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People Ex Rel. Edmund G. Brown Jr.,
8 *Governor of the State of California*

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN FRANCISCO
12

13 **PEOPLE EX REL. EDMUND G. BROWN**
14 **JR., Governor of the State of California,**
15
16 **v.**
17 **AMALGAMATED TRANSIT UNION,**
18 **LOCAL 1555; SERVICE EMPLOYEES**
19 **INTERNATIONAL UNION, LOCAL 1021;**
20 **AMERICAN FEDERATION OF STATE,**
21 **COUNTY AND MUNICIPAL**
22 **EMPLOYEES, LOCAL 3993; SAN**
23 **FRANCISCO BAY AREA RAPID**
24 **TRANSIT DISTRICT and DOES 1 through**
25 **5000,**
26
27 Respondents.
28

Case No.

**PETITIONER'S EX PARTE
APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND ORDER
TO SHOW CAUSE RE INJUNCTION**

Date: August 11, 2013
Time: 9:00 a.m.
Dept: 304
Judge: Curtis Karnow
Trial Date: N/A
Action Filed: August 9, 2013

Petitioner Edmund G. Brown Jr., Governor of the State of California, respectfully applies pursuant to section 3614 of the Government Code for a temporary restraining order preventing respondents Amalgamated Transit Union, Local 1555 ("ATU"); Service Employees International Union ("SEIU"), Local 1021; American Federation of State, County and Municipal Employees ("AFSCME"), Local 3993; and the San Francisco Bay Area Rapid Transit District ("District"),

1 and their agents, servants, and employees, from threatening or engaging in any strike or lockout
2 for a period of 60 days, through and including midnight, October 10, 2013.

3 Petitioner further applies for an Order to Show Cause why an injunction should not be
4 issued enjoining respondents from committing the above-described acts for a period of 60 days.

5 Pursuant to California Rules of Court, Rule 3.1202, to the best of counsel's knowledge, the
6 names, addresses, and telephone numbers of counsel for respondents are as follows:

7 For ATU:

8 Peter Warren Saltzman, Esq.
9 Leonard Carder, et al.
10 1188 Franklin Street #201
11 San Francisco, CA 94109
12 TEL: (415) 771-6400
13 FAX: (415) 771-7010
14 psaltzman@leonardcarder.com

15 Katherine R. Hallward, Esq.
16 Leonard Carder, LLP.
17 1330 Broadway
18 Oakland, CA 94109
19 TEL: (510) 272-0169
20 FAX: (510) 272-0174
21 psaltzman@leonardcarder.com

22 For SEIU:

23 Vincent A. Harrington, Jr.
24 Weinberg Roger & Rosenfeld
25 1001 Marine Village Pkwy
26 Suite 200
27 Alameda, CA 95401-1091
28 TEL: (510) 337-1001
FAX: (510) 337-1023
vharrington@unioncounsel.net

FOR AFSCME:

Pat Schuchardt
President
AFSCME Local 3993
300 Lakeside, Ste. 201
Oakland, CA 94612
TEL: (510) 834-3993
FAX: (510) 834-3993
AFSCME@sbcglobal.net

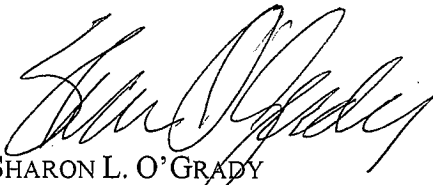
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For the District:
Matthew Howard Burrows, Esq.
Counsel, San Francisco Bay Area Rapid Transit District
300 Lakeside Drive, 23d Floor
P.O. Box 12688
Oakland, California 94604
TEL: (510) 464-6037
FAX: (510) 464-6049
mburrow@BART.gov

This application is made on the grounds that the People of the State of California will be irreparably injured if the threatened strike or lockout is not enjoined. Any such occurrence will significantly disrupt public transportation services in the greater San Francisco Bay Area and endanger the public health, safety, and welfare. This application is made on the further ground that great injury will result to the People of the State of California before the matter can be heard on notice. This application is based on the petition on file in this case, the accompanying memorandum of points and authorities, and the declaration of Sharon L. O'Grady.

Dated: August 9, 2013

Respectfully Submitted,
KAMALA D. HARRIS
Attorney General of California
DOUGLAS J. WOODS
Senior Assistant Attorney General



SHARON L. O'GRADY
Deputy Attorney General
*Attorneys for Petitioner
People Ex Rel. Edmund G. Brown Jr.,
Governor of the State of California*

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8 *Governor of the State of California*

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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN FRANCISCO
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13 **PEOPLE EX REL. EDMUND G. BROWN**
14 **JR., Governor of the State of California,**
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16 **Petitioner,**
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18 **v.**
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20 **AMALGAMATED TRANSIT UNION,**
21 **LOCAL 1555; SERVICE EMPLOYEES**
22 **INTERNATIONAL UNION, LOCAL 1021;**
23 **AMERICAN FEDERATION OF STATE,**
24 **COUNTY AND MUNICIPAL**
25 **EMPLOYEES, LOCAL 3993; SAN**
26 **FRANCISCO BAY AREA RAPID**
27 **TRANSIT DISTRICT; and DOES 1**
28 **through 5000,**
Respondents.

Case No.

**PETITION FOR TEMPORARY
RESTRAINING ORDER AND ORDER
TO SHOW CAUSE RE INJUNCTION TO
ENJOIN PUBLIC TRANSIT WORKERS'
STRIKE AND/OR LOCKOUT**

Date: August 11, 2013
Time: 9:00 a.m.
Dept: 304
Judge: Curtis Karnow
Trial Date: N/A
Action Filed: August 9, 2013

The People of the State of California allege:

1. Petitioner Edmund G. Brown Jr. is the Governor of the State of California and brings this action in his official capacity.
2. Respondent San Francisco Bay Area Rapid Transit District ("District") is organized and existing pursuant to sections 30771 et seq. of the Streets and Highways Code. The

1 District is based in the County of San Francisco (as well as the County of Alameda, the County of
2 Contra Costa and the County of San Mateo) and is subject to the labor dispute provisions of
3 Government Code section 3610 et. seq. The District operates the BART rail system.

4 3. Respondent Amalgamated Transit Union, Local 1555 (“ATU”) is a union subject
5 to the labor dispute provisions of Government Code section 3610 et. seq. ATU represents
6 approximately 920 District employees in classifications that include train operators and station
7 agents.

8 4. Respondent Service Employees International Union, Local 1021 (“SEIU”) is a
9 union subject to the labor dispute provisions of Government Code section 3610 et. seq. SEIU
10 represents approximately 1,450 District employees in maintenance, clerical and professional
11 classifications.

12 5. Respondent American Federation of State, County and Municipal Employees,
13 Local 3993 (“AFSCME”) is a union subject to the labor dispute provisions of Government Code
14 section 3610 et. seq. AFSCME represents approximately 220 supervisory and professional
15 personnel employed by the District. (Respondents ATU, SEIU and AFSCME are collectively
16 referred to herein as the “Unions.”)

17 6. The true identities and capacities of Does 1 through 5,000 are unknown to
18 petitioner who therefore sues them by fictitious names. Petitioner will seek leave to amend the
19 petition to state their true names and capacities when discovered. Petitioner is informed and
20 believes and on those grounds alleges that respondents Does 1 through 5,000 are the agents,
21 members, or employees of respondent union or respondent transit district and are responsible for
22 the actions complained of in this petition.

23 7. The collective bargaining agreements between the District and the Unions expired
24 June 30, 2013. Negotiations for successor agreements between ATU and the District and
25 between SEIU and the District began in April 2013, and continue to date. Negotiations for a
26 successor agreement between AFSCME and the District began in December, 2012.

27 8. At the end of June, 2013, AFSCME and the District entered into a day-to-day
28 contract extension that contained a “most favored nation” provision regarding economic terms.

1 The negotiations between the District and ATU and the District and SEIU were not successful.
2 On June 27, 2013, ATU and SEIU gave 72-hours notice of their intent to strike commencing at
3 12:01 am on July 1, 2013, following a strike vote in which 99.9% of ATU votes and 98.5% of
4 SEIU voters authorized the strike. At 12:01 a.m. on July 1, 2013, ATU and SEIU workers went
5 on strike and many AFSCME workers honored the strike. The strike caused the District to shut
6 down BART service.

7 9. The strike lasted for four and one-half days. On July 4, 2013, the District, ATU
8 and SEIU agreed to extend the existing collective bargaining agreements for a period of 30 days,
9 and BART train service resumed on the afternoon of July 5, 2013. The parties also agreed that,
10 during the 30-day period, they would return to the bargaining table to attempt to resolve their
11 dispute with the assistance of State and Federal mediators. The parties were not able to reach
12 agreement during the 30-day extension period.

13 10. On July 23, 2013, AFSCME held a strike vote at which 75% of the voters agreed
14 to authorize a strike. On August 1, 2013, the Unions gave 72-hour notice of their intent to strike
15 commencing at 12:01 a.m. on August 5, 2013.

16 11. On August 4, 2013, Governor Edmund G. Brown Jr., upon request by the General
17 Manager of the District, appointed a Board of Investigation pursuant to Government Code section
18 3612, subdivision (a). A copy of the General Manager's request is attached as Exhibit A; a copy
19 of the Governor's notice of the appointment of the Board of Investigation is attached as Exhibit
20 B. The effect of the Governor's action was to prohibit any strike or lockout during the period of
21 the Board's investigation.

22 12. On August 7, 2013, the Board of Investigation held a hearing. At the hearing, the
23 District presented a statement describing the impacts of a BART strike, a copy of which is
24 attached as Exhibit D. The District, ATU, SEIU and AFSCME each also submitted statements of
25 their positions, copies of which are attached as Exhibits E, F, G and H, respectively.

26 13. On August 8, 2013, the Board of Investigation made its written report to the
27 Governor in accordance with Government Code section 3612. A copy of that report is attached as
28 Exhibit C.

1 14. After receiving and considering the report of the Board of Investigation, and in
2 light of the significant disruption to public transportation services in the greater San Francisco
3 Bay Area should the Unions proceed with another strike, the Governor requested, pursuant to
4 Government Code section 3614, that the Attorney General petition this Court to enjoin a strike by
5 the Unions or any lockout by the District for a period of 60 days.

6 15. The Board of Investigation concluded in its report that a strike would cause
7 significant harm to the public's health, safety and welfare.

8 a. The evidence presented to the Board of Investigation demonstrates that a work
9 stoppage by the Unions or a lockout of the Unions by the District would
10 significantly disrupt public transportation services in the San Francisco Bay
11 Area. Approximately 400,000 passengers ride BART each workday. During
12 the July 1- July 5, 2013 strike, only 21% used alternative public transit. Traffic
13 in several travel corridors more than doubled. The increased traffic congestion
14 generated millions of pounds of carbon and wasted almost 800,000 gallons of
15 gas. Alternative modes of transit, such as regional buses and ferry services
16 cannot come close to substituting for BART. Moreover, since buses are
17 impacted by traffic, the bus system is much less productive during a BART
18 strike.

