
SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT

Senator Jerry Hill, Chair

2019 - 2020 Regular

Bill No: AB 2850 **Hearing Date:** August 5, 2020
Author: Low
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Urgency: No **Fiscal:** Yes
Consultant: Glenn Miles

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

KEY ISSUE

Should the Public Employment Relations Board (PERB) have jurisdiction over labor disputes between the Bay Area Rapid Transit District (BART) and its employees?

ANALYSIS

Existing law:

- 1) Governs collective bargaining in the private sector under the federal National Relations Labor Relations Act (NLRA) but leaves to the states the regulation of collective bargaining in their respective public sectors. While the NLRA and the decisions of its National Labor Relations Board (NLRB) often provide persuasive precedent in interpreting state collective bargaining law, public employees generally have no collective bargaining rights absent specific statutory authority establishing those rights (29 United State Code § 7).
- 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 the Meyers-Milias-Brown Act (MMBA) which provides for public employer-employee relations between local government employers and their employees, including some, but not all public transit districts (Government Code § 3500 et seq.).
- 3) Establishes 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, respectively, local alternatives to PERB oversight (Government Code § 3541).
- 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 found in each district's specific Public Utilities Code (PUC) enabling statute, in joint powers agreements, or in articles of incorporation and bylaws (e.g., Public Utilities Code § 28500).

- 5) Provides transit employees not under the MMBA with basic rights to organization and representation, but does not define or prohibit unfair labor practices. Unlike other California public agencies and employees, these transit agencies and their employees have no recourse to 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 (Public Utilities Code § 24501 et, seq.; 49 United State Code § 5333(b)).
- 6) Provides that the following provisions shall govern disputes between exclusive bargaining representatives of public transit employees and local agencies not covered by the MMBA:
 - (a) The disputes shall not be subject to any fact-finding procedure otherwise provided by law.
 - (b) Each party shall exchange contract proposals not less than 90 days before the expiration of a contract, and shall be in formal collective bargaining not less than 60 days before that expiration.
 - (c) Each party shall supply to the other party all reasonable data as requested by the other party.
 - (d) At the request of either party to a dispute, a conciliator from the California State Mediation and Conciliation Service shall be assigned to mediate the dispute and shall have access to all formal negotiations (Government Code §3611).
- 7) Establishes the San Francisco BART Act, which establishes the Bay Area Rapid Transit District (BART) and provides 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 (Public Utilities Code § 28500 et seq.).

This bill:

- 1) Provides that PERB, and the powers and duties of PERB, as specified, shall apply, as appropriate, to the PUC enabling statutes governing labor relations for BART.
- 2) Adopts the following definitions in the BART Act:
 - a) “District” means the San Francisco Bay Area Rapid Transit District, including all operations and extensions of the transportation system, regardless of modality or vehicle type, and excluding all temporary bus lines.
 - b) “Employee organization” means an organization that includes employees of the district that has as one of its primary purposes representing those employees in their relations with the district. “Employee organization” shall also include any person of the organization authorized to act on its behalf.
 - c) “Exclusive representative” means an accredited employee organization recognized or certified as the exclusive negotiating representative of employees in an appropriate unit within the district.

- 3) Makes conforming changes throughout the BART act to reflect PERB or MMBA terminology using “employee organization” and “exclusive representative” and eliminates language that refers to “labor organization” and “accredited representative”.
- 4) States that a primary purpose of the BART Act’s Labor Provisions is to promote the improvement of personnel management and employer-employee relations within the district by providing a uniform basis for recognizing the rights of employees, among other things, to select one employee organization as the exclusive representative in an appropriate unit.
- 5) Requires that exclusive representatives shall have the right to represent their bargaining unit members in employer-employee relations with the district, and employees shall have the right to representation by their exclusive representative.
- 6) Declares that nothing in the BART Act’s Labor Provisions section is intended to adversely affect any rights afforded to exclusive representatives or district employees under existing law as it may be amended from time to time.
- 7) Requires BART to give reasonable written notice to an exclusive representative of its intent to make any changes to matters within the scope of representation, as specified.
- 8) Adds to the BART Act a provision that prohibits BART and an employee organization from engaging in respective lists of unlawful labor actions reflective of similar prohibitions in the MMBA.
- 9) Maintains the current procedure whereby the Governor can call a “time out” and “cooling” off” period when BART and the employee representatives are at an impasse in labor negotiations before employees can strike.
- 10) Provides that the initial determination whether an unfair practice charge is justified and, if so, the appropriate remedy is a matter within the PERB’s exclusive jurisdiction.
- 11) Specifies that PERB shall have no authority in an action to recover damages due to an unlawful strike to award strike-preparation expenses as damages nor to award damages for costs, expenses, or revenue losses incurred during, or because of, an unlawful strike.
- 12) Authorizes any charging party, respondent, or intervener aggrieved by a final decision or order of PERB, as specified, to petition for a writ of extraordinary relief in the district court of appeal from PERB’s decision or order and specifies how the court may review PERB’s decision or order.
- 13) Authorizes PERB to seek enforcement of any final decision in the district court of appeal, as specified.
- 14) Provides that the BART Act as amended by this bill shall not be interpreted as if it were in conflict with any collective bargaining agreement and shall not be implemented to abrogate an agreement entered into before January 1, 2021, between the district and an employee organization.

