it has more recently been a part of the normal GCRTA budget and has been supported, in part, by Section 5 funding. However, a memorandum of understanding was negotiated between the ATU and GCRTA as part of the broader labor agreement that effectively structures arrangements that make the normal Section 13c agreement applicable. The memorandum included several important agreements: (a) approximately 67 percent of the services are to be provided by the transit property and 33 percent are to be provided by taxi operators under contract to GCRTA, (b) a new driver job classification was created within the transit property for CRT operators—these drivers receive a wage 31 percent lower than the normal prevailing wage for fixed-route system operators, (c) the prevailing terms and work conditions of the fixed-route operators are generally extended to the CRT operators, (d) CRT operators are given rights of first opportunity to fill any job openings in the existing fixed-route system, and (e) the 40-hour work-week requirement was relaxed to 30 hours.

The Cleveland agreement sets an important precedent for future negotiations with union labor concerning provisions of paratransit services because it implicitly recognizes a differential in the performance requirements for labor providing demand-responsive services and that providing conventional transit services. It also implicitly recognizes that there are inherent productivity differences between conventional transit and paratransit and that these productivity differences (which circumscribe the potential operating ratios) may create compelling reasons to operate service at a lower prevailing wage—because the alternative is no service at all. As will be discussed below, Cleveland is unique in that these paratransit arrangements were negotiated as one part of a broader framework of labor agreements (and the results have been striking and thus far unique).

5. Westport, Connecticut, Service and Methods Demonstration: The Westport SMD project involves a public transportation authority that directly provides fixed-route services and also contracts for (privately operated) demand-responsive (shared-ride taxi) and fixed-route services, maintenance services, and management services. There is no existing transportation union in Westport; the transit authority has executed an open Section 13c agreement that has standard protective clauses specified by DOL.

6. Delaware Authority for Specialized Transportation: The Delaware Authority for Specialized Transportation (DAST) Section 13c agreement is notable because DOL made a finding of compliance with Section 13c without the agreement of the local ATU bargaining unit in the bargaining unit in the local ATU bargaining unit. The agreement extended (as expressed in a letter from Undersecretary Francis X. Burkhardt to UMTA Acting Administrator Charles Bingham on June 22, 1977) that the employees of those companies are only "tangentially involved in project-related services. Therefore, we do not believe that such employees should be brought under the scope of Section 13(c) at this time."

Equally important in the Akron findings, DOL reviewed the issue of whether the employees of a taxicab company involved in shared-ride contract services should be afforded Section 13c protections and concluded (as expressed in a letter from Undersecretary Francis X. Burkhardt to UMTA Acting Administrator Charles Bingham on June 22, 1977) that the employees of those companies are only "tangentially involved in project-related services. Therefore, we do not believe that such employees should be brought under the scope of Section 13(c) at this time."

Two subsequent projects in Pittsburgh and New Haven have indicated, however, that the exclusion of taxicab company employees from Section 13c coverage is not absolute and have significantly broadened the scope of its protections:

8. Pittsburgh Section 6 Brokerage Grant (1978): In late 1977, the Port Authority of Allegheny County (PAT) sought demonstration funds to support a paratransit broker for Allegheny County. The broker's function was intended to be the coordinated management of human service-agency funds for transportation assistance to the elderly and elderly persons. Certification was granted to PAT by DOL on the condition that the Section 13c agreement between PAT and the ATU extended by inference to certain taxicab-company drivers engaged as expressed in a letter from Undersecretary Francis X. Burkhardt to UMTA Administrator Richard S. Page on April 5, 1978) in "elderly and handicapped services of the type sought to be coordinated in the instant project."

9. New Haven Section 5 Operating-Assistance Grant (1978): The Greater New Haven Transit District (GNHTD) sought operating assistance to purchase an operating shared-ride taxi service for handicapped and elderly persons during 1978/79. DOL certified the grant under Section 13c, subject to the same implicit requirement that the GNHTD-ATU agreement extended (as expressed in a letter from Undersecretary Francis X. Burkhardt to Administrator Richard S. Page on May 16, 1978) "substantially the same levels of protection as afforded to those employees for whom (the) protective agreement is negotiated" to "all affected employees," specifically including certain taxicab-company drivers.
The certification of the Pittsburgh and New Haven projects seems to establish two criteria for DOL determination that taxicab–company drivers are entitled to Section 13c coverage. First, if a minimum of 15 percent of the revenue of the company is derived from shared-ride services similar in nature to the services that are to be provided under the grant, the company is considered to be an "urban mass transportation carrier". Employees of such companies who can be specifically identified as providing primarily those services considered to be "mass transportation" are to be afforded levels of protection similar (not identical in an absolute sense) to those afforded to employees explicitly represented by any project Section 13c agreement negotiated with representatives of transit labor.