19 b. Substantially increased traffic leads to more traffic accidents. The congestion
20 hinders emergency response vehicles, causing delays that could be life-
21 threatening.

22 c. Persons who rely on caregivers, persons without automobiles, and children,
23 could be substantially and negatively impacted by a strike. Caregivers may find
24 it difficult to get to their patients and clients. Non-drivers might not be able to
25 get to important doctor's appointments. Children could be exposed to danger as
26 they wait for parents delayed in traffic or choose to walk home on their own.

27 16. The economic costs of a strike are also great. The Bay Area Council has estimated
28 that the direct cost of a BART strike to the region is \$73 million per day. In addition, there are

1 substantial indirect costs, like empty restaurant tables, lower attendance at concerts and sports
2 events and fewer visitors to the region.

3 17. The People of the State of California will be irreparably injured if the threatened
4 strike or lockout is not enjoined, because any such occurrence will significantly disrupt public
5 transportation services in the greater San Francisco Bay Area and endanger the public health,
6 safety, and welfare.

7 WHEREFORE, petitioner prays that:

8 1. The Court issue ex parte a temporary restraining order enjoining a strike or lockout
9 pending a hearing on this petition;

10 2. The Court issue an order to show cause against respondents ordering them to
11 appear and show cause why an injunction against a strike or lockout should not be granted;

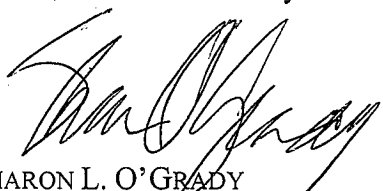
12 3. The Court issue an injunction enjoining all respondents, and each of them, and
13 their agents, servants, and employees, and all persons acting under or in concert with or for them,
14 from commencing a strike or lockout for a period of 60 days; and

15 4. The Court order such other relief as it deems just.

16 Dated: August 9, 2013

17 Respectfully Submitted,

18 KAMALA D. HARRIS
19 Attorney General of California
20 DOUGLAS J. WOODS
21 Senior Assistant Attorney General

22 
23 SHARON L. O'GRADY
24 Deputy Attorney General
25 *Attorneys for Petitioner*
26 *People Ex Rel. Edmund G. Brown Jr.,*
27 *Governor of the State of California*

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27 BART Draft Petition.doc

EXHIBIT A



SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
 300 Lakeside Drive, P.O. Box 12688
 Oakland, CA 94604-2688
 (510) 464-6000

2013

August 4, 2013

Tom Radulovich
 PRESIDENT

Joel Keller
 VICE PRESIDENT

Grace Crunican
 GENERAL MANAGER

DIRECTORS

Gail Murray
 1ST DISTRICT

Joel Keller
 2ND DISTRICT

Rebecca Saltzman
 3RD DISTRICT

Robert Reburn
 4TH DISTRICT

John McPartland
 5TH DISTRICT

Thomas M. Blalock, P.E.
 6TH DISTRICT

Zekahy Mallett
 7TH DISTRICT

James Fang
 8TH DISTRICT

Tom Radulovich
 9TH DISTRICT

The Honorable Edmund G. Brown, Jr.
 State Capitol, Suite 1173
 Sacramento, CA 94814

Dear Governor Brown,

As you are aware, BART and its unions (AFSCME 3993, SEUI 1021, ATU 1555) have been at the bargaining table for months trying to reach a deal on the terms of a new contract. Throughout this process, the District has necessarily prioritized the long-term health and sustainability of the BART system, and its ability to meet the future needs of our Bay Area residents. The BART system is aging, and needs considerable reinvestment to meet the mobility needs of the Bay Area while state and federal support for transit dwindle. Meanwhile, the cost of maintaining benefits continues to grow faster than our revenues. Our labor agreements must reflect these financial realities.

We will continue to focus our efforts on the table and remain committed to reaching an agreement. We believe that the best agreement is one arrived at between the parties themselves, without intervention by outside forces.

Despite these efforts, we may reach tonight's midnight deadline without an agreement. If this is the case, the District is willing to extend the contracts and will make that offer to the unions. If they decline to extend the contracts, they may choose to strike and shut down BART service. As we saw in early July, the effect of a public transit strike is a complete disruption of the Bay Area economy.

If the unions do decide to strike, we are requesting that you seek a cooling off period for these three unions, as provided for in California Government Code Section 3612 (the Public Transportation Labor Disputes Act). This would allow us to continue negotiating while assuring the public that it will have transit service tomorrow and for another 60 days as we continue to bargain. We believe the public should not be deprived of this essential public service unless all alternatives to avoid a work stoppage have been utilized.

We appreciate your vigilance in monitoring this process and trust we may continue to rely on your help as we continue to work out this complex dispute.

Sincerely,

Tom Radulovich

Tom Radulovich
 President

cc: Board of Directors
 General Manager



www.bart.gov

EXHIBIT B

OFFICE OF THE GOVERNOR

August 4, 2013

Ms. Grace Crunican
General Manager, San Francisco Bay Area Rapid Transit District
P.O. Box 12688
Oakland, CA 94604

Ms. Antonette Bryant
President, ATU Local 1555
132 Ninth Street, Suite 100
Oakland, CA 94607

Ms. Roxanne Sanchez
President, SEIU 1021
100 Oak Street
Oakland, CA 94607

Ms. Jean Hamilton
President
AFSCME, Local 3993
80 Swan Way, Suite 110
Oakland, CA 94621

Dear Ms. Crunican, Ms. Bryant, Ms. Sanchez, and Ms. Hamilton:

At the request of the Bay Area Rapid Transit District, I am appointing a board to investigate the threatened strike that would disrupt public transportation services in the Bay Area. This board is appointed under the authority of Government Code, § 3612, subdivision (a), because the strike will significantly disrupt public transportation services and endanger the public's health, safety, and welfare.

The three individuals appointed to the board of investigation are:

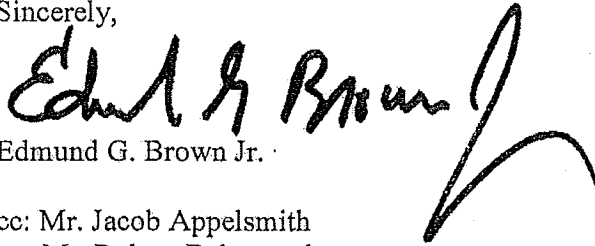
Mr. Jacob Appelsmith, Chairman
Mr. Robert Balgenorth
Ms. Micki Callahan

Grace Crunican, Antonette Bryant, Roxanne Sanchez, and Jean Hamilton
August 4, 2013
Page 2

The Government Code prohibits any strike or lockout while the board completes its investigation. (Gov. Code, § 3612, subd. (b).)

The board is directed to provide me with a written report within the next seven days. For the sake of the people of the Bay Area, I urge – in the strongest terms possible – the parties to meet quickly and as long as necessary to get this dispute resolved.

Sincerely,

A handwritten signature in black ink, appearing to read "Edmund G. Brown Jr.", with a large, sweeping flourish extending from the end of the signature.

Edmund G. Brown Jr.

cc: Mr. Jacob Appelsmith
Mr. Robert Balgenorth
Ms. Micki Callahan
Mr. Marty Morgenstern, Secretary of the Labor and Workforce Development Agency

EXHIBIT C

REPORT

to

THE HONORABLE EDMUND G. BROWN JR.
GOVERNOR OF THE STATE OF CALIFORNIA

by

THE GOVERNOR'S BOARD OF INVESTIGATION

in compliance with

SECTIONS 3612 AND 3613 of THE CALIFORNIA GOVERNMENT CODE

regarding

A LABOR DISPUTE

between

BAY AREA RAPID TRANSIT DISTRICT

and

AMALGAMATED TRANSIT UNION LOCAL 1555, SERVICE EMPLOYEES
INTERNATIONAL UNION LOCAL 1021, AND BAY AREA RAPID TRANSIT
SUPERVISORY AND PROFESSIONAL UNION, AMERICAN FEDERATION OF
STATE, COUNTY AND MUNICIPAL EMPLOYEES LOCAL 3993

Dated: August 8, 2013

I. INTRODUCTION

This report is submitted to the Honorable Edmund G. Brown Jr., Governor of the State of California, in compliance with Government Code section 3612, subdivision (a) by a Board of Investigation (the Board) appointed by Governor Brown pursuant to that subdivision to investigate the issues involved in a labor dispute between the Bay Area Rapid Transit District (BART) and the Amalgamated Transit Union Local 1555 (ATU), the Service Employees International Union Local 1021 (SEIU), and the Bay Area Rapid Transit Supervisory and Professional Union, American Federation of State, County and Municipal Employees Local 3993 (AFSCME).

The members of the Board are Jacob Appelsmith (Chair), Senior Advisor to Governor Edmund G. Brown Jr.; Micki Callahan, Human Resources Director of the City and County of San Francisco; and Robert Balgenorth, President Emeritus of the State Building & Construction Trades Council. All members of the Board participated in the drafting of this Report and approved its submission to the Governor.

As authorized by the second paragraph of Section 3613 of the California Government Code, the Board held a public hearing on August 7, 2013, at the Elihu M. Harris State Office Building at 1515 Clay Street, Main Auditorium, Oakland, California. The hearing began at approximately 10:30 a.m., and it ended at approximately 4:50 p.m.

Representatives of BART, ATU, SEIU, and AFSCME appeared before the Board and made presentations, written and oral. Members of the public provided comment, written and oral. Accompanying this report are the following documents submitted by the parties:

- 1 Position Statement of BART with exhibits and supporting documentation (Exhibit A).

- 2 Position Statement of SEIU with exhibits and supporting documentation (Exhibit B).
- 3 Position Statement of ATU with exhibits and supporting documentation (Exhibit C).
- 4 Position Statement of AFSCME with exhibits and supporting documentation (Exhibit D).

In accordance with California Government Code Sections 3612 and 3613, this Report contains a statement of the facts with respect to the dispute, the issues involved in the dispute, and the respective positions of the parties regarding the issues.

II. STATEMENT OF FACTS WITH RESPECT TO THE DISPUTE

The following is a brief statement of the facts leading up to the current labor dispute among the parties.

The term of the labor agreements between BART and each of the three unions ran from July 1, 2009, through June 30, 2013. ATU represents approximately 920 workers in classifications including train operator and station agent. SEIU represents approximately 1,450 workers in maintenance, clerical, and professional classifications. AFSCME represents approximately 220 supervisory and professional personnel.

