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IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

LISA BURKE, et al.,  
Plaintiffs,

vs.

UTAH TRANSIT AUTHORITY, et al.,  
Defendants.

ORDER GRANTING U.S.  
DEPARTMENT OF LABOR'S  
MOTION TO DISMISS

Case No. 2:04-CV-985 PGC

Defendant, the United States Department of Labor, has moved to dismiss plaintiffs' claims against it pursuant to Fed.R.Civ.P. 12(b)(1) and (6) in the above-referenced matter. Plaintiffs oppose dismissal, arguing that the agency's certification decisions under 49 U.S.C. § 5333(b) (formerly § 13(c) of the Urban Mass Transportation Act) are properly subject to judicial review.

As an initial matter, the court agrees with plaintiffs that agency certification decisions under 49 U.S.C. § 5333(b) are amenable to judicial review. It is evident, however, that any such review would be limited to the record before the agency at the time of the certification decision at issue. But plaintiffs have failed to plead or otherwise allege that the agency had any knowledge or information regarding the current labor dispute when it made the challenged certification

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decision in October of 2001. Absent any such allegations, plaintiffs have failed to state a claim upon which relief may be granted and their claims against the U.S. Department of Labor should be dismissed pursuant to Fed.R.Civ.P. 12(b)(6).

Accordingly, the U.S. Department of Labor's motion to dismiss (29-1) is GRANTED.

DATED this 6th day of April, 2005.

BY THE COURT:



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Paul G. Cassell  
United States District Judge

United States District Court  
for the  
District of Utah  
April 8, 2005

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:04-cv-00985

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