Second, even if a taxicab company does not meet the criterion that a minimum of 15 percent of its revenue is derived from related services, certain of its employees (those who do spend a significant proportion of their time providing service that meets a test of the definition of "mass transportation") are to be afforded Section 13c protections. Again, the coverage may be extended implicitly, according to the terms of the existing negotiated agreement. This condition was found to exist in New Haven.

These findings in Pittsburgh and New Haven in mid-1978 permitted projects to proceed toward timely implementation without requiring that the grant recipients (transit authorities) negotiate protective agreements directly with taxi labor. DOL determined that the implicit extension of equivalent levels of protection would suffice and (by implication) suggested that the public interest would not be served by delaying certification by requiring time-consuming formal negotiations. However, in late 1978, DOL refused to renew the New Haven certification and required GNHTD to negotiate a Section 13c agreement directly with the Teamsters local at Terminal Taxi (the GNHTD contractor for special services).

As 1978 drew to a close, DOL policy with respect to extension of protections to labor in the private paratransit sector seemed to be based on three logical tests:

1. Does the carrier appear to be a "mass transportation" carrier under the definition developed by UMTA? The criterion that 15 percent of gross revenue can be attributed to services falling within this definition appears to be the break point for the classification of private carriers operating multiple types of service.

2. Can specific individuals be identified as employees of these companies deriving a significant portion of their compensation from such "mass transportation" services?

3. Is the proposed project likely to affect any such employees?

10. Brockton Service and Methods Demonstration Grant (1978): In January 1978, the Brockton [Massachusetts] Area Regional Transit Authority (BART) negotiated a Section 13c agreement with its ATU local to permit a demonstration focusing on coordination and integration of conventional and paratransit services. The agreement stipulated that the size of the bargaining unit would be maintained for a period of four years and that all paratransit vehicles would be maintained by the union shop; in return, BAT retained complete flexibility with respect to the status and work rules of the paratransit operations as well as the ability to substitute paratransit for conventional services.

The Brockton system is in the (enviable and unusual) position of being able to project a continuing significant growth in demand for conventional services. BAT achieved unprecedented flexibility for the future development of its service program but only at the price of a firm guarantee of the size of the bargaining unit; unlike the Knoxville SMD project agreement three years earlier, the Brockton agreement guarantee was not tied to project effects. A few transit authorities appear to be confident that significant ridership growth will continue for a four-year period, a condition that makes such a Section 13c agreement feasible. Still, the Brockton agreement demonstrates an evolving flexibility on the part of the ATU and reflects its paramount and fundamental concern over job security.

An earlier experience in Pittsburgh provides a further example of DOL Section 13c policy:

11. Pittsburgh Section 5 Grant (1977): In early 1977, PAT filed an application for a Section 5 grant that included funding for services to be operated by Yellow Cab Company in one of the local communities of Pittsburgh. PAT successfully negotiated a Section 13c agreement with the local division of the ATU covering the complete program of projects contained in the grant request. However, DOL required that a Section 13c agreement be negotiated with the Teamsters local at Yellow Cab. PAT refused, indicating a basic policy of not entering into Section 13c agreements covering projects over which it has no control. The project was ultimately dropped from the grant program, which allowed the program (minus the project) to move forward. Although DOL would have accepted Section 13c protective assurances from any public agency (e.g., the city of Pittsburgh), it would seem unlikely that anybody not directly involved would wish to assume such a liability.

This negotiation in Pittsburgh highlights an area of significant concern as contract paratransit operations proliferate: Who should guarantee the protective arrangements developed for private-sector employees and what are the implications of such a guarantee?

As a final historical note, in the last six months of 1977, the ATU, the primary labor union in conventional transit properties, successfully negotiated Section 13c agreements in approximately 35 cities covering programs funded under Section 5 that contain the explicit provision—known as the "Lancaster Provision"—because it first appears in a Lancaster, Pennsylvania, Section 13c agreement—that all paratransit projects funded under a federal-assistance grant shall be provided by the conventional operator using union labor at the prevailing wage rates and work rules. Although these provisions appear contradictory to the spirit of Section 3e of the act of 1964, DOL has continued to grant certifications of compliance with Section 13c for these grants.