ATU and SEIU exchanged initial proposals with BART on April 1, 2013. These parties then continued to negotiate the general provisions jointly, such as wages, pension contributions, and healthcare benefits, and the supplemental provisions of the respective agreements separately. On June 27, 2013, ATU and SEIU gave 72-hour notice of their intent to strike beginning July 1, 2013, following a strike vote, in which 99.9% of ATU voters and 98.5% of SEIU voters authorized the strike. On that date, at 12:01 a.m., the ATU and SEIU workers commenced the strike. Numerous members of

AFSCME honored the strike, as well. The strike lasted for four and one-half days, until the parties agreed to a 30-day contract extension.

Mediation began in June 2013, prior to the contract expiration. In July 2013, during the 30-day contract extension period, state and federal mediators met with the parties regularly. ATU and SEIU have not agreed to any contract extensions beyond the 30-day extension entered on July 4, 2013.

AFSCME and BART began interest-based bargaining in December 2012 and exchanged contract proposals in April 2013. By the end of June 2013, the parties agreed to a contract extension on a day-to-day basis and a "most favored nation" provision regarding economics. On July 23, 2013, AFSCME held a strike vote in which 75% of the voters authorized a strike. On July 30, 2013, AFSCME gave 72-hour notice of intent to terminate the contract extension.

On August 1, 2013, AFSCME, ATU, and SEIU gave BART a 72-hour notice of their intent to strike.

To date, the parties have had numerous bargaining sessions. However, all parties claim a failure on the part of their counterparts to meaningfully exchange information and proposals for resolution. The parties have reached some tentative agreements and all parties concede that recent significant progress has been made on the supplemental issues. However, all parties agree that the major issues of the negotiations remain unresolved, including wages, health benefits, pension contributions, and workplace safety. AFSCME has an additional core issue regarding classification and compensation.

On August 4, 2013, in anticipation of the inability of the parties to reach an agreement, BART requested the Governor to appoint a Board of Investigation. On August 4, 2013, Governor Brown informed the parties that, effective August 5, 2013, he was invoking Section 3612 of the Government Code and had appointed this Board to

investigate and to submit a report on the current labor dispute on or before August 11, 2013.

The Governor's appointment of this Board has the effect of prohibiting any strike or lockout for a period of seven days, beginning August 5, 2013.

III. PRINCIPAL ISSUES INVOLVED IN THE DISPUTE

The Board identified these issues based on the written submissions and oral presentations from the parties at the public hearing. The principal issues on which there is no agreement are wages, health benefits, pension contributions, term, and certain working conditions. The parties do not agree on the magnitude of the gap in their respective economic proposals. With respect to ATU and SEIU, the parties are between \$56 and \$62 million apart on the overall economic package over a 3-year period. With respect to AFSCME, in addition to the overall economic issues of wages and benefits, the parties are between \$4 and \$4.5 million apart on the classification and compensation issue. Other specific unresolved issues are the unions' proposals for increased workplace safety measures and BART's proposals for increased rights regarding workforce management.

IV. POSITIONS OF THE PARTIES AS TO PRINCIPAL ISSUES

Term, Wages and Benefits: BART proposes a 4-year contract term, containing offers to ATU and SEIU of a wage and benefit package of \$18.5 million over four years above the baseline, which the unions contend represents a net pay decrease in the first year and less than an annual 1.4% increase by the fourth year. BART's proposal includes wage increases, as well as increased employee contributions to pension and health insurance premiums. BART proposes wage increases of a total of 9% over four

years; specifically, 2% in each of the first two years of the contract and 2.5% in each of the second two years of the contract term. BART proposes employees assume partial payment of the employee contribution to the pension in the amount of 2% of salary in the first year of the contract, 3% in the second year, 4% in the third year, and 5% in the fourth year of the contract. BART also proposes increased employee contributions for health insurance premiums by capping its employer contribution at the rate of the premium for an employee plus two or more dependents enrolled in the lowest cost plan, thus only affecting those employees with two or more dependents enrolled in plans other than the lowest cost plan. Roughly 800 employees would be affected.

ATU and SEIU jointly propose a 3-year contract term with a 5% wage increase per year for the 3-year term of the contract, which BART contends is a cost of \$62 million above the baseline.

The Unions have also countered BART's proposals concerning increased employee contributions to pension and health insurance premiums. The Unions offer to pay the CalPERS 7% employee pension contribution in exchange for a 6.5% increase in wages (in addition to the wage increases described above). The Unions offer to increase the current employee contribution to health insurance premiums by 5% in each year of the contract. Based on the current employee premium contribution of approximately \$92 monthly, this would increase that rate to approximately \$107 per month by the third year.

Both BART and the Unions have made movement from their initial proposals to arrive at their current positions.

Other Issues: BART identified its other significant issues regarding productivity, scheduling, overtime, and management rights.

ATU and SEIU identified their other significant issues regarding workplace safety, including lighting, assaults on employees, and sufficient clearance for track workers.

AFSCME identified the classification and compensation issue as critically important. At issue is the union's proposal for a compensation plan with step advancement at regular intervals based on seniority. The parties dispute the number of steps, the amount of time it will take to reach the top of the salary range, and the extent to which the plan will remedy past inequities.

V. IMPACT OF A STRIKE ON THE SAN FRANCISCO BAY AREA REGION

BART provides train service to approximately 400,000 riders each weekday. If the unions strike, there will be no train service for these riders who, as a result, will either use the roadways or not travel. BART's unrefuted testimony of the effect of the 4-day strike in July 2013 included examples such as a 30-minute commute extending to three hours, and a 200% increase in travel time over the Bay Bridge. The morning peak hour driving times between Walnut Creek and West Oakland, where BART is the only transit alternative, increased about 140%. Were the unions to strike at the end of the 7-day cooling off period, the resulting increased congestion would result in an increase in traffic accidents. It would also result in slower response times by emergency personnel responding to those accidents, as well as other public emergencies. According to the Bay Area Council's estimate, a strike would cause a loss of \$73 million per day in gross domestic product for the Bay Area.

ATU agrees that a strike would harm the Bay Area. SEIU did not take a position on this question. AFSCME disagrees that a strike would cause a danger to the public's health, safety or welfare.

This Board concludes that a strike will cause significant harm to the public's health, safety, and welfare.

V. PUBLIC COMMENTS

Fifteen members of the public made comments at the end of the hearing, and eleven members of the public submitted post-hearing comments via email. The members of the public expressed concern regarding a potential strike, and voiced a variety of opinions on all sides of this dispute.

Witnesses Appearing

BART:

Grace Crunican
Paul Oversier
Carter Mau
Vicki Nuetzel
Ericka Mitchell
Rudolph Chavez Medina

ATU:

Antonette Bryant
Kate Hallward

SEIU:

Vincent Harrington
Roxanne Sanchez
Josie Mooney
Saul Almanza
John Arantes

AFSCME:

Patricia Schuchardt
George Popyack

Public:

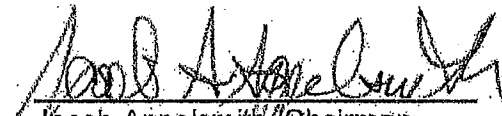
Mike Arata
Michael Cunningham
Sarah Larson
Jack Frolic
Steven Babiak
Rebecca K. Morrow
Steve Zeltzer
Jim Fink
Tim Paulson
Shelly Kesler
Josie Kamacho
Chris Finn
Jerry Holly
Chris Daly
Jon Kozlosky

VI. CONCLUSION:


The undersigned members of the Board of Investigation respectfully submit that this Report fulfills the statutory obligations pursuant to Labor Code Section 3612.

Date: August 8, 2013

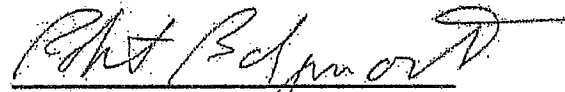
Respectfully submitted:



Jacob Appelsmith, Chairman



Micki Callahan, Member



Robert Balgenorth, Member

EXHIBIT D

Impacts of BART Work Stoppage

Effects on Public Health and Safety

The direct, negative impact on public health and safety of a BART strike is irrefutable. Substantially increased traffic congestion leads to more traffic accidents. Emergency response vehicles (fire, police, ambulance, paramedic) responding to these additional accidents, as well as to their regular calls, would be hindered, in some cases severely. The result of these traffic congestion caused delays could be life threatening under many circumstances.

Caregivers, charged with providing essential aid to those in need, would be challenged to get to their patients and clients. People without automobiles who rely on BART might not be able to get to their pharmacy to fill their prescriptions or to important doctor's appointments. Even children could be exposed to danger as they waited for parents, delayed in traffic, to pick them up from school or camp; even more so if they chose to walk home on their own.

The public health and safety consequences of shutting down the region's largest public transit provider are serious. These serious consequences warrant appropriate emergency measures to prevent the shutdown. The lack of BART service represents a clear increased risk to public health and safety.

Economic Impacts:

The Bay Area Council has estimated that the direct cost of a BART strike to the region is \$73 million per day. Let's wrap our heads around what this figure means.

This figure is conservative as it only counts the increased travel time people endured after being forced off BART and into their cars or other forms of transit. Yet it is still a very big number in the sense that it represents a loss of about \$45 a day to the average household and an 8% loss in the Gross Domestic Product of the San Francisco/Oakland Metropolitan Area.¹

To put an 8% loss GDP in perspective, this drop would be even greater than the single biggest downturn in US GDP that was witnessed during the 2008—2009 Global Financial Crisis.

The true economic loss is probably much higher, the above figures do not include the indirect economic impacts that a BART strike has. These include empty tables at San Francisco and Eastbay restaurants, lower attendance at concerts and sporting events, freight not moving

¹ Note that \$73 million per day equals \$26.6 billion per year, which is 8% of the latest Regional GDP estimate of \$347 billion.

along the Bay Area's highways, trips cancelled by potential visitors, higher day care expenses for working parents, increased greenhouse gas emissions, increased accidents on roadways, and an overall increase in personal stress levels.

Transportation Impacts:

We do have some solid information to back up the Bay Area Council's findings on a BART strike's highway travel time and transit capacity impacts. We know that of the 400,000 daily trips taken on BART, only 83,000 or 21% were diverted to other forms of alternative transit. The remaining 79% either stayed home or were stuck in some very heavy traffic. Of our nearly 200,000 weekday Transbay trips, only about 15% of them were absorbed by regional express buses and ferries.

Luckily it was the July 4th Holiday week so many people were not working, schools were not in session and employers were more flexible. It is anticipated that the impacts would be worse next time.

Traffic Impacts

Despite it being a lighter than usual traffic week, traffic delays on Tuesday, July 2nd in several travel corridors more than doubled. That can equate to hours out of many people's day. According to the Bay Area Council, increased traffic congestion generated almost 16 million pounds of carbon, and wasted almost 800,000 gallons of gas at a cost of almost \$3.3 million every day.

