

Date of Hearing: May 5, 2020

ASSEMBLY COMMITTEE ON PUBLIC EMPLOYMENT AND RETIREMENT

Freddie Rodriguez, Chair

AB 2850 (Low) – As Amended May 4, 2020

SUBJECT: Public transit employer-employee relations: San Francisco Bay Area Rapid Transit District.

SUMMARY: Applies the Meyers-Milias-Brown Act (MMBA) to govern employer-employee relations for the San Francisco Bay Area Rapid Transit District (BART); thereby, placing such relations under the exclusive jurisdiction of the Public Employment Relations Board (PERB), among other provisions. Specifically, **this bill:**

- 1) Establishes that the MMBA governs employer-employee relations for the BART and BART employees, including supervisory, professional, and technical employees, without limitation.
- 2) Establishes that the PERB, pursuant to the MMBA, has exclusive jurisdiction over the BART and its employees relating employer-employee relations.
- 3) Provides that a contract or agreement must not be made with any labor organization, association, group, or individual that denies membership on any basis, as provided and defined under existing law. However, the organization may preclude any individual who advocates the overthrow of government by force or violence from membership.
- 4) Provides that the BART must not discriminate regarding employment against any person on the basis of existing law, as provided, defined, and otherwise, under existing law.
- 5) Repeals provisions in existing law within the Public Utilities Code (P.U.C.) relating to the San Francisco BART Act that govern labor relations between the BART and its employees, and more specifically, those involving bargaining unit determination, representation, collective bargaining, and the processes for resolving disputes.
- 6) Includes a standard boilerplate provision regarding reimbursement of costs. Pursuant to existing law.

EXISTING LAW:

- 1) Governs collective bargaining in the private sector under the federal National Relations Labor Relations Act (NLRA) but leaves it to the states to regulate collective bargaining in their respective public sectors.

While the NLRA and the decisions of its National Labor Relations Board often provide persuasive precedent in interpreting state collective bargaining law, public employees have no collective bargaining rights absent specific statutory authority establishing those rights.

- 2) Provides several statutory frameworks under California law to provide public employees collective bargaining rights, govern public employer-employee relations, and limit labor strife and economic disruption in the public sector through a reasonable method of resolving disputes regarding wages, hours and other terms and conditions of employment between public employers and recognized public employee organizations or their exclusive representatives. These include:
 - a) The MMBA which provides for public employer-employee relations between local government employers and their employees.
 - b) The Los Angeles County Metropolitan Transit Authority Transit (LAMTA) Employer-Employee Relations Act (TEERA) providing for public employer-employee relations between the employer and supervisory employees of the LAMTA.
- 3) Establishes the PERB, a quasi-judicial administrative agency charged with administering certain statutory frameworks governing employer-employee relations, resolving disputes, and enforcing the statutory duties and rights of public agency employers and employee organizations, but provides the City and County of Los Angeles a local alternative to PERB oversight.
- 4) Does not cover California's public transit districts by a common collective bargaining statute. Instead, while some transit agencies are subject to the MMBA, the majority of transit agencies are subject to labor relations provisions that are found in each district's specific P.U.C. enabling statute, in joint powers agreements, or in articles of incorporation and bylaws.

These provisions provide employees with basic rights to organization and representation, but do not define or prohibit unfair labor practices. Unlike other California public agencies and employees, these transit agencies and their employees have no recourse to the PERB.

Instead, they must rely upon the courts to remedy any alleged violations. Additionally, they may be subject to provisions of the federal Labor Management Relations Act of 1947 and the 1964 Urban Mass Transit Act (now known as the Federal Transit Act).

- 5) Establishes, pursuant to Sections 28500 et seq. of the P.U.C., the San Francisco BART Act. This act, pursuant to Sections 28850 through 28855 provides labor provisions for the BART. These provisions provide for representation by a labor organization; unit determination; collective bargaining; personnel; and, provisions relating to retirement benefits.

The act also defines "San Francisco Bay area" to mean the Counties of San Francisco, Marin, Sonoma, Napa, Solano, Contra Costa, Alameda, Santa Clara, and San Mateo.

FISCAL EFFECT: Unknown. This bill is flagged as fiscal by Legislative Counsel.

COMMENTS: According to the author, “Assembly Bill 2850 replaces current conflict resolution processes with the guidance of an established, comprehensive labor relations statute – the MMBA – and a neutral administrative agency – the PERB – to aid BART and its employees in resolving unfair labor practice and labor representation disputes.

1) Public Transit Districts: Jurisdictional Variation for Handling Alleged Workplace Violations

The courts have held that the MMBA does not apply to public transit districts that have a statutorily prescribed method of administering employer-employee relations that was in existence at the time the MMBA was enacted.

Existing law, pursuant to Chapter 833, Statutes of 2003 (AB 199, Oropeza), establishes the TEERA which governs employer-employee relations for supervisory employees of the Los Angeles Metropolitan Transportation Authority (LAMTA).