These recent actions by DOL—the Pittsburgh, Akron, and Lancaster situations—reflect the continuing development of Section 13c policy. A clear definition of DOL and UMTA policies regarding the way in which Section 13c protections will be administratively executed with respect to future treatment of paratransit, and particularly private-sector paratransit labor, is difficult if not impossible to delineate at this time. DOL policy has evolved incrementally over a period of several years, on a case-by-case basis in which considerable thought has been given to parallel precedents in the conventional transit sector.

If there is a consistency of any sort to DOL administrative actions with respect to Section 13c, it lies in the continuing concern that employees of conventional public mass transportation properties be protected from worsening of conditions as a result of any projects funded under the major assistance programs of UMTA. However, the recent decisions in Akron, Pittsburgh, and New Haven show a conscious expansion of protection to certain types of labor in the private paratransit sector.

The position of organized conventional transit labor with respect to the assurances they seek in paratransit projects Section 13c agreements is becoming fairly clear and consistent:

1. First and foremost, it seeks to retain all work within the union shop at prevailing wage rates and work rules.
2. Contract paratransit operations shall not compete with, nor substitute for, conventional transit services and become a substitute service for or displace conventional services and nighttime (owl) services. Where possible, fences have been established to separate market-service areas of paratransit from those of conventional transit.

3. All maintenance work on vehicles participating in the paratransit project (except warranty and first-echelon maintenance) shall be performed by the maintenance facilities of the conventional property by union employees.

Project services will be limited strictly to those persons described in the project application whose daily work trips are not served by the transit routes and services rendered by the conventional transit system.

In reviewing these recent experiences in negotiating Section 13c agreements with conventional transit labor, several additional conclusions can be drawn. First, the successful negotiation of Section 13c protective arrangements for paratransit projects (involving federal funds) has required the support of conventional transit management; they have served a key part of any agreement. Second, organized labor has been willing to talk about any project but has been extremely suspicious of and frequently intransigent toward projects that have been presented to them as fait accompli. In most demonstration projects where the union leadership has been brought into project planning early in that process, satisfactory protective arrangements have been negotiated without delay to the project or major disagreement between the parties. Third, when paratransit projects have been designed to serve complementary markets, exposure to Section 13c liabilities on the part of grant recipients has been minimized, which has facilitated the negotiating process by allowing a clear demarcation between conventional transit and paratransit markets.

The administrative procedures surrounding Section 13c move slowly and deliberately, a situation that has served as a natural impediment to new paratransit services having federal financial assistance. Because new paratransit services have no existing users or constituents whose interests must be protected by that section, the negotiations have taken place in the context of the broader, master labor-agreement negotiations; rather, they have been approached as independent issues by both labor and management. This probably reflects the circumstances of the planning process as much as does conscious design; as yet, few transit authorities have chosen to negotiate paratransit labor work rules and wages simultaneously with other major issues. Cleveland is a notable exception, and the results there both promising from a public perspective and unduplicated elsewhere. Where transit authorities have negotiated paratransit labor issues separately, they have had little flexibility in the negotiations because there has been little ground for give and take; it is unlikely that any public authority would endure a strike during unsuccessful negotiations that would affect (in the short run) only a small percentage of their operations and involve new services that did not yet have existing constituencies. Thus, most Section 13c agreements for paratransit projects, and any connected discussions concerning wages and work rules, have probably been conducted under conditions giving strong power to organized transit labor and little leverage to management.

If paratransit services are planned as cost-effective substitutes for existing services, Section 13c liabilities may materialize; however, these liabilities can be minimized by incremental, staged paratransit implementation strategies that minimize the risk or liability potential because of the natural turnover in the conventional labor force and the ability to reduce the force gradually through attrition. This suggests that, in preparation for paratransit service implementation, a short-run strategy of nonreplacement of employee attrition—combined with a short-term use of liberal overtime policies—may be cost-effective in making a transition from transit to paratransit services (for example, late evening fixed-route services converted on an area-by-area, route-by-route basis). Recent Section 13c agreements related to Section 5, which restrict work to the union shop, clearly are a major impediment to such a strategy. Equally important, most operating agencies lack the public support to risk a major labor confrontation by adopting such a strategy. The short-term threat of a strike and major friction acts as a powerful disincentive to management, which must wait months or years to realize the economic return potentially (but not certainly) available through such a strategy. Clearly, greater resolve and commitment to change must be present if such evolution is ever to take place.