Specifically, traffic delays on day two of the recent BART strike were most greatly felt in the Bay Bridge corridor between West Oakland and San Francisco and the SR-24 corridor between Walnut Creek and West Oakland:

- AM peak hour driving times increased 25 minutes to just over 60 minutes or about 140% on the route between Walnut Creek and West Oakland, the corridor where BART is the only transit alternative.
- In the Bay Bridge corridor where BART carries nearly 21,000 riders in the AM peak hour/direction, driving times during that same time period increased from 10 minutes to 30 minutes or about 200%.
- Traffic delays and travel times were very unstable and unpredictable in most corridors normally served by BART.

Telecommuting is an option for some of our riders. This option has become less attractive as many companies have reduced telecommuting from two days a week to one or eliminated it all together (e.g. Yahoo). For many of those who do have telecommuting as an option, after a few days of telecommuting they must eventually return full-time to their place of business or office.

Those who work in retail, hospitality, restaurants, health care and other service industries must show up in person to do their jobs every day. Many of these service workers do not have access to an automobile and are in fact transit dependent.

Ridesharing and carpooling work really well during the AM peak period but there are always fewer drivers that are willing to take riders back home during the PM peak period in San Francisco due to lack of travel time savings and economic incentives. Consequently, the regional transit operators must pick up the slack in the afternoon and evening.

Transit Impacts

The Water Emergency Transportation Authority (ferry operator) saw ridership increase by 200% and AC Transit (Transbay bus) saw ridership increase by 150%. Lines for buses and ferries were very significant and multiple "pass-ups" were a regular occurrence.

This network of Transbay express buses and ferries has seen considerable investment in the last 10 years. Still this system does not even come close to substituting for BART's peak period capacity:

- One express bus or ferry boat only carries 50-200 people and matches the approximate crush load carrying capacity of just one BART car in a multi-car train.
- On weekdays we deploy 62 trains during the peak period with an average train length of 9 cars; this works out to be about 570 total BART cars circling the Bay.
- The customer service feedback we receive on a typical weekday today and future ridership projections strongly suggests we should be running longer trains and more of them during the peak period.
- The ferries and regional bus network currently lack high capacity passenger terminals in Oakland and San Francisco: existing facilities are medium capacity at best and were overwhelmed during the strike with lines stretching for blocks.
- Multiple public agencies must redeploy staff to assist with increased crowding, vending of fares and traffic congestion at bus and ferry terminals. The reallocation of already constrained resources results in significant staff overtime and reduced ability to address other priorities.
- The productivity of the regional express bus system, including BART's charter buses during the recent July BART work stoppage, is greatly impacted by freeway traffic conditions. The worse traffic gets, the less productive the bus system gets and more resources must be deployed to provide the required capacity and service frequency.

EXHIBIT E

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

2013 BOARD OF INVESTIGATION

WEDNESDAY, AUGUST 07, 2013

**Remarks of Grace Crunican, General Manager
San Francisco Bay Area Transit District
Governor's Board of Investigation
August 7, 2013**

We appreciate the opportunity to make a statement this morning. I would like to thank the Governor and the Board for their efforts on behalf of BART and the Bay Area.

Our overarching goal in the 2013 contract negotiations has been to find a balance between reinvesting in our vital aging infrastructure, providing fair and reasonable compensation for our workers, while ensuring the long-term financial health and sustainability of our transit system.

Today I'm going to give a quick overview of BART, our recent successes, the challenges we face, and our contract negotiations with the unions that represent our workers.

BART is the backbone of the Bay Area's regional transit system. The District is proud of its 95% on-time performance rate, and is defined by its reliability. We carry 400,000 riders each day, and dramatically reduce car congestion and air pollution throughout the region.

Each weekday, BART riders collectively save over 20,000 gallons of gasoline, and the Federal Transit Administration (FTA) calls BART the environmentally cleanest system in the country. People depend upon BART to get to work, to school, to medical appointments, to attend sporting and cultural events, and to get back home.

Over the past two years, BART has seen record breaking ridership increases. Today, BART carries 200,000 passengers through the Transbay Tube. The four and a half day strike by BART unions in July demonstrated that the extra service provided by our transit partners and the additional busses we secured were unable to carry even a fraction of the region's BART riders. Transportation leaders unanimously concluded that it is simply not possible to replace BART should another strike occur.

According to an estimate by the Bay Area Council, the daily cost of a BART strike is \$73 million in lost productivity to the Bay Area. The Council concludes that an

already fragile economic recovery would be demonstrably damaged by a prolonged strike.

Since the July strike, our riders have provided multiple testimonials about its impact on their lives. Regular commutes of 30 minutes took as long as three hours during the strike. Waitresses, hotel workers, and other service employees lost wages because they were simply unable to get to work. Some Bay Area workers were able to work from home for one or two days, but that option may not be available should a long strike occur.

Negotiations Overview – The Need for Reinvestment

BART is at a critical juncture in its 40 year history. While enjoying record ridership and maintaining on-time performance goals, the District faces significant reinvestment needs that will define whether it thrives or deteriorates as has happened in other aging systems such as New York City Transit in the 1970's.

The UC Berkeley Transportation Institute conducted a detailed analysis of the impact to the Bay Area should BART fail to replace its oldest-in-the-country fleet of train cars, invest in its stations, and keep other critical systems in good working condition. In 2012, the Institute concluded that BART needs about \$16 billion over the next 25 years to maintain the system and prepare for future growth. That equates to an investment of \$500 million annually to make the repairs and replace the necessary equipment required to ensure that trains run reliably and safely.

This reinvestment requires a shared responsibility from all BART stakeholders. BART's goal is to have new contracts in place which will balance the long-term interests of our employees, riders, and other stakeholders.

Pension/Health Care Costs: Employees Must Share

BART is currently struggling with a challenge common to every employer in the nation - how best to control the rising cost of its benefit packages. The average BART employee makes \$79,500 in salary. Our benefit package, which is considered one of the richest in the industry – costs an average of \$50,800 per employee per year. The costs of the benefit package have risen nearly 200% in 10 years and the escalation continues.

BART is asking its employees to play a larger role in sharing the costs of their generous pension and medical plans.

A recent survey of employer-sponsored health benefits done by the Kaiser Family Foundation/Health Research & Educational Trust found that workers in both the private and public sector on average are paying \$4,316 a year toward the cost of their health care premiums. This is nearly four times more than the \$92 per month that BART employees pay.

Unlike many other transit districts and government agencies, BART employees do not contribute to their pension plans. BART's unfunded liability for these pensions topped \$158 million last year.

If BART doesn't normalize its benefit packages, the public will feel the consequences in reduced train service and less reliability.

Big Three Major Reinvestment Projects:

1. Replacing the Oldest Fleet in the Nation

BART's purchase of new high-tech, reliable and environmentally-friendly train cars is a critical investment that will help to carry more riders and protect the region's economic future.

Last year, the BART Board approved a contract for 410 new cars (of a 775 total order). At an average cost of about \$2.2 million per car, BART customers can expect new train cars as early as 2017. BART is paying about 25% of the cost of the new cars and the additional 75% will be federally funded through the Metropolitan Transportation Commission (MTC).

BART's new trains will be more efficient to operate and will include:

- 50% more doors to make getting on and off faster and easier;
- More priority seating for seniors and people with disabilities;
- Bike racks to better accommodate bicyclists;
- Energy efficiency LED lighting and state-of-the-art propulsion;
- Interior digital displays showing the next stop and other passenger information in multiple languages;
- Exterior digital displays showing route color and the train's destination;
- An improved public address system, including automated announcements;
- Improved on-board security cameras.

2. Hayward Maintenance Complex

Over the next 30 years, BART will expand the system into Silicon Valley and also gain additional riders from the Oakland Airport Connector, and the East Contra Costa (eBART) extension.

Accordingly, this will require an expanded maintenance and storage facility to serve the expanded fleet. The proposed Hayward Maintenance Complex project will include the purchase of additional property and the construction of additional storage tracks, and a new two-story facility to house our truck bay and our secondary repair equipment.

3. New Train Control System

Our train control system is four decades old and is quickly becoming the number one source of equipment caused delays. A new system is needed to ensure reliability and to meet the demands from growing ridership. A new system will allow us to increase capacity and run 30 instead of the current 23 trains an hour through the Transbay Tube. It will mean fewer failures and delays. It will be easier to repair because of better parts availability and it will allow for more remote diagnostics which we can address without having to send staff out to the scene.

Modern Work Rules: Absenteeism/Overtime Costs

BART must find ways to modernize and operate more efficiently to help keep costs down. Labor contract limitations have tied our hands to the point where we can't manage our workforce in the current age of technology. Arcane and outdated work rules prevent us from taking advantage of modern work practices. As Silicon Valley neighbors, we should be leading the industry in technological advancement, yet we are out of sync with other transit agencies.

One of the goals in this year's contract bargaining talks is to require that employees must actually work 40 hours before they collect overtime in any given week. This common sense fix may interrupt the absence/overtime cycle, and will not only improve the overall financial health of the system but will allow for more efficiency and increased customer service.

1670

The average station agent and BART train operator takes 40 unscheduled absences per year out of their 248 working days. As absences rise, so do overtime costs – and those costs are increasing at an alarming rate.

BART is hard at work on accident prevention and “return to work” solutions that should slow down the increase in absences. Staffing levels, which lagged during the recession, have returned to pre-2009 levels. Despite these steps, BART work rules have evolved to give a financial advantage to employees who work overtime, without working 40 hours in a week.

Conclusion

The District has succeeded in providing safe, reliable and convenient transportation to the Bay Area through the valuable combination of our riders, employees, and stakeholders.

We remain far apart on the major issues of this contract. That’s why we are here today. I’d like to restate the District’s commitment that whatever package that we ultimately agree to must be good for the long-term sustainability of the system. I strongly believe that we can agree to a wage and benefit package that both fairly compensates our workers and ensures a sustainable the system. It is in everyone’s interest to settle this dispute swiftly.



OFFICE OF THE GOVERNOR

August 5, 2013

Grace Crunican, General Manager
San Francisco Bay Area Rapid Transit District
P.O. Box 12688
Oakland, CA 94604

Antonette Bryant, President
Amalgamated Transit Union, Local 1555
132 Ninth Street, Suite 100
Oakland, CA 94607

Roxanne Sanchez, President
Service Employees International Union, Local 1021
100 Oak Street
Oakland, CA 94607

Pat Schuchardt, Vice President
AFSCME Local 3993
300 Lakeside Drive, Suite 102
Oakland, CA 94612

Dear Ms. Crunican, Ms. Bryant, Ms. Sanchez, and Ms. Schuchardt:

I write to you in my capacity as Chairman of the Board of Investigation that Governor Edmund G. Brown Jr. has empanelled to investigate the labor dispute between Bay Area Rapid Transit and its three unions: AFSCME Local 3993, SEIU Local 1021, and ATU Local 1555.

As authorized by Government Code section 3612, the Board will conduct a hearing into the issues involved in the dispute on Wednesday, August 7, 2013, at 10:30 a.m., at the State of California building, 1515 Clay St., Oakland, California, 2nd Floor, Room 1. The hearing will be recorded and will be open to the public. Testimony and documentary evidence will be received at the hearing to form the basis for the report we will prepare and submit to the Governor.