As stated under “Existing Law”, *supra*, with the exception of the TEERA and MMBA, existing law does not cover all public transit districts by common collective statute. For these transit districts, the PERB is not the venue for recourse relating to alleged workplace violations. Instead, these transit districts must rely upon the courts for a remedy.

This jurisdictional variation for handling workplace violations may be viewed as inequity in public employer-employee relations, as well as result in inconsistent decisions issued by the courts and those of the PERB related to workplace violations, notwithstanding jurisdictional boundaries.

2) This Measure Does Not Establish a New and Separate Collective Bargaining Statute

This measure does not establish a new statutory collective bargaining framework for the BART and its employees. Rather, it places these employees who are currently and statutorily governed by the P.U.C., and are currently required to seek resolution in a court of competent jurisdiction to remedy alleged workplace violations (i.e., unfair practice charge), under the jurisdiction of the PERB via the MMBA.

3) Comments by Supporters

The California State Council of the Service Employees International Union states that, “Under current law, most public transit districts are not covered by a uniform collective bargaining statute such as the MMBA, but rather governed by the P.U.C. and accompanying regulations. Disagreements under this situation are handled unevenly and in costly litigation. [This bill] would require all labor disputes and claims to be resolved under the MMBA before the PERB; thus, reducing the need to take every dispute to the Superior Courts. The BART strike of 2013 demonstrated the need for a more timely adjudication process to resolve disputes and keep the trains running on time. Assembly Bill 2850 provides the guidance of an established,

comprehensive labor relations statute – MMBA – and a neutral administrative agency – PERB – to aid BART and its employees in resolving unfair labor practices and representation disputes.

4) Comments by Others

In part, the BART expresses concerns about this bill in stating that, “For more than 40 years, BART’s employer-employee relations have been governed by the BART Act. We believe a local solution to such matters is preferable to [this bill], which will result in a loss of local control for both BART employee organizations and the Board of Directors. We will lose the ability to resolve issues locally if either side declares an impasse and the issue moves to fact finding and adjudication before the PERB. If an impasse issue is related to a new essential project, such as the retrofit of the Transbay Tube or installation of the next generation of train control equipment, progress and delivery of the final project could be delayed until the PERB process concludes.

In addition, the BART states that, “There will be significant potential costs to BART to implement this bill across all bargaining units. BART estimates a new administrative cost of \$9,500 per dispute referral to PERB. For BART to prepare for and operate under the new process of the MMBA, the employment of technical consultants and outside counsel would be required. In addition, for BART to manage the process and interface with PERB, additional fulltime employees may be needed depending upon the number of disputes referred to PERB. Total costs for BART during the first year of implementation could be between \$500,000 - \$800,000.”

5) Prior or Related Legislation

Chapter 713, Statutes of 2019 (Assembly Bill 355, Daly) requires employers and employees of the Orange County Transportation Authority (OCTA) to adjudicate charges of unfair practice before the PERB, among other provisions.

Assembly Bill 2305 (Rodriguez, 2018) proposed to expand the jurisdiction of the PERB to include disputes between public agencies and peace officer employee organizations other than those employers and employees under the jurisdiction of employee relations commissions for the City and County of Los Angeles. Disputes between public agencies and individual peace officers would remain outside of the jurisdiction of the PERB. This bill was vetoed by the Governor who stated:

“Over the years, the Legislature has expanded the Board’s jurisdiction, but the necessary funding for the increased workload has not kept pace. This has resulted in significant backlogs at the Board – both labor and employers have complained about this problem. This Administration has recently increased the Board’s funding to help correct this problem. The Board’s jurisdiction should not be expanded again until the Board’s ability to handle its previously expanded caseload is established.”

Assembly Bill 2886 (Daly, 2018) proposed to transfer jurisdiction over the adjudication of unfair labor practices for the Orange County Transportation Authority (OCTA) and San Joaquin Regional Transit District (SJRTD) from the judicial system to the PERB, effective January 1, 2020. This bill was vetoed by the Governor who stated the same rationale as provided for the veto of Assembly Bill 2305 (Rodriguez, 2018).

Assembly Bill 530 (Cooper, 2017) proposed to expand the jurisdiction of the PERB to include Penal Code Section 830 peace officers; authorized a peace officer or labor union representing these peace officers to bring certain actions in court and, excluded employers and employees of the City and County of Los Angeles from its provisions. The Governor vetoed this bill and stated:

“This bill authorizes peace officers to bring unfair practice charges to the Public Employment Relations Board while preserving their existing right to directly petition a superior court for injunctive relief. No other group has both of these rights and I’m unconvinced that providing such a unique procedure is warranted.”

Assembly Bill 3034 (Low, 2018) proposed to amend the Public Utilities Code by placing supervisory, professional, and technical employee units of the BART under the MMBA; thereby, granting them certain statutory rights related to the employer-employee relationship. The Governor vetoed this bill by stating the same rationale provided for with Assembly Bills 2305 (Rodriguez, 2018) and 2886 (Daly, 2018).

REGISTERED SUPPORT / OPPOSITION:

Support

California State Council of the Service Employees International Union

Opposition

None on file

Other

San Francisco Bay Area Rapid Transit District (*concerns expressed*)

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