Federal Protective Clauses and the Individual Entrepreneur

Although Section 13c is designed to protect the interests of labor, a strong case can be made that much of the labor force that might potentially be involved in provision of paratransit services falls outside the bounds of those persons whose interests are protected by that section. Thus, federal definitions of paratransit have focused on services rather than on management structure, and federal protective clauses embody a list of services delivered by networks that is based on a defined and identifiable employee labor force (which frequently is organized). This view fails to include a delivery framework that uses private individuals working as independent contractors or independent entrepreneurs to operate service. Such employment relationships are common in both the private taxicab sector (where leasing is rapidly becoming a
dominant system characteristic and in vanpool and car-pool programs (where the operator is regarded as an independent contractor or, perhaps in some cases, is engaged in activity that is outside the defined boundaries of the labor market).

The current legal status of lease taxi drivers as independent contractors appears to place them outside the bounds of Section 13c protections; although this issue has yet to be reviewed in formal administrative or judicial proceedings, it is only a matter of time until it is raised. It is unlikely that DOL might choose to rule administratively that such independent contractors are, in fact, labor that must be protected, because this would create an internal DOL policy conflict, as well as an external conflict with earlier Internal Revenue Service (IRS) findings made after lengthy review of leasing practices in the exclusive-ride taxi industry.

The legal status of the operators of vanpools has received considerable attention in recent years. As ride-sharing projects have been implemented, most notably in Knoxville and Minneapolis, questions have been raised about whether vehicle operators should or could be considered as employees of either a sponsoring private corporation, a sponsoring government agency, or a private vehicle-leasing organization. The inclusion of such operators in a definition of employees would raise a host of potential federal policy questions, including the following:

1. Should (must) these employees be covered by workmen’s compensation?
2. Should (must) these employees be protected under Section 13c?
3. Should any compensation earned by these operators be subject to minimum wage requirements?
4. Is remuneration received by these operators taxable as earned income by the IRS?

Most of these questions have been avoided by carefully defining vanpool operators as independent contractors. In developing this classification, these operators have clearly lost certain protections and benefits that they might otherwise accrue. At present, this loss seems inconsequential, because the majority of these individuals are vehicle operators only as an activity incidental to primary employment—and, hence, have substantial (on-the-job) protections—and view any resulting income as only marginally beneficial. The income from pooling is an inducement, but it is not their primary income; thus, (transportation) labor protections are of little concern to the operator of a ride-sharing vehicle (or, apparently, to DOL).

The situation of the vanpool operator is markedly different from that of the lease taxi operator; exclusion from the protections that come from being considered labor may be unimportant for the vanpool operator, but it may be exceptionally important for the taxi operator, for whom driving is frequently the primary source of income. Thus, the issue of labor protection, from a labor viewpoint, may be very different in each of these independent-contractor contexts; the vanpool operator may not care, but a taxi operator very clearly does care.

As paratransit evolves out of the private (taxi) sector, the issue of labor protection for such independent contractors will grow; the adequacy of Section 13c in its present form to deal with these concerns is highly suspect.

LABOR PROTECTION, LABOR STANDARDS, AND THE FUTURE ROLE OF PARATRANSIT

As one reviews the recent history of paratransit and the importance of labor issues in the emergence of that family of services, one is struck by several dominant economic themes. First, paratransit services are by their very nature significantly different from conventional transit services with respect to labor productivity potential; this makes the economics of providing paratransit services fundamentally different from the economics of conventional transit modes. Second, the continuing emergence of publicly subsidized paratransit services will undoubtedly affect both the demand for and the availability of privately operated, unsubsidized taxi services; thus, the ultimate survival and future role of the private paratransit sector is closely intertwined with the development of subsidized paratransit services.

Third, the evolution of paratransit has been, and likely will continue to be, constrained by concern for protection of labor in the mass public transportation sector that is reflected and embodied by the interpretation and administration of Section 13c by DOL. It is apparent that each of these three areas of evolving labor concerns will have a significant effect on the future role of paratransit modes—their feasibility, market share, method of operation, and pace of implementation and diffusion.

