

TESTIMONY OF MICHAEL CORDIELLO, PRESIDENT, AMALGAMATED TRANSIT
UNION LOCAL 1181-1061 AND A VICE PRESIDENT OF THE NEW YORK STATE
AFL-CIO AND JAMES HEDGE, RECORDING SECRETARY AND POLITICAL
DIRECTOR, AMALGAMATED TRANSIT UNION LOCAL 1181-1061 AND VICE CHAIR
AMALGAMATED TRANSIT UNION (ATU) NEW YORK STATE LEGISLATIVE
CONFERENCE BOARD

JOINT ASSEMBLY AND SENATE EDUCATION BUDGET HEARING

FEBRUARY 14, 2017

Assembly Ways & Means Chair Farrell, Senate Finance Chair Young, Assembly Education
Chairwoman Nolan, and Senate Education Chairman Marcellino and members of the Joint
Education Budget Committee:

We thank you for this opportunity to submit testimony for your consideration as you
begin to review proposals with respect to the proposed 2017 – 2018 New York State Budget.
My name is Michael Cordiello, and I am the President of Local 1181 of the Amalgamated
Transit Union and a Vice President of the New York State AFL-CIO. I am joined by James
Hedge, the Recording Secretary and Political Director of Local 1181 of the Amalgamated Transit
Union and Vice Chair of the Amalgamated Transit Union New York State Legislative
Conference Board. Local 1181 represents some 12,000 school bus drivers, matrons, and
mechanics who everyday provide safe, efficient transportation to about 160,000 New York City
school children. We have been doing so for over 60 years. We have collective bargaining
agreements with most of the private bus companies that, in turn, have contracts with the
Department of Education for transportation of pupils in New York City.

I am here today for two reasons. First, I want to thank both the Assembly and Senate for your support of our industry for passing legislation sponsored by Assemblyman Daniel O'Donnell and Senator Martin Golden that would achieve stability in the school bus transportation industry, ensure the safe and reliable transportation for millions of schoolchildren and provide a living wage and decent benefits for hardworking, skilled and experienced workers. This legislation was sent to the Governor for his review at the end of November. After his review, the Governor vetoed this legislation primarily, he said because it needed to be included in the budget process. The Governor said in his veto message: "(R)ecognizing the need to have safe reliable school transportation, I pledge to engage the Legislature in the coming months to work on a meaningful solution to address this issue in the context of the budget process."

This leads me to my second reason for being here today; to ask both houses to include this school bus industry proposal in their one-house budgets. Since the legislation was vetoed, we have been working with the Governor's office to achieve this goal. We have made changes to the legislation from last year to address the Governor's other questions. I have attached a copy of that draft to my testimony. I believe that this draft will answer the Governor's questions and give us a path forward to finally stabilize this industry, provide decent wages and benefits to the workforce and, of course, provide safe and reliable transportation to New York City schoolchildren.

During the 2012-2013 school years, the Bloomberg administration made the decision to eliminate the decades-old employee protection provision ("EPP") in its contracts with school bus contractors. The EPP had been included in all transportation contracts issued by the City of New York since 1979. Under the EPP, private bus company employees (whether they are members of Local 1181, another union or no union at all), who are laid off due to a termination of a contract

between their employer and the Department of Education, are, on the basis of their seniority in the industry, not with a particular company, given priority in hiring by the new contractors who are retained by Department of Education. It is important to note the need for this seniority list is to retain a steady, professional and trained workforce regardless of which company has the bus contracts, since companies come and go.

The EPP's also ensure that workers in this industry have medical and pension benefits. Without the EPP's, these benefits cease to exist and an industry that currently has a healthy, private pension fund faces increased uncertain and certain loss of stability. The area of pension withdrawal liability is one where the costs can be measured, and without reinstating the EPP's, those costs will be significant.

