

GILMORE KEAN, LLC

December 13, 2010

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be filed
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Hon. Paul L. Friedman
United States District Judge
United States District Court
For the District of Columbia
United States Courthouse
333 Constitution Avenue, NW Room 6012
Washington, D.C. 20001

FILED
JAN 31 2011
Clerk, U.S. District & Bankruptcy
Courts for the District of Columbia

Re: Petties v. District of Columbia, No. 95-00148

Dear Judge Friedman:

I know the Court is aware that the original date for the anticipated full return of the Transportation Division to unsupervised management by the District Government has been postponed by consent of the parties and approval of the Court. Though I'm certain the Court gleaned the basis for this action even without detailed explanation, I believe it is now appropriate to provide the Court and the parties my assessment of the performance of the Division of Transportation since responsibility for its day-to-day management was returned to the District of Columbia by the Transition Order of May 5, 2010.

I regret to inform the Court that the Division has experienced substantial performance problems since the beginning of the School Year and, it appears, for the preceding summer school session. I had hoped to be able to report that Defendants are making significant measureable progress toward achieving full compliance. Regrettably, I cannot. So, I also wish to alert the Court that unless significant progress is made toward resolution of these performance issues in the near future, I may be compelled to initiate the process for declaring a material breach of the Transition Order and to return operational control of the Division to a Transportation Administrator, under the terms of the Consent Order of June 25, 2003.

Throughout the period, the Transportation Division has been consistently failing to meet performance requirements established by the Court, most notably by failing to deliver special needs students to school in compliance with required times. Moreover, there is a substantial risk that these performance problems may be exacerbated in the near future by a cut in the Division's budget for Fiscal Year 2011, which was preliminarily approved by the D.C. Council on December 7, 2010. Final approval of such a budget reduction would violate the express terms of the Transition Order. Further, the largest part of the budget reduction would be absorbed by the account for Maintenance of the Division's buses, even though the Maintenance function is a

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critical area in which the Division already has suffered significant and completely unacceptable failures under Defendants' control.

Discussion

Day-to-day management of the system by Defendants actually began in October, 2009. Though I continued to serve as Transportation Administrator, Defendants were given increasing levels of operating responsibility under my direct supervision and authority. During the last School Year, I worked closely with managers selected by the District of Columbia to assist them in learning how to run the Division of Transportation, so that these officials would be in position to operate the Division after the Court approved a process to provide for transition of control back to Defendants. On May 5, 2010, the Court approved a Transition Order that provided for such a transfer of control, subject to my oversight and assessment of Defendants' performance in the capacity of Supervising Court Master.

Through the 2010 summer school session, the Division continued to report satisfactory performance, reports that were subsequently found to be inaccurate. Unfortunately, the Division experienced substantial and persistent operational problems at the opening of the 2010-2011 School Year. The on-time arrival rate of the Division's buses fell precipitously from the levels that the transportation system had achieved in the Transportation Administrator period down to levels around 60%, far below the performance criterion established by the Court's substantive Orders in this case. These operational issues prompted vociferous complaints from the parents of special needs students about the Division's inability to deliver their children to their assigned schools in a timely manner.

After reviewing the situation, I determined that a substantial part of the performance failure was due to inadequate preparation of the fleet during the summer months and persistent problems with the routing system. Several weeks into the new school year, the Division had fewer operational vehicles than there were routes. In response, I increased the level of oversight of the Division performed by my staff. I also retained as an expert consultant, the retired head of school transportation for the Montgomery County schools. I have requested that this experienced official spend a substantial amount of his time at the Division to review its performance and attempt to determine the reasons why it was unable to deliver the level of service that it had achieved consistently in prior years.

I believe Defendants have made good faith efforts to improve on-time arrival performance though they are unable to provide evidence that their performance reports are accurate. From performance statistics we can verify, it appears the Division's reported level of compliance has improved somewhat over time, but far more slowly than anyone would wish. The Division's reported performance remains far below the level required by the standing Court orders and the level that I would find acceptable. I have substantial doubts about the accuracy of the reported information. The Division has discontinued many of the measures that I maintained as Transportation Administrator to validate the accuracy of the reported on-time arrival statistics, and has attempted to move toward a system based primarily on GPS reporting devices.

However, the Division has experienced substantial problems with the GPS system, which currently works in only approximately 50% of the buses. Even for that 50% of the fleet, the reported on-time arrival rate is substantially below the level required by Court orders and achieved by the Division in prior years.

Taking these and other performance issues into account, as well as the apparent likelihood that the District will not provide the fiscal resources it, itself had determined are needed to operate a compliant system, unless the District of Columbia can achieve a significant increase in the on-time bus arrival rate in the next few weeks, I am prepared to initiate the process provided by the Transition Order to declare that Defendants are in material breach of its provisions and to transfer responsibility for day-to-day operation of the Division back to a Transportation Administrator.

My concern with the adequacy of Defendants' operation of the Division has been heightened by recent developments threatening the level of budgetary resources available to the Division. On December 7, 2010, the D.C. Council gave preliminary approval to a Proposed Gap-Closing Plan submitted by the Mayor on November 23, 2010 to reduce the District's budget deficit by \$188.6 million. The Gap-Closing Plan proposes (at 29) to reduce the budget for Special Education Transportation by \$4.4 million. In particular, the Plan would reduce the amount available for bus Maintenance by \$2 million.

The reduction in the budget available to the Division would constitute an express violation of Section 3 of the Transition Order, in which the Defendants agreed to "provide sufficient funding necessary to operate the Division of Transportation in a manner that complies with the Court's underlying substantive Orders in this matter." Moreover, the Plan would exacerbate one of the critical operational failures that the Division has experienced under the Transition Order, by eliminating a substantial amount of the money available for maintenance of the bus fleet for the rest of the Fiscal Year, even though maintenance failures have proved to be the Achilles heel of the Division.

I sympathize with the efforts of the Mayor and the D.C. Council to reduce the District's deficit and understand the difficulties they face in determining how to allocate budget cuts among important but competing programs. In my judgment, however, the cuts proposed by the Gap-Closing Plan for the Division's budget are utterly irrational and would, if finally adopted by the D.C. Council, make it impossible for the Division to comply with the Court orders and the performance criteria incorporated in the Transition Order. Accordingly, I wish to alert the Court that the filing of motions seeking to declare the District in violation of the Transition Order and to return the Division to the control of a Transportation Administrator is inevitable if the proposed budget cuts are finally enacted.

Finally, I wish to inform the Court and the parties that in my judgment, even if the threatened budget reduction is not adopted and even if the problems with the Division's performance are successfully resolved in the next few months, it is highly likely that the Transition Period will need to be further extended until at least October 1, 2011, after the start of

the 2011-2012 School Year, so that the Court will have a reliable basis for determining whether Defendants have developed a durable resolution of the operational problems that have adversely affected the student transportation system during this School Year.

Sincerely,

A handwritten signature in black ink, appearing to read "David Gilmore", with a long, sweeping flourish extending to the right.

David Gilmore
Supervising Court Master