Productivity and the Economics of Paratransit

In a free marketplace, the value of labor is ultimately determined by the productivity of labor and the value of the goods (or services) produced. The major gains in the real wage levels in most American (free) market sectors reflect the historic trend of improving productivity.

From a pure supply or production perspective, paratransit modes are inherently less efficient than are conventional transit modes; that is, the potential productivity of paratransit modes (assumed sufficient demand materializes) is significantly greater than that of conventional transit modes. For example, line-haul bus services are potentially capable of carrying 40 to 80 passengers/vehicle-h, and light and heavy rail services have significantly greater productivity potential. By contrast, dial-a-ride and shared-ride taxi systems seldom achieve productivities greater than 10 passengers/h, and route-deviation, subscription-bus, and vanpooling systems seldom exceed productivities of 20 passengers/h.

It is important to realize that productivity in urban transportation can be viewed from both this equilibrium perspective—which measures output as a function of ridership (a measure of the supply-and-demand equilibrium point)—and from a pure-supply or production perspective—which measures output without regard to consumption (for example, vehicle hours of service). However, although this latter perspective is an important measure for managing production, it is clear that in a normal economic market the value of output reflects an equilibrium, rather than a pure-supply, perspective. Thus, in a normal marketplace, it might be reasonable to conclude that a unit of labor that can support provision of services to 50 passengers/h will be worth significantly more than a similar unit of labor that might provide service to only 10 passengers/h.

There are several reasons why this logic may be flawed in the real world and not reflected by it:

1. It is possible that the marketplace undervalues...
the former (more-productive) labor appropriately because of imperfections in the labor market.

2. There are qualitative differences in the nature of the services produced that may (or may not) account for the differences in the value of labor needed to produce those services (e.g., one taxi trip may be worth four or five transit trips in a free market).

3. There are significant public externalities that may accrue to the consumption of service (e.g., energy, air-quality, general mobility, and land-use-opportunity costs) and that complicate the valuation of output.

However, although these three complications may distort the labor-valuation process, a good economic argument might be made that paratransit labor ought to be paid less than conventional transit labor because paratransit labor is less productive. A logical countervailing argument notes that productivity must be measured by realized output consumption and not by potential output consumption and that paratransit labor is as productive as transit labor in the appropriate market context (e.g., low-demand-density markets); however, this is probably a justification for lower wages for labor providing either service option rather than a justification for paratransit operators receiving transit-operator wages.

Notwithstanding the arguments that paratransit labor is in some way more or less productive than transit labor, it is clear that paratransit is more sensitive to the prices of labor than conventional transit for two reasons:

1. Paratransit is more labor intensive than conventional transit (due to the need for more vehicle-dispatching control personnel).
2. Paratransit is inherently unable to achieve the productivity (in terms of passengers carried) that can be achieved by conventional modes and is thus likely to be characterized by higher costs per passenger than other successful conventional transit modes.

These two facts combine to make paratransit a more marginal service from an economic perspective. Changes (or differences) in the cost of labor inputs have a greater effect on the cost per trip of paratransit than of conventional transit (assumming the latter is functioning with reasonable efficiency). Also, the cost per trip for efficient paratransit will likely be significantly higher than the cost per trip of efficient conventional service (although paratransit may be more efficient than inefficient conventional transit). (Vanpooling and carpooling may present significant exceptions to this discussion.)

Given the fact that most trips by public transportation are heavily subsidized by public-sector resources, this implies that paratransit trips are more vulnerable to cutbacks in resources allocated to subsidize transportation; in an era of zero-base budgeting and severe financial pressure, new services or any sort face an uphill battle for limited or shrinking funds. It seems apparent that the degree to which paratransit services take hold in the future will be significantly affected by the level of compensation and conditions of employment that characterize their labor forces.

This poses a fundamental question that will likely only be answered by a test of time: Will professionally operated paratransit services survive or develop with a wage-and-work-rule structure that parallels or duplicates the wages and work rules in the conventional transit sector?

The greater cost sensitivity of paratransit implies that paratransit would be a first casualty of an upward cost spiral in the labor market. If the answer to the (above) question is "No", then a second question must be asked: Is it in the interests of labor or society that no paratransit service be provided rather than paratransit being provided by an underpaid work force? This question parallels current economic debates about the value of jobs containing a minimum wage (i.e., whether exploitative employment at low wages is less desirable than no employment at all). In the instance of paratransit, the question is complicated by the fact that there is an existing labor force in the taxi sector working at conditions close to the statutory minimums in an unsubsidized marketplace. Protection of one segment of the labor market may take place at the expense of a second less-organized segment of that labor market.