Accordingly, please prepare a summary of the issues in dispute and your position on whether a strike or lockout would significantly disrupt public transportation services and endanger the


Grace Crunican, Antonette Bryant, Roxanne Sanchez, Pat Schuchardt
August 5, 2013
Page 2

public's health, safety, or welfare. Please include your organization's position on each of these issues, with any relevant supporting documentation you wish to include, such as the estimated costs of the proposals. We hope that you will attend the hearing to present your information, but if you wish you may instead submit it to me directly by noon on August 6, 2013. Please bring seven copies of any submissions to be presented at the hearing for the Board members and other parties.

Please note that the Board's charge is to prepare a report including a statement of the facts with respect to the dispute, with the positions of the parties. The report will not include recommendations.

Finally, I join the Governor in urging all parties to continue with the negotiations process, even as the Board conducts its business. The convening of the Board should not delay negotiations in any way.

Thank you for your cooperation. If you have any questions, you may call Harold Jackson, who is providing staff support to the Board, at (213) 576-7714.



Jacob Appelsmith, Chairman
Board of Investigation, Bay Area Rapid Transit Labor Dispute

cc: Micki Callahan
Robert Balgenorth

EXHIBIT F

BART/ATU LOCAL 1555 NEGOTIATIONS FOR A SUCCESSOR AGREEMENT

ATU LOCAL 1555's Overview of the Issues in Dispute

August 7, 2013

I. OVERVIEW OF ISSUES IN THE LABOR DISPUTE

Introduction

There are two central issues in this dispute, which, if resolved, would likely lead to other issues falling into place. Those issues are: BART workers' need for safer working conditions, and their need for a fair deal with respect to net compensation after years of concessions.

Primary Safety Concerns:

Safety concerns have been at the heart of ATU Local 1555's position since the beginning of negotiations. The Union seeks to address four distinct concerns.

The first concern is the rising incidence of violence in the workplace, mostly assaults upon Station Agents, which have increased threefold. In 2009, 30 station agents were physically attacked at work. In 2013, as many workers faced assault in the first four months of the year. BART police reported 2446 crimes to the FBI at 5 stations alone. It is completely irresponsible for BART to assign Station Agents to work alone at night in this context. The Union's proposals for double staffing during late night hours and for safety glass speak directly to this issue. These proposals are OSHA's recommendations for preventing violence, and harm to workers in isolated, yet public settings at night.

ATU's second concern is that the District's delaying of safety inspections until patrons are inside the stations is unsafe – for all of us. The Union seeks just 10 additional minutes in the morning schedule to ensure that station inspections are completed before the stations are opened so safety is ensured for the riding public.

The third concern of the Unions is the 43% rise in workplace injuries resulting from short staffing during BART's two-year hiring freeze. BART's operations staff fell by 8%, so that remaining workers rolled up their sleeves and worked through their days off. Increased hours and heavier workloads, have led to more injuries for BART's employees. Together, SEIU and ATU's proposals seek to strengthen workplace ergonomics and assist injured workers in returning to work without risk of re-injury.

The final safety issue is addressed by the Unions' joint proposal to work collaboratively with the District on workers compensation issues. Each year, the District loses almost 10,000 days of work time to workplace injuries. That is the equivalent of 40 full time workers. We know that this can be improved.

Fair Compensation:

ATU members, who include 945 Station Agents, Train Operators, Clerical Workers and Foreworkers, deserve a fair wage increase in light of BART's positive financial picture and past employee concessions. Since 2009, BART workers' base wage rates have been frozen. Over the years, workers have given up raises in exchange for pension benefits and have also agreed to annually increasing contributions to medical benefits. Workers currently pay between \$1,110 a year and several thousand dollars for medical benefits, depending on their health plan. In other words, BART employees now earn less than they did in 2008, during the depth of the Great Recession, though they work more and harder in less safe and more injury-causing conditions.

The Unions proposal is for a 5% annual increase, inclusive of the cost of living allowance, for a total of 15% over three years. BART's proposes 2,2,2 and 2.5 with an additional 0.5% in the third year in exchange for workers paying 10 times as much – 5 percent of pay – into their pension. Now, BART workers are willing to contribute to pension and medical – we've made that clear in our proposals. But at the end of the day, workers deserve a genuine raise. When we factor in BART's proposal on medical premiums, we see that BART still wants hundreds of workers to end up in the red. BART's stated "raise" is a pay cut in disguise.

Ultimately, though, we are approximately \$56 million apart at the table over three years, or an average of \$18.5 million per year. That may seem like a lot. But it's a lot less than what business leaders estimate to be the impact of a BART strike.

And we know it can be done. BART has growing revenues. Ridership, and related fare revenue, are up – in fact, ridership is way up and growing, at a clip of 6% a year. Sales tax and property tax revenues are up and climbing.

ATU understands BART's plans to grow and extend into new areas, but those plans can be financed in a reasonable way that also fairly compensates BART workers. BART's Board has authorized the purchase of 410 new train cars. However its financial forecast more than doubles this number – overstating its expenses by 2 and a half times. You can see this in black and white at Tab 2A.

And while management tells the public and the board of directors that BART could be carrying as many as a million passengers ten years from now, its budget anticipates only half as many. So, when BART claims that it does not have the resources to both expand the system and give

workers a fair raise, they are relying on numbers that understate their revenues – considerably, and overstate their expenses.

Instead of seeking a reasonable balance between capital improvements and a fair contract for workers, BART has chosen to ignore its workers' serious safety concerns and reasonable wage proposals, and use its resources to malign its workers in the media and hire a high priced hatchet man known for provoking strikes.

There is no question that BART manufactured the current crisis. Workers struck for four days, foregoing paychecks, in an effort to force BART to take bargaining seriously and make proposals that would be fair to hard working people. Union members voluntarily returned to work and agreed to 30 days of mediation, only to find themselves in a windowless room for 12 hours a day, with virtually no sign of the District, and no sign that it intended to reach an agreement with its workers...

ATU, like all BART Unions, wants nothing more than to reach a fair agreement that improves safety, for workers and riders, and provides fair and equitable wages and benefits for its members. To that end, ATU Local 1555 has done everything in its power to avoid the strike that BART provoked and inflicted on its workers and the public.

To date, we have seen no indication that BART intends to engage in serious, genuine bargaining, even with a strike deadline looming. Over the weekend, we made an offer Saturday night and it took management 22 hours to return to the table with a counter – a counter that would leave workers worse off than they were in 2008.

So, we welcome the Governor's intervention and ask for increased public scrutiny from elected officials who may be able to help turn BART around and call off its irresponsible fight against working people. With your help, we think an agreement can be achieved by Sunday night.

A. THE CONTEXT

BART is Financially Healthy

After demanding concessions from workers in 2009 on the premise that it was facing a multi-year deficit, BART's calculations turned out to be way off and the very next year, BART had a surplus. Ridership soared by 16% and tax revenues are rising faster than ever before in BART's history. Currently, more than 400,000 ride BART on a given weekday and ridership continues to rise.

BART has a \$1.5 billion budget, of which the payroll for SEIU and ATU bargaining units is approximately \$200 million. The system has a budgetary forecast that anticipates growing revenues and expansion of the system that will draw in more funds. This is a time when BART can afford to make up for past employee concessions.

The District's 10 year budget forecast (also known as the short range transit plan) projects that the District could cover its capital expansion and renovation needs with surplus operating revenues. (See Tab 2A) Indeed, BART plans to transfer ("allocate") an average of \$125 million per year out of Operations and into a wide range of capital projects, including the purchase of 1,000 new cars, new train control technology and the expansion of the Hayward Maintenance Yard (after accounting for annual debt service). (See Tab 2A) These unprecedented "allocations" reflect a massive operating surplus. At the same time, over the past four years, the District has enjoyed significant gains in efficiency – so much so that it has already met and exceeded goals set out for the District through 2017. (See Tab 2C)

Should BART workers be the ones to foot the bill for a renovated transit system? Of course not. Today, however, despite the District's financial turnaround, and employees' remarkable effort to maintain BART's record of 95% on time performance even with steadily rising ridership, BART wants workers to finance the system's renovation.

District's CalPERS Pension is Well Funded (92%)

Amazingly, BART seeks major pension concessions even though the CalPERS pension is 92.9% funded, and was "superfunded", such that BART did not have to contribute any money into the plan for years. (See Tab 2B (CalPERS Valuation of BART's Pension Plan).) There is no financial need to force workers to take a pay cut in order to fund the pension. BART workers have no other safety net when they retire as they are not covered by Social Security.

BART's Actions Provoked the July Strike

In a clear sign that BART intended to pick a fight with its own workforce, the District paid \$399,000 to hire Tom Hock, a private sector transit consultant known for provoking strikes and engaging in surface bargaining – i.e., going through the motions of negotiations without any intent of reaching an agreement.

BART steered the negotiations process off course by delaying bargaining by six weeks, until Mr. Hock arrived in mid-May.

Hock's response to workers' safety concerns? "We're not interested."

BART's multiple unfair practices prompted SEIU Local 1021 and ATU Local 1555 to file suit in Superior Court.

The District made matters worse by making proposals aimed at provoking the July 1 strike, such as its empty shell of a wage proposal that purported to offer workers an increase while, in actuality, it offered workers a pay cut and would have punished workers for using FMLA and other protected leaves. (See Tab 6)

The District also unlawfully threatened to impose terms when the parties were nowhere near impasse.

In a similar act of aggression, on the last day of the parties' 30- day extension agreement, BART chose not to offer a counter for 22 hours straight, then offered a 0.5% pay increase but only in exchange for its proposal to cut workers pay by ten times as much through 5% contributions to the pension. (See Tab 7)

B. CHRONOLOGY OF NEGOTIATIONS

- February, 2013 ATU Local 1555, SEIU Local 1021 and BART representatives met to discuss ground rules for bargaining but were unable to reach agreement
- March 1, 2013 Ground rules discussions continued. In contrast with at least twenty years of historical practice, BART announced that it did not intend to release bargaining team members from their disparate shifts and duties so that they could meet and represent their respective units as a team, unless the employees or their unions would incur the financial loss. BART further refused to secure a neutral location for negotiations, despite a long history of doing so.
- ATU submitted initial information requests.
- Grace Crunican obtained Board approval to amend her contract with Tom Hock to make him chief negotiator, quadrupling his pay to \$399,000.
- April 1, 2013 The parties exchanged comprehensive opening proposals without discussion.
- April, 2013 Multiple meetings to discuss ground rules. No agreement reached given the District's refusal to release the full bargaining teams.
- In resolution of SEIU-specific expedited arbitration over the release time dispute, SEIU and BART entered into an agreement to release SEIU's bargaining team on May 13, over ATU's objection to the significant delay to negotiations.
- May 2, 2013 All three parties met to briefly explain their opening proposals on General Provisions (common to both ATU and SEIU).
- May 13, 2013 BART released the two union bargaining teams for negotiations.
- First two weeks of substantive negotiations were spent on each union's Supplemental Provisions (that are unique to their unit and union).
- The District's failure to provide information impeded substantive progress at the table; ATU reiterated outstanding requests.
- June, 2013 Negotiations over General Provisions (economic and other terms common to both unions); BART, SEIU and ATU reached tentative agreements on a few relatively small issues. Major issues remained in dispute.
- Following two weeks were spent on Supplementals; BART and ATU reached tentative agreements on a limited number of relatively small issues. Major issues remained in dispute.
- SMCS Mediators welcomed by both parties.