- 15) Requires that specified provisions added by this bill to the BART Act to be interpreted in a manner consistent with PERB's interpretation of parallel provisions in other statutes it enforces.
- 16) Makes BART subject to existing Government Code sections guaranteeing unions' access to employee data and employees for purposes of communication, including at employee orientations, and requires BART provide union representatives reasonable leaves of absence without loss of compensation or benefits to serve as stewards or officers to the employee representative or affiliated statewide or national employee organizations.
- 17) Makes findings and declarations regarding the unique need of BART to efficiently and cost-effectively adjudicate unfair labor practice complaints that support this special statute in lieu of a statute of general applicability.

COMMENTS

1. Need for this bill?

Background

Many public transit districts have historical antecedents as private sector companies that public agencies took over in the post - World War II period during company consolidation as the private sector withdrew from mass transit. Federal legislation linked transportation project funding to the preservation of transit district employees' collective bargaining rights at a time when public sector employees had not yet attained collective bargaining. Consequently, transit district employees often enjoyed collective bargaining protections earlier than other state and local public employees did. When the state authorized collective bargaining for state and local public employees through various labor relations statutes, existing statutes already governed many transit districts. The MMBA provides in part in Government Code Section 3500: "Nothing contained herein shall be deemed to supersede the provisions of existing state law ... which establish and regulate a merit or civil service system or which provide for other methods of administering employer-employee relations ..."

Under current law, if BART and its employees' representatives cannot reach mutual agreement, they resolve labor disputes through arbitration and litigation in the court system. In contrast, the statutory frameworks for most public sector labor relations regimes now provide that the parties resolve their disputes through PERB. This bill seeks to incorporate PERB jurisdiction of labor disputes into the BART Act, as specified, guided by the public policy that its expertise in public labor law will facilitate cooperation and labor peace in the public sector

In 2013, BART experienced a labor strike that created substantial disruption in the Bay Area. Since then, there have been considerable efforts by BART, its employee representatives, and public and community officials to revise BART's labor relations law to mitigate further labor conflict while preserving the rights of the respective parties.

This bill is intended to improve employer and labor relations at BART by clarifying each party's rights and obligations under the law and by applying appropriate decision-making and enforcement mechanisms from the MMBA to BART.

3. Proponent Arguments

According to the author,

AB 2850 provides the guidance of an established, neutral administrative agency - PERB - to aid BART and its employees in resolving unfair labor practice disputes. This bill will encourage harmonious labor relations and industrial peace, setting up BART for success in its upcoming contract bargaining.

According to SEIU,

Under current law, most public transit districts are not covered by a uniform collective bargaining statute such as MMBA but rather governed by the Public Utilities Code and accompanying regulations. Disagreements under this situation are handled unevenly and in costly litigation. AB 2850 would require all labor disputes and claims to be resolved ...before 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.

4. Opponent Arguments:

None on file.

5. Prior Legislation:

AB 3033 (Low) of 2018 would have amended the PUC by including BART's supervisory, professional, and technical employee units under MMBA's provisions; thereby, granting them certain statutory rights related to the employer-employee relationship, and bringing them under PERB's jurisdiction. Governor Brown vetoed AB 3033 and two PERB-related bills, writing in his veto message:

I am returning the following bills without my signature.

AB 2305

AB 2886

AB 3034

These bills expand the Public Employment Relations Board's jurisdiction to cover labor disputes involving several local public agencies.

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.

AB 604 (Glazer) of 2017 would have prohibited BART from entering into an agreement that would limit its ability to prepare for a work stoppage or operate during a work stoppage. The author withdrew the bill from consideration in the Senate Public Employment and Retirement Committee.

SB 423 (Huff) of 2014 would have repealed various statutes governing public transportation labor disputes, including requirements governing labor relations when a strike is threatened. The bill died in the Senate Public Employment and Retirement Committee.

AB 199 (Oropeza), Chapter 833, Statutes of 2003, transferred the jurisdiction of labor disputes regarding supervisor's bargaining units at the Los Angeles County Metropolitan Transportation Authority to PERB.

SUPPORT

Service Employees International Union - California

OPPOSITION

None received.

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