Paratransit, the Private Sector, and the Private Entrepreneur

The last ten years have seen some striking changes in the private paratransit sector. Although the markets for exclusive-ride taxi services have decreased significantly, private taxi operators have survived and, in some instances, prospered through strategies of horizontal and vertical integration into new marketplaces, such as package delivery and contract paratransit services, and through evolution from the commission basis of operation to vehicle leasing operations. The trend toward vehicle leasing—in which the vehicle operator essentially rents a vehicle complete with fleet-management support services (such as dispatching, maintenance, and insurance) and legal operating privileges for call-and-demand services much as one might rent an automobile from a rental firm—has altered the status of the operator. The commission driver is legally treated as an employee, but the lease driver is viewed as an independent contractor. As a result, the ability of lease drivers to organize collectively has been seriously diminished and many benefits that normally accrue to commission employees (e.g., social security, unemployment compensation, vacation, and holidays) may not be available to them.

Although the transition to leasing in the taxi sector appears to seriously degrade the conditions of employment of vehicle operators, it appears to be a system that puts increased cash in the pockets of most of them. One of the most striking panel discussions held among fleet owners at the 1978 Annual Convention of the International Taxicab Association concluded that vehicle operators in taxi fleets that had made the transition from commission to lease operation were generally happier in the latter context—a reflection of inflationary times and the belief that a dollar in hand is worth more than a deferred dollar of pension plan or unemployment insurance. In a world that increasingly has two and even three family members entering the labor market, there is apparently an increasing demand for jobs that pay cash today. There are relatively few of these jobs available.

If paratransit services develop largely in the public transit sector, it may well be at the expense of jobs in the private taxi sector. Although UMTA has maintained a legal and administrative distinction between exclusive-ride taxi service and shared-ride paratransit, there is little doubt that the markets for these services, if offered simultaneously, overlap significantly. A survey of recently implemented, publicly subsidized shared-ride services indicated diversion rates of 10 to 30 percent from premium taxi services. A primary conclusion of recent DOT research has been that continuing development of paratransit operated wholly by the public sector will definitely erode the market base of the private paratransit sector and threaten its financial feasibility. Conversely, the development of service through
contracts with private operators will significantly strengthen the financial position of the private paratransit sector and increase the number of jobs in that sector (4).

The use of public funds to subsidize services that are competitive with unsubsidized private services and that may displace private-sector labor raises an important philosophical question, even though legal protections for taxi operators and taxi labor under statutes such as Sections 3e and 13c or the U.S. Constitution may be minimal, at least as those protections are currently administered.

Thus, as one looks to the future, one quite logically must conclude that the ultimate conditions that prevail in the paratransit sector will both significantly affect the level of new employment and could result in increased unemployment in an existing private labor sector (taxi), depending on whether paratransit evolves predominantly in the public or the private sector.

Similarly, one must be concerned with the way that the administration of Section 13c has excluded independent entrepreneurs from its protections and potentially prevents many from entering the marketplace, particularly with respect to ride-sharing. The evolution of ride-sharing projects under UMTA auspices can be contrasted to those developed by using FHWA Federal Aid to Urban Systems funding sources; the former almost always focus on outlying suburban areas, while the latter are area-wide in focus and include the central city. (The most recent Federal-Aid Highway Act contains a new labor-protection clause that could seriously constrain the implementation of ride sharing under FHWA sponsorship in a way similar to Section 13c.)

The UMTA-funded programs, as described above, have some sort of fence developed through Section 13c negotiations to prevent diversion from transit to ride-sharing modes; FHWA-sponsored programs are not generally circumscribed by such arrangements. Although the concerns of labor are understandable in such instances, Section 13c has clearly been used to protect jobs rather than to protect people and has served as a serious constraint to what might otherwise be a logical and important development affecting the ultimate balance among urban transportation modes.

LABOR PROTECTIONS AND THE FUTURE

The lengthy delay on the part of the UMTA Office of Policy and Program Development to finalize a Paratransit Policy reflects, more than anything else, the overriding concern with labor issues and the complexity implicit in both the legal and philosophical attributes of Section 13c. Despite the belief by DOL that Section 13c was intended to be a flexible statute that could respond to changing conditions, we have clearly reached a point in time where it is being applied in contexts different from those for which it was originally developed.