SEIU and ATU filed Writ Petition (Case No. RG13684861) in Alameda Superior Court regarding BART's failure and refusal to bargain in good faith, refusal to provide critical information, implementation of unilateral changes.

Membership of both unions overwhelmingly voted to authorize their respective bargaining teams to call a strike to protest BART's unfair labor practices. (99.9% for ATU; 97.5% for SEIU).

SEIU and ATU issued strike notices with 72 hour advance notice to the public, to protest BART's refusal to bargain in good faith.

June 28, 2013

SEIU and ATU waited for the District to appear at the bargaining table for twelve hours straight. District repeatedly advised union to wait and then did not appear. District advised unions that its team would continue working into the night; moments later, District's team was seen heading for home.

June 29, 2013

After another very long day of virtually no discussion, the parties exchanged sets of proposals on the Generals through the mediators.

BART's proposed economic terms purported to include a raise, but after concessions proposed regarding pension and medical costs, would have left members in the red.

June 30, 2013

Governor Brown's Secretary of Labor requested the parties engage in further negotiations; Unions proposed terms that would include revisions to retiree medical benefits that would save the District approximately \$30 million in future dollars, approximately \$7 million present value. BART informed Unions that it had no proposal for them. Union teams left for the night and BART went to the media, accusing the Unions of "walking out."

July 1, 2013

Open-ended strike began.

July 4, 2013

Unions voluntary agreed to return to work after 4 days on strike, and the parties entered into 30 day mediation agreement at Governor Brown's Secretary of Labor's request.

July 4-Aug. 4, 2013

Negotiations proceeded slowly and largely without accurate budget forecasting data or costing information regarding pending proposals, hampering the parties' ability to bargain.

BART refused to address safety issues in any meaningful way.

Unions offered to contribute 7% to pension; increase contributions to medical premiums and revise wage proposal to 5%/year, inclusive of cost of living adjustment.

BART waited 22 hours to respond with a counter at 8pm Sunday night; counter was clearly intended to inflame the dispute as it offered to add

only 0.5% to its wage offer in exchange for employees paying 10 times as much (5% of pay) into their pension, and with medical contributions that would result in hundreds of employees incurring a financial loss throughout the life of the contract. (See Appendix 4)

Governor Brown called for a Board of Investigation; Unions informed membership that a strike would not take place August 5.

August 5, 2013

The parties emerged from mediation without substantive agreement on major issues which remain in dispute.

C. SUMMARY OF OUTSTANDING ISSUES

1. Employee Safety

a. Violence in the Workplace, Safe Booths and Safer Staffing (ATU Supplemental provisions in Article 34)

In order to prevent workers in publicly accessible locations at night from being vulnerable to violence, OSHA recommends that employees work in pairs.¹

BART Police report that 2,446 FBI-reportable crimes occurred in just five BART stations since 2010. During the same time period, 1,099 customers were physically attacked, as were 99 BART employees. (See Tab 3C). Yet in most stations, BART assigns only one Station Agent to staff the entire station (some of which are three levels deep and the size of several football fields) even late at night and before dawn.

ATU proposes to avoid any assignment that would put a Station Agent in such a vulnerable position - with no one to call for help, or come to their aid, or whose presence would act as a deterrent to any act of violence. In addition, the presence of a second Station Agent would improve customer service and prevent acts of violence from occurring in which patrons are victimized in isolated locations.

ATU proposes that BART hire 15 additional Full Time Equivalent employees and re-assign other agents to maximize double coverage in high risk stations with a high rate of crime and/or where Station Agents have faced physical attacks. The District, after initially refusing to discuss the issue at all, now proposes to hire an additional 3 FTEs, and to rely almost exclusively on short-staffing the system's busiest stations, undermining customer service and likely increasing the degree to which Station Agents bear the brunt of patrons' frustration over such short-staffing. To date, BART is unwilling to provide more than 3 additional full time equivalents to address the need.

¹ OSHA Recommendations for Workplace Violence Prevention Programs, 2009, (OSHA 3153-12R) US Department of Labor.

The Union also proposes that all Station Agent booths be reinforced with bullet-proof glass and dutch doors. The District refuses to commit to the idea in the contract.

ATU further proposes that BART take steps to support workers who have been attacked with peer counseling, employee assistance and an assurance that they will not be forced to sacrifice a third of their pay if they need time off to recover from the traumatic incident.

- See Tab 3B (*Violence in the Workplace Log*); Tab 3C (*Police Log of Assaults on Employees*); Tab 3D (*FBI-reportable crime data at BART stations*), Tab 3E (*Trauma Log*); Tab 6 (*ATU's proposal re Article S34*)

b. Rider and Employee Safety - ATU proposal to provide sufficient time for station safety inspections before opening

ATU seeks to improve rider and worker safety by ensuring that Station Agents have sufficient time to perform morning station safety inspections before patrons enter each station. Currently, in an effort to avoid paying workers shift differential, BART schedules start times with insufficient time to perform necessary safety inspections when they are needed – before patrons enter the station, rather than afterwards. ATU's proposal would require 10-15 additional minutes at the start of each opening Station Agent's shift (i.e. at least 25 minutes total prior to the arrival of the first train), to ensure that they can inspect trackways and platforms, and ensure that escalators and elevators are in working order or, if not, cordoned off appropriately.

- See Tab 6 (*ATU's proposal in Article S13.9, 28.5 and resolution of grievances*)

c. Employee Safety – Worker Injuries, Ergonomics and Accommodations

BART workers are suffering from an increased level of workplace injuries, many of which are preventable. The Unions are proposing to improve ergonomic standards in the workplace in order to reduce injuries and ensure that injured employees are provided with accommodations they need in order to return to work. During the life of the now-expired contract, BART cut operations staff and the number of workplace injuries, including repetitive strain injuries, soared by approximately 43%, which the Unions believe to be a direct result of employees working longer hours than ever before.

- See Tab 3A (*OSHA Annual Summaries of Injury Logs indicating that more than 10,000 work days per year are lost due to worker injury, a loss of approximately 40 FTE*); Tab 5 (*The Unions' joint proposal Section 9.7*)

d. Workers Compensation for Injured Employees

BART is currently in the process of restructuring how it administers its self-insured Workers Compensation program, seeking to parcel out four distinct roles historically provided by Athens (a third party administrator) to four different providers. BART has put out Requests for Proposals for services involving Medical Case Management, Prescription Services, Billing/Utilization Review and Investigative Services, all of which are pending. The District program's current and contemplated structure is built around an adversarial system of claims resolution, with administrative trials and appeals according to statute. Medical inflation is

causing the District's liabilities to climb significantly, such that in the past year alone, BART had to place an additional \$12.4 million into reserves over the amount it had anticipated.

Workers' express significant dissatisfaction with BART's current workers compensation program, and with the initial changes already implemented by the District unilaterally in March of 2013. Injured workers report significant delays in receiving treatment, denials of medically necessary procedures, such as surgery for torn tendons, and the invasion of their medical privacy by case managers from whom BART seeks direct reports.

On April 1, in the parties' initial exchange of proposals, ATU and SEIU proposed a collaborative approach to workers compensation benefits and the resolution of claims.

In early June, the former chief administrative law judge for the Workers Compensation system, now with Workers Comp Solutions, made a presentation to BART and the Unions on collectively bargained workers compensation systems and the benefits – including the considerable savings to the employer – that are associated with adopting a collaborative approach towards injured workers. The District, through its representatives in bargaining, indicated that it is not interested in adopting a collaborative approach, and has, instead, indicated that it does not wish to “subject workers compensation matters to collective bargaining.”

- See Tab 3G and H; Tab 4 (Section 9.5)

2. Wages

a. The Unions Propose a Fair and Equitable Wage Increase That Considers Worker Productivity, BART's Economic Expansion, and The Cost of Living in the Bay Area.

The Unions revised their proposal on Saturday August 3, to provide for a 5% annual raise, inclusive of the COLA, i.e. 15% over three years.

- See Tab 5

3. Other Pending Union Proposals

a. Generals

There are a number of other union proposals that are open and pending, including:

- Contracting Work (1.8);
- Vacation (4.1);
- Bereavement Leave (4.2);
- Disability Coverage (including allowing employees to purchase coverage at their own cost) (5.9);
- Employee Assistance Program (5.10);
- Updating the Money Purchase Plan (6.4);
- Allowing employees to purchase PERS Service Credit at their own cost (6.6);
- Parking (7.4);
- Pay Periods (ensuring timely payment) (8.1); and

- Ergonomics and Reasonable Accommodation language (9.7).

Some of these issues have been discussed in some detail at the bargaining table; others are still awaiting meaningful discussion and/or outstanding information and a response from the District.

- See Tab 4.

b. ATU Supplementals

Additional outstanding supplemental provisions include a proposal to improve staffing in the Richmond Tower (S19.7) and the timely provision of uniforms and updated payment of expenses (S29). If these, and the proposals described above and in Tab 5, are resolved, ATU can live with existing contractual language on all other matters in the Supplemental provisions of the contract.

- See Tab 5

4. BART's Proposed Takeaways and the Unions' Response

a. Pension: Employee Contributions from All Employees:

For many years, BART's CalPERS pension was "superfunded" such that the employer made no contributions at all. Today, CalPERS reports that it is 92.9% funded – i.e, it is financially healthy. Nonetheless, BART seeks employee contributions valued at more than \$50 million dollars for these two bargaining units over a four year period. This is an enormous and opportunistic takeaway that neither the pension fund, nor BART, actually need.

In 1980, BART proposed to pick up employee contributions to pension benefits in exchange for a concession on wages. Today, after benefitting from that bargain, BART proposes that employees should contribute 2, 3, 4, and 5% of pay toward their pension, a proposed takeaway that would virtually eclipse any wage increase currently on the table.

The Unions' most recent proposal offered to have employees contribute a full 7% to their pension, in exchange for a 6.5% swap to neutralize that loss to employee pay. BART's response, hours before the contract extension deadline, was to offer only 0.5% to offset a 5% employee contribution – i.e., for employees to incur a significant financial loss.