Withdrawal liability is a legal obligation for employers that contribute to multiemployer defined benefit pension plans. Upon ceasing to make contributions (withdrawing), an employer must make payments towards the plan's future liabilities. Local 1181's pension plan had an exemption from withdrawal liability when the EPP's were in effect because the EPP's required the next employer in line to continue to make payments to the plan on behalf of the withdrawing employer's employees, which ensured the continuing stability of the plan.

Upon removal of the EPP's, the conditions warranting the exemption ceased to exist, so the Plan stated assessing withdrawal liability. These assessments are significant and have been estimated to be around \$265 million just for Local 1181 employers. Reinstating the EPP's would permit the reinstatement of the exemption, which would again foreclose the assessment of withdrawal going forward. The possibility of withdrawal liability drives up the cost of the contracts because bidders and contracts must factor this into their costs. In addition, there is an ongoing lawsuit by the Plan against the DOE asserting that the DOE is responsible along with

withdrawal liability. Certainly, if the DOE is found to be responsible, the cost of the withdrawal liability will far exceed any cost savings from removing the EPP's.

When a worker is displaced from a job, because the company they were employed by no longer has the transportation contract with the City of New York, the worker goes on the master seniority list and is selected for any job opening at another company based purely on their industry seniority. It does not matter if the employee was union or non-union, high on the pay scale or lower on the pay scale. The only consideration is the workers' seniority. The workers bring with them the wages and benefits they earned with the prior employer, which can vary depending upon the employer, whether or not there was a collective bargaining agreement with that employer. With this job security in place, the Department of Education is able to retain the most experienced, skilled drivers to best serve our children. These drivers know the routes and the children and are adept at maneuvering buses while navigating the congested streets of New York. These matrons are the most experienced in assisting students, especially those with special needs or physical disabilities.

As a result of the ill-advised decision of the Bloomberg Administration to remove the EPP, the entire school bus transportation industry in the City of New York has been destabilized. By removing the EPP, the Bloomberg Administration invited low-ball bids that could not sustain a workforce making a living wage. The responsible companies that had trained and experienced workers whom they paid a living wage lost the bids to these low-ball company bids. It is hard to reach any other conclusion than the havoc wreaked on New York City schoolchildren; their families; and school bus drivers, matrons, and mechanics; all stem from the former administration's belief that working men and women do not deserve fair wages and benefits or job security. The membership of Local 1181 - which numbered approximately 15,000 just three

years ago - has been devastated. In June of 2013, some 2,000 of those members lost their jobs. In advancing this myopic policy initiative, despite the mandate of competitive bidding laws that an agency achieve the best possible service for the lowest possible cost, the former Administration focused solely on the cost of school bus transportation services, while ignoring completely the quality of such service and the costs associated with removing the EPP. Of course, the drivers, matrons, and mechanics in the industry have suffered because of that misplaced focus, but so too have their most precious cargo, who deserve a dependable, reliable, caring, and safe transportation workforce.

What we have learned though is that the “low bids” heralded by the previous administration were only low because labor costs now consist of wages barely above the minimum wage, minimum or no healthcare coverage, and no pensions. To call the payment of subsistence level wages to the workforce that cares for some of our most vulnerable children “cost savings” deliberately ignores the external costs associated with such low-level wage workforces. In fact, because there are diminished wages and benefits in the industry now, there is a shortage of 100 drivers just for the companies we serve in the NYC DOE system, which would mean there is at least shortage of 200 drivers for the whole industry, because we cannot find qualified and reliable drivers willing to work under these conditions. We must have the EPP’s reinstated to ensure that we can retain and recruit a skilled and qualified workforce.

Further, it has been demonstrated in numerous studies of low-wage workforces, that when workers cannot earn a living wage to support their families, they are reliant on social services. The utilization of such social services is not cost-neutral to the City, even if they are off the Department of Education’s balance sheet. Food stamps, government-subsidized healthcare, government-subsidized housing all cost the City money. Such low-level wages will not offer

career opportunities for people in the industry, leading to high turnover. As new workers constantly join the industry to replace departing workers, the Department of Education, or its school bus contractors, will have to constantly retrain workers—a costly endeavor. Further, even when trained, there is nothing that can replace experience, which many of the drivers, matrons and mechanics have.