The statute is now being extended to operators in a new labor sector as two sectors merge. Although there may be need for protection for labor in the private taxi sector as paratransit develops, Section 13c is not providing it. Instead, its protections are being extended to labor in contract operations meeting the definitional test of "mass transportation".

A logical conclusion of the recent Pittsburgh and New Haven Section 13c findings is that paratransit services may be competitively awarded to a private operator once, but, after the first award, that operator's labor force becomes institutionalized by the protections of Section 13c. A second competitive bid could be carried out only with explicit protections for the original (contract-operator) labor force. Although this scenario may sound ludicrous, it was sketched out by James Perlmutter of DOL in a discussion on October 24, 1978. Obviously, such an extension of Section 13c would appear to be far from the intentions of the original authors of the statute; equally important, such an interpretation is not in the public interest; it is questionable whether it would even be in the interests of labor.

Section 13c is also inadequate to deal with the independent-contractor lease driver in the private taxi sector. As an independent contractor, such individuals may receive no protections under Section 13c, even where they may be appropriate.

Perhaps the most important question one must ask about the way Section 13c has been administratively interpreted by DOL is, Should Section 13c protect people or should it protect jobs? The interpretation to date suggests that it should protect both people and jobs. However, such an interpretation, which provides checks without balances for forces wishing to maintain the status quo, seriously constrains innovation in the urban transportation sector.

The time may have come to examine the range of protections offered by Section 13c, so that they can be re-focused to protect people without exacting a significant price from society as a whole. This would require legislative action by Congress that more carefully defines the interest of labor protections embodied in urban mass transportation assistance. Congressional testimony of Secretary of Labor Willard Wirtz in 1963 (5) suggests that Section 13c was intended to cover only existing employees:

SENATOR SPARKMAN: My interpretation of Section 13(c) is that... new employees would be affected rather than existing employees, that they would be covered under the provisions of 13(c) because they would be employees affected by such assistance or financing.

SECRETARY WIRTZ: That new employees would be covered by this?

SECRETARY WIRTZ: In a system that is started where there is now no system?

SECRETARY WIRTZ: My answer, Mr. Chairman, would be directly the contrary—that 13(c) is intended to cover those employees whose interests would be adversely affected by a change, and it would not be intended to establish protections for the future as far as new employees are concerned. The particular purpose here is the purpose of protecting the adversely affected interests of existing employees...

The current administrative process surrounding Section 13c and the recent history of relevant findings by DOL suggests that the limited protections described by Secretary Wirtz have been significantly expanded. In 1979, we find that the Section 13c certification process is extending protections to new employees of new mass transportation services, even where those services are operated by private contractors selected through a competitive bid for a limited period of performance.

As noted above, Section 13c agreements and the process surrounding their negotiation have served to strongly influence both the design and operational planning of new services. The time has arrived to carefully examine the issue of labor protections and review both the process by which these protections are established and the content or breadth of protections they offer.

Several basic options appear available to UMTA and DOL, each of which requires legislative action by Congress:
The zone of protected interests under Section 13c can be redefined. The current administrative interpretation protects 'mass transportation employees', but this zone of interest could be expanded or contracted. If the philosophical basis of Section 13c is a belief that labor should be protected against negative effects of public subsidy actions, then the zone of interests should be expanded to include employees in substitute modes (e.g., exclusive-ride taxi). However, such protections should be limited to specific contexts; it is absurd to think that labor in a contract operation should be indefinitely sheltered from natural technological developments and changing travel-behavior patterns.

The administrative procedures could be altered so that people are protected rather than jobs or interests (a term that appears to mean both people and jobs). The development of protective arrangements could be limited to terms of compensation and definition of administrative procedures for award of damages.

The present policy and practices surrounding federal labor protections in the mass transportation industry serve as a serious constraint to its natural evolution. In the context of paratransit, we see the mass transit and private taxi industries fighting to divide an historically shrinking marketplace for urban public transportation; while engaged in this fight, they have both lost ground to the automobile. The current conflicts over Section 13c in the context of paratransit are merely symptomatic of broader, more fundamental concerns that surround the future evolution of conventional transit. The issues, which center on the rights of individual workers versus those of the public and on how labor and management negotiate fair and equitable terms of employment in a monopolistic marketplace (a marketplace that is strongly colored by social welfare norms), are constantly there in the background.

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REFERENCES