- See Tab 2B (*CalPERS Valuation of BART's Pension*)

b. Lesser Pension Benefits For New Hires:

In the past, BART unions negotiated concessions in order to secure a pension benefit formula of 2% at 55, agreeing to allow BART to retain 1.627% of wages in order to fund that benefit, and securing contract language that requires BART to involve the unions in contractual changes with PERS necessary to provide for that 2% at 55 benefit. On January 1, 2013, BART unilaterally reduced new hires' pension formula to 2% at 62, without any prior notice to ATU or an opportunity to bargain, and on July 1, completed its implementation of two-tier compensation plan by deducting 6.25% of pay from all new hires' paychecks. This change was announced as a *fait accompli* without negotiation, although BART does now seek to reflect this significant

change to compensation in the successor agreement. The District has made no effort to negotiate any benefit or compensation for the employees adversely affected.

c. Medical Contributions that Would Erode or Even Eclipse a Fair and Equitable Wage Increase

BART seeks to impose increased costs on employees and to shift the risk of medical inflation to those in a much weaker position to bear such financial risk. The Unions seek to maintain existing language negotiated in 2005 as a significant concession to BART, which already provides for employee contributions toward medical premiums and already provides for 3% annual increases to such employee contributions.

Both Unions have proposed to increase existing future contractual contributions to medical premiums by 5% across the Board to \$1270/year by the end of the contract for those in Kaiser/Blue Shield and that employees in other plans would continue to pay all additional premiums, some of which would cost employees an additional \$800 each month or up to \$9,600/year.

BART's most recent proposal seeks to make Blue Shield coverage unaffordable by charging those employees with kids over \$4,000/year so that they would suffer a net loss in take-home pay unless they changed health plans.

d. BART's Current Economic Proposals Would Still Leave Hundreds of Workers Worse Off, and Offer Little to No Financial Benefit to Others After Taking Medical and Pension Contributions into Account

BART's most recent wage proposal purports to offer 2%, 2%, 2% and 2.5% increases, with a conditional 0.5% in the third year in exchange for workers losing 5% of their pay in order to maintain their pension. This takeaway, compounded with BART's proposal to charge workers thousands more for medical benefits would result in a net loss for hundreds of workers.

BART's economic proposals are designed as PR stunts, creating a false promise of an increase, when what the District actually has on the table is a pay *cut* for hundreds of workers, particularly those with families.

- See Tab 6

e. BART Seeks to Exacerbate Short-Staffing and Deny Workers Overtime Pay for Time Worked on Regular Days Off

Over the life of the now-expired contract, BART cut operations staff by 8%. Staffing on the Train Operator extra-board (a number of workers scheduled to back-fill vacancies as needed) fell by as much as two thirds, reaching a low of only 7%. (See Tab 3F) Not surprisingly, then, overtime use rose significantly during the period of time in which BART intentionally short staffed its operations.

Now, BART seeks to blame workers who volunteered to work through their days off for the rise in overtime, even those who suffered workplace injuries as a result of repetitive strain. The District accuses workers - without supporting evidence - of dropping sick on a regularly scheduled shift and manipulating their schedules. The District has produced no evidence to back

this up. When pressed, BART representatives made it clear that the employees they consider "overtime abusers" are those who worked overtime and then suffered catastrophic medical conditions and/or significant workplace injuries that have kept them off the job.

If BART's true goal were to reduce overtime costs, there is a clear way to do so: hire and maintain sufficient staff to get the work done, and ensure a safe workplace so that they do not lose work time due to injury. Currently, BART workers lose over 10,000 workdays a year, due to injury. (See Tab 3A) BART's proposal to deny workers premium pay for time worked on their days off, would create an incentive to rely on those workers to work at straight time on their days off, creating a financial incentive to short-staff its operations.

D. THE ISSUES RESOLVED TO DATE

BART and both unions have reached tentative agreements with respect to the General provisions on several issues including:

1. The timing and number of copies of the successor agreement to be distributed; (Section 1.3)
2. The availability of benefits to domestic partners pursuant to an agreed upon definition; (Section 1.9)
3. The provision of information regarding member dues deduction in electronic form; (Section 2.4)
4. The location of Union bulletin boards; (Section 2.5)
5. BART's responsibility to provide the unions with the results of District-wide investigations in a timely manner; (Section 3.1)
6. Access to personnel files, including employee medical files; (Section 3.2)
7. An update to the District's educational assistance program; (Section 3.5)
8. An agreed-upon description of family leave policies; (Section 4.4)
9. The ability for retirees to purchase dental benefits at their own expense; (Section 5.3)
10. The ability for retirees to purchase vision benefits at their own expense; (Section 5.4)
11. Health Care Cost Containment (5.11)

BART and ATU Local 1555 have reached tentative agreements on the following issues specific to ATU:

12. Seniority (S12.0)
13. Station Agent Parking (S13.8)
14. Special Provisions – Transportation Administration Specialists (Article 15)
15. Special Provisions – Operations Control Center (Article 20)
16. Special Provisions – Employee Development Specialists et al (Article 21)
17. Job Descriptions (Article 25.0)
18. *Conditional Agreement* - Job Abandonment (S39.7)
19. *Conditional Agreement* - *Special Provisions* – Special Provisions –Part-Time Train Operators and Station Agents (Article 44)

EXHIBIT G

1 VINCENT A. HARRINGTON, JR., Bar No. 071119
2 WEINBERG, ROGER & ROSENFELD
3 A Professional Corporation
4 1001 Marina Village Parkway, Suite 200
5 Alameda, California 94501
6 Telephone (510) 337-1001
7 Fax (510) 337-1023

8 BEFORE THE BOARD OF INQUIRY ESTABLISHED PURSUANT TO
9 GOVERNMENT CODE SECTION 3612

10 IN THE MATTER OF:

Case No. RG13684861

11 SAN FRANCISCO BAY AREA RAPID
12 TRANSIT DISTRICT ("BART"),

**POSITION STATEMENT OF SEIU
LOCAL 1021**

13 Employer,

14 and

15 SERVICE EMPLOYEES INTERNATIONAL
16 UNION, LOCAL 1021 and AMALGAMATED
17 TRANSIT UNION, LOCAL 1555, and
18 AMERICAN FEDERATION OF STATE,
19 COUNTY AND MUNICIPAL EMPLOYEES,
20 LOCAL 3993,

21 Unions.

22 SEIU Local 1021 ("SEIU"), hereby submits its position statement with regard to the
23 Board of Inquiry proceedings now set for Wednesday, August 7, 2013.

24 Of necessity, this is a summary of the Union's positions on the issues in dispute. We will
25 amplify upon these points during the hearing on Wednesday. Additionally, we, of course,
26 anticipate that Amalgamated Transit Union, Local 1555 ("ATU") and American Federation of
27 State, County and Municipal Employees, Local 3993 ("AFSCME") will as well provide
28 information to the panel regarding these issues.

1 We will at the outset provide a brief introduction to the background of the historical
2 bargaining between BART and these Unions, and then proceed to a discussion of the current
3 bargaining.

4 I. THE BARGAINING SCHEME AND REPRESENTATIONAL
5 ARRANGEMENT AT BART

6 As a result of representation proceedings conducted by the office of the State Department
7 of Industrial Relations, the SEIU became recognized as the collective bargaining representative of
8 employees in the maintenance and clerical subunits. The initial Labor Agreement between SEIU
9 and the District became effective in 1973. Within the SEIU bargaining unit is a range of
10 classifications including, by way of example, Utility Worker and System Service Workers,
11 Transit Vehicle Mechanics, Transit Vehicle Electronic Technicians, Electricians, Track and
12 Structures Workers, Inspectors. Within the clerical unit are clerical and secretarial employees, as
13 well as groups of professional level classifications who perform Computer Support and Analysis,
14 Employment Training Specialists, Buyers, and Assistant Buyers.

15 Since the original recognition in the early 1970s, the SEIU and the ATU have typically
16 bargained at the same time, and have executed contracts in the same budgetary cycle. The parties
17 jointly bargain regarding so-called "general" provisions, and separately bargain regarding so-
18 called "supplemental" provisions. In general, as might be expected, the "general" provisions deal
19 with core issues such as benefit plans, including health insurance, pension, and the like, whereas
20 the supplementals are concerned with issues specific to each of the units such as bidding,
21 seniority, classification, etc. As to the SEIU and the ATU, however, the wage proposals are
22 actually dealt with as "supplemental" proposals.

23 The SEIU represents approximately 1,450 employees in its unit, whereas, ATU represents
24 approximately 945 employees.

25 II. THE COURSE OF THE CURRENT BARGAINING CYCLE

26 This round of bargaining has, from the SEIU perspective, been especially contentious
27 from the outset. There was initial bargaining about ground rules for the negotiations, which was
28 never resolved, and which did not result in a generalized agreement on that subject. Although,

1 consistent with the statute the parties exchanged opening proposals on April 1, the parties did
2 actually begin bargaining on a full time basis, with the bargaining teams released, until May 13.
3 This resulted from the initiation by the SEIU of an immediate arbitration before Arbitrator Jerilou
4 Cossack, and it was only through that action, and a settlement which she oversaw, that the parties
5 commenced bargaining. This delay in the onset of the bargaining was in contradiction to more
6 than 30 years of past practice between these bargaining parties.

7 Notably as well, the SEIU and ATU jointly filed a lawsuit against the District back in June
8 of this year charging the District with numerous unfair labor practices during the course of the
9 negotiations. That matter remains pending in California Superior Court, Alameda County.

10 The parties failed to reach an agreement before the expiration of the contract on June 30,
11 2013, and a strike ensued early July 1. Late in the evening of July 4, the District and the Unions
12 entered into a voluntary agreement to terminate the work stoppage and return to the table and
13 bargain "in good faith" for the next 30 days. That agreement expired on Sunday evening, August
14 4, 2013.

15 From the SEIU perspective neither the original bargaining from May 13 through June 30,
16 nor the renewed bargaining in the 30 days commencing after the return to work on July 4, has
17 proved productive.

18 As we shall briefly discuss in the next section, in the historic bargaining relationship
19 during recent bargaining cycles the SEIU has been flexible, and has dealt in good faith with the
20 employer to deal with and resolve by mutual agreement very difficult issues. Although we have
21 stood ready to do so in this bargaining cycle as well, we have been unable to secure a similar
22 result.

23 III. HISTORY OF RECENT NEGOTIATIONS

24 In the 2005 bargaining cycle the parties jointly addressed the employer's claims
25 concerning its so-called OPEB liabilities ("Other Post-Employment Benefits"). The agreements
26 achieved in that area are found in the current Agreement, covering the period 2009 to 2013 in
27 Section 5.2, concerned with "PERS-Medical and Prescription Drug Benefits." Both current and
28 retired employees of the District are addressed in this provision. See Agreement at pages 23-30.

1 As can be seen, as a result of joint analysis and agreement between actuaries working for the
2 Unions and those working for the District, a schedule of future employee and retiree contributions
3 toward the healthcare insurance benefits were established going out to the year 2034.