Then of course, there are considerations of labor peace. With the inclusion of the EPP in school bus contracts for so many years, there was a stabilizing effect on the workforce. Turnover was low; job actions and strikes were non-existent. That labor peace, though, lasted only as long as the EPP was included in school bus contracts. Now, however, with the anticipated influx of new workers, it is very likely that the industry will be much more turbulent. As these new workers consider if they want to be represented by our union, other unions, or no union at all, there will be organizing drives. Labor unrest may increase. Resulting strikes may very well occur. Service disruptions are certainly not without cost to the Department of Education. We know from the strike, which my members were forced into several years ago, that it cost the City at least \$21 million,¹ not to mention the cost of police overtime; the cost of additional reimbursements to parents for alternative transportation during the strike; and legal fees related to ensuing litigation.

Another cost that will be absorbed by the Department of Education, due to companies going out of business, is the cost for substitute contractors. As we recently saw when Atlantic Express declared bankruptcy at the end of 2012, and the Department of Education awarded contracts to substitute school bus contractors to continue transportation services for the latter half of the 2013-2014 school year, those substitute contractors charged the Department of Education a

¹ In response to an initial freedom of information law request submitted by Local 1181 soon after its strike inquiring as to the cost of the strike incurred by the City, the City responded that the cost at that point was \$21.27 million.

10% premium to do the very same work that was performed by Atlantic Express before being forced into bankruptcy. The Department of Education has also agreed to indemnify these substitute contractors for potential back pay liability that will likely cost additional millions of dollars.

Instead of all of the challenges we faced with the Bloomberg administration, we have been able to work with the administration of Mayor Bill De Blasio. He supports restoring the EPP to RFB/RFP's issued by the City of New York.

I am also happy to report that in addition to support from the Mayor of New York, we also have the support of the AFL-CIO, the Teamsters, the Central Labor Council, the Long Island Labor Federation, the New York State Contractors Association, which includes many of the bus companies that bid on these RFB/RFP's, and parent advocacy groups including Parents to Improve School Transportation.

In addition to supporting legislation to require that inclusion of the EPP in RFB/RFP's issued by the City of New York for the transportation of schoolchildren, Local 1181 also supports a proposal by the New York State School Bus Contractors Association that would change how extensions of existing transportation contracts are priced. Current law requires that any extension be governed by the Consumer Price Index. However, years of experience have shown that as to the school bus transportation industry, this metric does not work. Instead, we support using the Employment Cost Index (EIC), which more accurately reflects cost pricing in the industry. Further, we also support the proposal to exempt the purchase of new school buses from sales tax. It seems counterintuitive that the State would impose sales tax on the purchase of new school buses and thus increase costs to the school districts, which in turn contributes to the taxes paid by the taxpayers in the school district.

In conclusion, Local 1181 strongly encourages you to include this package of proposals in your proposed budgets. We truly believe that these proposals will help to stabilize the school bus transportation industry in the City of New York and return to a time when there was a stable and reliable workforce available to transport our most vulnerable schoolchildren. Thank you.

Attachment 1

AN ACT to amend the education law and the tax law, in relation to contracts for the transportation of school children

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Paragraph a of subdivision 14 of section 305 of the education law, as amended by chapter 273 of the laws of 1999, is amended to read as follows:

a. **(1)** All contracts for the transportation of school children, all contracts to maintain school buses owned or leased by a school district that are used for the transportation of school children, all contracts for mobile instructional units, and all contracts to provide, maintain and operate cafeteria or restaurant service by a private food service management company shall be subject to the approval of the commissioner, who may disapprove a proposed contract if, in his **or her** opinion, the best interests of the district will be promoted thereby. Except as provided in paragraph e of this subdivision, all such contracts involving an annual expenditure in excess of the amount specified for purchase contracts in the bidding requirements of the general municipal law shall be awarded to the lowest responsible bidder, which responsibility shall be determined by the board of education or the trustee of a district, with power hereby vested in the commissioner to reject any or all bids if, in his **or her** opinion, the best interests of the district will be promoted thereby and, upon such rejection of all bids, the commissioner shall order the board of education or trustee of the district to seek, obtain and consider new proposals. All proposals for such transportation, maintenance, mobile instructional units, or cafeteria and restaurant service shall be in such form as the commissioner may prescribe. Advertisement for bids shall be published in a newspaper or newspapers designated by the board of education or trustee of the district having general circulation within the district for such purpose. Such advertisement shall contain a statement of the time when and place where all bids received pursuant to such advertisement will be publicly opened and read either by the school authorities or by a person or persons designated by them. All bids received shall be publicly opened and read at the time and place so specified. At least five days shall elapse between the first publication of such advertisement and the date so specified for the opening and reading of bids. The requirement for competitive bidding shall not apply to an award of a contract for the transportation of pupils or a contract for mobile instructional units, if such award is based on an evaluation of proposals in response to a request for proposals pursuant to paragraph e of this subdivision. The requirement for competitive bidding shall not apply to annual, biennial, or triennial extensions of a contract nor shall the requirement for competitive bidding apply to quadrennial or quinquennial year extensions of a contract involving transportation of pupils, maintenance of school buses or mobile instructional units secured either through competitive bidding or through evaluation of proposals in response to a request for proposals pursuant to paragraph e of this subdivision, when such extensions ~~[(1)]~~ **(i)** are made by the board of education or the trustee of a district, under rules and regulations prescribed by the commissioner, and, ~~[(2)]~~ **(ii)** do not extend the original contract period beyond five years from the date cafeteria and restaurant service commenced thereunder and in the case of contracts for the transportation of pupils, for the maintenance of school buses or for mobile instructional units, that such contracts may be extended, except that power is hereby vested in the commissioner, in addition to his **or her** existing statutory authority to approve or disapprove transportation or maintenance

contracts, [(i)] **(A)** to reject any extension of a contract beyond the initial term thereof if he or she finds that amount to be paid by the district to the contractor in any year of such proposed extension fails to reflect any decrease in the regional consumer price index for the N.Y., N.Y.-Northeastern, N.J. area, based upon the index for all urban consumers (CPI-U) during the preceding twelve month period, or for all contracts for school buses used for the transportation of school children, maintenance, and all contracts for mobile instructional units, if the amount to be paid by the district to the contractor in any year of such proposed extension fails to reflect any percentage decrease in the employment cost index (ECI) for total compensation for private industry workers in the northeast region (not seasonally adjusted) for the fourth quarter of the preceding year; [~~and (ii)~~] **(B)** to reject any extension of a contract after ten years from the date transportation or maintenance service commenced thereunder, or mobile instructional units were first provided, if in his or her opinion, the best interests of the district will be promoted thereby. Upon such rejection of any proposed extension, the commissioner may order the board of education or trustee of the district to seek, obtain and consider bids pursuant to the provisions of this section; and (C) to reject any extension of a contract for transportation, or new contract, if he or she finds that the amount to be paid by the district to the contractor in any year of such proposed contract fails to reflect the savings realized from the sales tax exemption on school buses, parts, equipment, lubricants and fuel used for school purposes pursuant to paragraph forty-four of subdivision (a) of section eleven hundred fifteen of the tax law. The board of education or the trustee of a school district electing to extend a contract as provided herein, may, in its discretion, increase the amount to be paid in each year of the contract extension by an amount not to exceed the regional consumer price index increase for the N.Y., N.Y.-Northeastern, N.J. area, based upon the index for all urban consumers (CPI-U), during the preceding twelve month period, or for all contracts for school buses used for the transportation of school children, maintenance, and all contracts for mobile instructional units, by an amount not to exceed the percentage increase in the employment cost index (ECI) total compensation for private industry workers in the northeast region (not seasonally adjusted) for the fourth quarter of the preceding year, provided it has been satisfactorily established by the contractor that there has been at least an equivalent increase in the amount of his or her cost of operation, during the period of the contract.

