

Labor and Employment

Kaplan Kirsch & Rockwell's broad and detailed knowledge of airports and mass transit systems is complimented by its expertise in labor and employment matters that arise in those contexts. Having this breadth of "nuts and bolts" experience in the rarefied world of employment and labor matters in these environments, coupled with the broad substantive knowledge of the regulations governing them in general, is truly unique. This rare combination of highly specific expertise and experience enables us to provide an unparalleled level of support to airports and transit systems struggling with sticky labor and employment matters.

Airports

Working at an airport is unlike working elsewhere. There are federally based rules and regulations governing so many areas: safety and security, airfield vehicular movement, and safety management systems, just to name a few. When employee issues arise, our team members' extensive familiarity with the legal minefield of the airport environment enables them to immediately provide valuable, insightful, and practical advice. We represent airports in all employee-based matters ranging from how to address employee performance issues related to on-airfield incidents to defending airports in federal employment cases (in both federal courts and agencies).

Airports are also uniquely situated in that labor organizations and other stakeholders have an interest in employee welfare matters. Whether it is union organizing activity, informational picketing, or attempts to alter the means and methods by which unions may gain status as an authorized bargaining representative, our labor law experience allows us to guide airports through challenging times.

In recent years, several new labor/employment issues have become of particular interest to airports and the municipalities in which the airport operates, including "labor harmony" or "labor peace" agreements and prevailing/living wage legislation. We counsel airports in all of these areas and successfully negotiate a multitude of unique solutions to the complex, difficult issues facing airports today.

Fixed-Guideway Transit Systems

The historical importance of the rail industry over the last century has resulted in a system of laws and protective arrangements for the benefit of rail employees—a system that was designed specifically to ensure uniform treatment of employees across the country and to provide incentives for the employees to continue working without interruption to address economic disputes. The "employee protective arrangements" that grew up in the railroad industry became part of the landscape of the transit industry along with the inclusion of Section 13(c) in the Urban Mass Transportation Act of 1965, now the Federal Transit Act. Our experience in serving both the freight and passenger sides of the industry allows us to offer clients a full range of services to address issues under the Railway Labor Act, the Railroad Retirement Act, and the labor protective arrangements imposed under the Section 13(c) and the statutory and regulatory requirements of the Surface Transportation Board (STB).

This expertise enables us to assist our transit-industry clients in navigating the often unfamiliar world of rail labor arrangements and the laws that govern them when the agencies enter negotiations with rail carriers for acquisition of corridors. With these acquisitions come the requirement of interacting with the rail industry unions and the unique laws that govern their relationships with the rail carriers. At the same time, addressing the protections available under Section 13(c) and the protective arrangements included in collective bargaining agreements or mandated by the STB to employees who are currently working on the lines or in the facilities to be acquired, requires careful attention to the structure of the transaction and to the acquiring agency's rights or obligations as the new owner or operator.



The attorneys of Kaplan Kirsch & Rockwell are uniquely qualified to guide clients through the multifaceted challenges of these acquisitions and avoid the many potential pitfalls. We advise clients on how to structure their transactions to address these requirements, including Section 13(c) or Railroad Retirement obligations, without incurring costs and hiring mandates that are not required by applicable laws.

Representative Matters

- Represented a medium hub airport in disputes involving breach labor peace agreement, including counseling related to improper use of airport badge by employees and related unfair labor practice charges filed at National Labor Relations Board.
- Negotiated labor harmony/labor peace provisions of new concessions agreement on behalf of large hub airport.
- Assisted medium hub airport in negotiations with master concessionaire in resolution of labor-centered contract disputes and new concessions agreement with airport.
- Advised large hub airport in potential implications of new legislation regulating ground service workers and potential impact upon use and lease agreements with airlines.
- Represented medium hub airport in proceedings before United States Equal Employment Opportunity Commission in matter related to termination of employee for runway incursion and allegations of disability-based discrimination.
- Assisted multiple airports in addressing and managing union-related demonstrations, informational and organizational picketing on airport property.
- Designed and deployed best practices employee training program at medium hub airport.
- Counseled medium hub airport in all employee disciplinary actions, including employee terminations and related risk mitigation measures to be taken prior to taking adverse employment action.
- Addressed rail and transit labor and employment issues, including implications of federal labor protection arrangements. For example, secured rulings from Railroad Retirement Board relating to status under Railroad Retirement Act of Southern California Regional Rail Authority and its five member agencies. *Southern California Regional Rail Authority*, B.C.D. 09-4 (RRB Feb. 18, 2009); *Southern California Regional Rail Authority*, B.C.D. 02-12 (RRB Feb. 12, 2002); *Southern California Regional Rail Authority*, B.C.D. 94-116 (RRB Dec. 14, 1994); *Los Angeles County Metropolitan Transportation Authority*, B.C.D. 94-48 (RRB) (1994); *Orange County Transportation Authority*, *Riverside County Transportation Commission*, B.C.D. 94-47 (RRB) (1994); *San Bernardino Associated Governments*, B.C.D. 94-101 (1994); *Ventura County Transportation Commission*, B.C.D. 94-100 (RRB) (1994) (secured determinations over a number of years that public transit agencies did not become subject to Railroad Retirement Act tax when acquiring lines of railroad from freight carriers; subsequently secured “segregation” ruling for SCRRRA, allowing SCRRRA to “segregate” the unit of dispatchers to permit them to be covered under Railroad Retirement while preserving the non-covered status of the remainder of the agency’s employees).
- Represented client transit agencies in litigation and arbitration related to issues arising under Section 13(c). *Holloway, et al. v. South Florida Regional Transportation Authority*, FMCS 14-53032-3 Section 13(c) Claims’ Grievances (2014) (arbitrator’s decision denying claim for benefits under Section 13(c) of the Federal Transit Act).