

## ASSEMBLY THIRD READING

AB 2850 (Low)

As Amended May 4, 2020

Majority vote

**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.

**Major Provisions**

- 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.

**COMMENTS:**

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

Existing law does not cover all public transit districts by common collective statute. For these transit districts not covered by a common collective statute, 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; whereas, the PERB is the venue for those covered by a common collective statute

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

## 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) *Other Important Information*

Please see the policy committee analysis for a full discussion of this bill.

### **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."

### **Arguments in Support:**

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."

### **Arguments in Opposition:**

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."

**FISCAL COMMENTS:**

According to the Assembly Appropriations Committee, this bill would result in "[a]nnual General Fund (GF) costs for [the] PERB in the range of \$40,000 in the first two years and unknown costs each year thereafter. This cost estimate assumes four cases per year in first two years." In addition, this bill would result in "[p]otentially reimbursable costs to [the] BART to the extent that placing employees under [the] MMBA imposes new requirements for the local agency. Assuming four cases per year and that [the] BART uses in-house counsel, annual costs would be in the range of \$112,000. State costs would depend on whether the Commission on State Mandates determines that a portion of these costs, if any, would be subject to state reimbursement."

**VOTES:****ASM PUBLIC EMPLOYMENT AND RETIREMENT: 5-1-1**

**YES:** Rodriguez, Cooley, Cooper, O'Donnell, Reyes

**NO:** Voepel

**ABS, ABST OR NV:** Fong

**ASM APPROPRIATIONS: 13-4-1**

**YES:** Gonzalez, Bauer-Kahan, Bloom, Bonta, Calderon, Carrillo, Chau, Eggman, Gabriel, Eduardo Garcia, Petrie-Norris, McCarty, Robert Rivas

**NO:** Bigelow, Megan Dahle, Diep, Voepel

**ABS, ABST OR NV:** Fong

**UPDATED:**

VERSION: May 4, 2020

CONSULTANT: Michael Bolden / P.E. & R. / (916) 319-3957

FN: 0002852