(2) Notwithstanding any other provision of this subdivision, the board of education of a school district located in a city with at least one million inhabitants shall include in contracts for the transportation of school children in kindergarten through grade twelve, whether awarded through competitive bidding or through evaluation of proposals in response to a request for proposals pursuant to paragraph e of this subdivision, provisions for the retention or preference in hiring of school bus workers and for the preservation of wages, health, welfare and retirement benefits and seniority for school bus workers who are hired pursuant to such provisions for retention or preference in hiring, in connection with such contracts. For purposes of this subparagraph, "school bus worker" shall mean an operator, mechanic, dispatcher or attendant who: (i) was employed as of June thirtieth, two thousand ten or at any time thereafter by (A) a contractor that was a party to a contract with the board of education of a school district located in a city with at least one million inhabitants for the transportation of school children in kindergarten through grade twelve, in connection with such contract, or (B) a subcontractor of a contractor that was a

party to a contract with the board of education of a school district located in a city with at least one million inhabitants for the transportation of school children in kindergarten through grade twelve, in connection with such contract, and (ii) has been furloughed or become unemployed as a result of a loss of such contract, or a part of such contract, by such contractor or such subcontractor, or as a result of a reduction in service directed by such board of education during the term of such contract.

§ 2. Paragraph c of subdivision 14 of section 305 of the education law, as amended by chapter 15 of the laws of 2005, is amended to read as follows:

c. Each board of education, or the trustees, of a school district which elected or elects to extend one or more pupil transportation contracts may extend a contract in an amount which is in excess of the maximum increase allowed by use of the ~~[CPI]~~ ECI referenced in paragraph a of this subdivision. Such excess amount shall not be greater than the sum of the following: (i) the sum of the actual cost of qualifying criminal history and driver licensing testing fees attributable to special requirements for drivers of school buses pursuant to articles nineteen and nineteen-A of the vehicle and traffic law plus the actual cost of any diagnostic tests and physical performance tests that are deemed to be necessary by an examining physician or the chief school officer to determine whether an applicant to drive a school bus under the terms of the contract has the physical and mental ability to operate a school transportation conveyance and to satisfactorily perform the other responsibilities of a school bus driver pursuant to regulations of the commissioner; (ii) in a school district located in a city with at least one million inhabitants, the actual cost of clean air technology filters and Global Positioning System (GPS) technology; (iii) in a school district located in a city with at least one million inhabitants, with respects only to any extension beginning in fiscal year two thousand five--two thousand six, the sum of the actual cost of providing school bus attendants including the actual cost of criminal history record checks for school bus attendant applicants and training and instruction for school bus attendants pursuant to section twelve hundred twenty-nine-d of the vehicle and traffic law plus up to five percent of such cost for necessary administrative services; and (iv) the actual cost of equipment or vehicle modification, or training required, by any state or local legislation or regulation promulgated or effective on or after June first, two thousand five. Such costs shall be approved by the commissioner upon documentation provided by the school district and contractor as required by the commissioner.

§ 3. Subdivision (a) of section 1115 of the tax law is amended by adding a new paragraph 44 to read as follows:

(44) School buses as such term is defined in section one hundred forty-two of the vehicle and traffic law, and parts, equipment, lubricants and fuel purchased and used in their operation.

§ 4. Separability. If any item, clause, subparagraph, paragraph, subdivision or section of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to this item, clause, subparagraph, paragraph, subdivision or section thereof that was adjudged to be invalid.

§ 5. This act shall take effect immediately; provided, however, that the provisions of section three of this act shall take effect on the first day of a quarterly sales tax period, as set forth in subdivision (b) of section 1136 of the tax law, next succeeding April 1, 2017.