

STATEMENT OF RALPH L. STANLEY, ADMINISTRATOR
OF THE URBAN MASS TRANSPORTATION ADMINISTRATION,
BEFORE THE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION, SUBCOMMITTEE
ON INVESTIGATIONS AND OVERSIGHT, OF THE UNITED STATES
HOUSE OF REPRESENTATIVES ON MAY 31, 1984

Mr. Chairman, Members of the Subcommittee. Thank you for inviting me here to participate in the Subcommittee's continuation of hearings concerning the withdrawal from transit service of 851 Grumman Flexible buses by New York City Transit Authority (NYCTA) and related issues. I am accompanied today by Alfred A. DelliBovi, the Deputy Administrator of the Urban Mass Transportation Administration (UMTA); G. Kent Woodman, UMTA's Chief Counsel; Peter Benjamin, UMTA's Associate Administrator for Technical Assistance; and George Parker, the Associate Administrator for Enforcement of the National Highway Traffic Safety Administration. I would like to take this opportunity to add to my statement of April 27, 1984 and address a number of issues that have arisen since that date.

As you know, on May 10, 1984, NYCTA filed suit in State court in the State of New York against Grumman. In its complaint NYCTA alleges, that Grumman committed a fraud and participated in a conspiracy to defraud NYCTA in connection with the 851 Model 870 buses purchased by New York. The complaint also alleges breach of contract, negligent misrepresentation, breach of implied warranty of merchantability, and breach of implied warranty of fitness for particular purpose.

In a letter to NYCTA dated May 9, 1984, one day prior to the filing of the suit, Grumman invoked the disputes clause in the Grumman-NYCTA contracts for the Model 870 buses. The disputes clause requires NYCTA's contracting officer

to render a written decision on "any dispute concerning a question of fact arising under this contract." The clause then permits the contractor, Grumman in this case, to appeal the contracting officer's decision to UMTA.

We are inclined to believe that it would be inappropriate to review the applicability of the disputes clause at this time. However, it has long been UMTA's position that the disputes clause allows UMTA to render decisions only on issues directly related to the interpretation and effectiveness of the White Book Specification.

The litigation instituted by NYCTA on May 10 has re-emphasized a concern that UMTA has had since February 7 removal of the Model 870's from transit service. That concern relates to protecting the Federal financial interest in the vehicles removed from service by NYCTA. UMTA continues to have an interest in the Model 870's equal to 80 percent of the value of the vehicles on February 7, 1984, and has taken steps to recover that interest consistent with the grant agreements.

At my direction, on February 15, 1984, Hiram Walker, the Deputy Regional Administrator in UMTA's New York Office, sent a letter to David Gunn, the President of NYCTA, in which Mr. Walker called to Mr. Gunn's attention provisions in the grant agreements requiring prompt remission to the Federal Government of a proportionate share of the fair market value of the buses removed from mass transportation service. In his letter, Mr. Walker also asked to be advised within seven working days of NYCTA's plans regarding the Model 870's. The only response UMTA has received to date has been a recognition of the Federal interest in the vehicles.

This morning, I sent a letter to NYCTA setting forth the valuation process UMTA plans to use with regard to the disposition of the Model 870's and requesting prompt payment of the Federal interest. I am also providing NYCTA with the opportunity to devise an alternative disposition plan within a two week time period.

Despite the litigation, UMTA will actively and immediately pursue its interest. We feel this is made even more imminent by information gathered on a May 25 tour of the Brooklyn Army Terminal by Mr. DelliBovi and other UMTA personnel. During that tour, which was conducted by Howard Roberts, Vice President of NYCTA in charge of Surface Operations, it became apparent that NYCTA was not making any efforts to maintain the 851 vehicles withdrawn from service.

Finally, I want to clarify a matter raised at the April 27 hearing. During the hearing David Gunn, the President of NYCTA suggested that the Federal interest in 662 of the transit authority's Model 870's equals 40 percent of the value of these vehicles. However, the Federal share in all of the Grumman Model 870's is 80 percent. At the time that the grants under which these vehicles were purchased were approved by UMTA, section 3(h) of the Urban Mass Transportation Act of 1964, as amended, permitted recipients of UMTA discretionary capital grants to use up to half of the UMTA capital funds for operating assistance provided that those funds were repaid with State and/or local funds. NYCTA has continued to pay back all of the funds borrowed pursuant to section 3(h) in accordance with the repayment schedule agreed upon by UMTA and NYCTA. Upon final repayment, the Federal Government will be

placed in the same position with regard to these capital grants as we would have been had section 3(h) not been exercised. Since the April 27 hearing, UMTA has received assurances from representatives of NYCTA that indicate the transit authority's agreement with our interpretation of section 3(h).

That concludes my prepared statement. I am available to answer any questions you may have.