4 Additionally, the parties addressed the retiree health benefits by the establishment of a Retiree
5 Health Benefits Trust into which contributions were made by the District and employees. Very
6 particularly, as seen in Section D, concerned with "Retiree Insurance Funding," the parties agreed
7 to a contribution by the employer and contribution by the employees for future funding of those
8 benefits. Specifically, employees permitted the employer to retain the 1.627% Money Purchase
9 Plan contribution in order to assist in funding its retiree health benefits. See Agreement, Section
10 5.2(D), (5) and (6).

11 Thus, when the bargaining of this Agreement commenced, employees were paying \$92.24
12 per month, plus 1.627% of their wages to fund health and welfare and retiree health and welfare
13 benefits. When calculated across the bargaining unit, therefore, employees are paying over
14 \$180.00 per month at the present time for health insurance benefits for active employees and
15 retirees and their families. (Also please note that the employer's contribution is capped at the Bay
16 Area Basic premium rates for PERS HMO, Blue Shield access + or PERS HMO Kaiser Plan,
17 whichever is greater, less the employee and retiree contributions. Those employees electing
18 coverage with greater cost pay for that coverage themselves. See Agreement at pages 24-25.)

19 In the 2009 negotiations, when confronted with the District's claims of revenue loss due to
20 the economic collapse of 2008, the Unions also worked with the employer to achieve one hundred
21 million dollars' (\$100,000,000) worth of savings in staffing, work rules, and other contractual
22 changes. As part of that concessionary bargaining cycle the Union agreed to no base wage
23 increase for 4 years, but instead agreed to accept one-time lump sum payments which did not
24 raise the base pay. See attached Exhibit B, Section 28.4 "Base Wage Schedule." As specified in
25 subdivision A, if all of the criteria identified in subdivision 6 were met, the employees might
26 potentially receive a 1% base pay increase effective July 1, 2013. In fact, that 1% was
27 determined to be owed and paid.

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IV. PENSION/RETIREMENT BENEFITS

Section 6 of the Agreement currently describes the retirement benefits provided to employees under the current contract. See Agreement pages 39-41. As can be seen, beginning in 1991 the parties agreed the District could retain its contribution of 1.627% of payroll into the Money Purchase Plan ("MPP") to account for the "costs" of a new pension benefit agreement. In other words, the employees agreed to divert that contribution into the District's budget to fund that benefit, rather than into the MPP.

Additionally, in Section 6.2, the District agreed to continue its long-standing practice of picking up the employee contribution into the PERS system. This "pick up" by the employer of the employees' PERS contribution has its basis in the 1979-1982 Agreement between the parties. See Exhibit 8, an excerpt from that Agreement. At that time, consistent with the practices in many public entities after the passage of Proposition 13, unit members agreed to waive any wage increases in consideration of the employer's willingness to pick up the then-existing employee retirement contribution. This was beneficial for both parties: by "picking up" or reimbursing employees for that expense the employer avoided numerous other costs associated with wage increases such as taxes, mandatory contributions to other entities such as the pension plan itself, increases in base pay rates for purposes of overtime or premium pay, and the like; from the employee perspective while it provided a net increase in take home pay, it did not increase in the base pay rate. (From the SEIU perspective, had the employees in fact taken this "reimbursement" as a wage increase, they would be far ahead of their existing wage base. The employer has obtained the benefit of that "swap" over the past 30 plus years.)

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V. SAFETY

Work at BART for many of the SEIU-represented employees contains significant risk of harm. Of course, BART runs a transit rail system. It is powered by a 1,000 volt electrical system, and the trains which operate on the system move at speeds up to 65 miles per hour. Employees represented by the SEIU work out on the trackways, in the tunnels, on the elevated structures, and in the vehicle repair, and marshaling yards from which the trains are dispatched and where they are repaired. The SEIU represents employees who repair the electrical switches,

1 the electrical power, and maintain and service the transit vehicles, and their mechanical and
2 electronic parts. The District operates on a 24-7 basis. This means that employees work at night,
3 in adverse weather conditions, throughout the week.

4 In the last 12 years two employees represented by the SEIU have been killed at work: one
5 was crushed in an underground tunnel, and a second was hit from behind by a train when he was
6 out near the trackway. Other serious injuries have occurred because of the inherent dangers in
7 much of the work involved, including electrocutions, and loss of limbs.

8 Health and safety is, of course, a mandatory subject of bargaining. For its part the SEIU
9 has advanced safety proposals intended to address these concerns. These proposals have been
10 focused on the area of safety training, the creation of a work crew who would clear debris, trip
11 hazards, brush, tree limbs, etc., from the trackway in the areas in which employees must work,
12 and other proactive safety measures. It has also made proposals for patron health and safety.
13 These safety provisions remain on the table, largely unresponded to by the District.

14 VI. STATUS OF ISSUES CURRENTLY ON THE TABLE

15 Exhibits 2 and 3 describe the general and supplemental proposals, respectively, and are
16 SEIU's summary of the status of the issues which remain on the table.

17 As can be seen, there are a number of outstanding Union proposals in both the generals
18 and the supplementals categories. All of the Union's safety proposals have been rejected, with
19 the Employer's only concession in this area a willingness to establish a committee to look at
20 safety issues. That position ignores the Union's significant proposals for additional safety
21 training, better lighting throughout the system, including in tunnels and on the trackside areas of
22 the system, the re-opening of bathroom facilities in the stations, and the re-establishment of a
23 crew to clear debris, overgrown brush, and trees which encroach on the track way.

24 In the major areas of wages, health insurance benefits, and pensions, the parties remain far
25 apart despite numerous meetings, and despite the July strike.

26 A. WAGES

27 As noted in the preceding section of this position paper, Union members took a base pay
28 wage freeze during the period of 2009-2013. During that same period of time according to

1 reliable sources such as the Federal Bureau of Labor Statistics, the cost of living in the Bay Area
2 increased 8.3%. See Consumer Price Index Urban Wage Earners and Clerical, Bureau of Labor
3 Statistics publication. Exhibit 5. Current projections published for Bay Area urban wage earners
4 show an additional 2.4% increase in cost of living in each year between 2013 and 2016, totaling
5 9.6%. Thus, by the conclusion of the calendar year 2016 Bay Area urban wage earners, including
6 BART employees, will have seen their real wages erode by an additional 9.6%. See Fact Sheet
7 on Concessions, etc. attached to this position paper as Exhibit 4.

8 Indeed, many observers believe that the Bureau of Labor Standards CPI numbers fail to
9 account for the real costs of living in the Bay Area specifically. For example, in the San
10 Francisco Chronicle of October 5, 2011, they noted under the headline "Report: Basic Cost of
11 Living Soars in Bay Area," a report from the respected, and oft-cited Insight Center for
12 Community Economic Development, in Oakland, California that the "Self-Sufficiency Standard"
13 for living in San Francisco County was also soaring, producing ever increasing costs for families
14 to remain self-sufficient in the critical areas of housing, child care, food, transportation and health
15 care. See the study attached hereto as Exhibit 7 referenced in the Chronicle story.

16 What the SEIU seeks in this negotiation is a fair and equitable contract settlement which
17 takes into account the past sacrifices of its members, and the current state of the economy
18 including the ever escalating cost of living. The District has the financial stability to provide a
19 fair settlement and still make the capital investment it desires. See Exhibit 9, SEIU's evaluation
20 of BART's projected fund surpluses over the next 4 fiscal years.

21 VII. PENSION CONTRIBUTION

22 The District has insisted that employees begin to pay their pension contribution, switching
23 the cost from the District to employees. The SEIU, for its part and the ATU have expressed a
24 willingness to negotiate regarding that subject, but are unwilling to have the cost simply shifted
25 back to workers without any corresponding wage increase. Such a switch erodes any wages
26 which may be provided in the Labor Agreement. Notably as well, that proposal, without any
27 "swap" fails to recognize the historical basis for the Employer's assumption of this responsibility
28 in the first place: It "swapped" wage increases for its proposal, on a tax-free basis, to pay the

1 employee's share in lieu of wage increases. It is only fair and equitable that if the employee is
2 now required to re-assume that obligation, that they also re-acquire the consideration which they
3 gave up in the past to the benefit of the District.

4 **VIII. HEALTH INSURANCE PREMIUM PROPOSALS**

5 As indicated above, the labor contract already contains a carefully negotiated, funded,
6 system for employee and eligible retiree payments toward the cost of health insurance plans. The
7 District's current proposal, as we understand it, would do two things: It would reduce the
8 Employer's health contribution by changing the cap in its contributions from the greater of either
9 the PERS HMO Blue Shield Access Plus or the PERS HMO Kaiser plan for employees plus two
10 dependents, to the lesser of those two plans; It would also increase to \$134.00 a month the
11 minimum employee and retiree contribution required for participation in those plans. As we
12 understand it, this change, based on a differential between the Blue Shield and the Kaiser rates
13 would create a cost shift to those families participating in the Blue Shield Access plan of more
14 than \$3,000 per year. There is every reason to believe that would force employees to migrate
15 away from the Blue Shield plan, and seek other coverages. However, in many areas a number of
16 the other coverages are not available, including the Kaiser health plan. Such a choice would also,
17 of course, potentially disrupt the continuity of medical care for those family members as there is
18 no guarantee that their current practitioner is included within any of the available other plans.
19 Both SEIU and the ATU indicated a willingness to negotiate changes in the current schedule of
20 premium payments, and have asked BART to recognize or acknowledge the fact of the current
21 contribution of the MPP funds into the Retiree Healthcare Trust to fund these benefits. The
22 failure of the District to timely bargain with respect to this subject prior to midnight of August 4,
23 meant that the Unions were not in a position to engage in the traditional give and take concerning
24 the subject which may well have resulted in an agreement to pay an additional amount to address
25 the employer's desire to achieve savings in this area. Good faith bargaining would, in the
26 Union's view, ultimately lead to an agreement on this critical subject. We have yet to see that
27 bargaining.

28

1 **IX. THE IMPACT OF THE EMPLOYER'S CURRENT PROPOSALS ON TWO**
2 **TYPICAL BART CLASSIFICATIONS REPRESENTED BY THE SEIU**

3 As of the time of the meeting of the Board the District has on the table a wage proposal
4 which, combined with its other proposals for ongoing employee payment of additional costs for
5 medical insurance premiums, as well as increasing employees' payment of the PERS contribution
6 will result in a negligible wage increase at the end of four years. A wage increase which would
7 leave workers only a cumulative total of 1.38% ahead of where they were on July 1, 2013, in the
8 case of Utility Workers, and 1.32% ahead for a Maintenance Worker III. This would result in
9 these workers lagging 8.2%, and 8.28%, respectively, behind the projected cost of living over the
10 same period of time. On the cost of living changes between 2009 and 2013 are accounted for,
11 under the Employer's proposal these workers would be over 16% behind the aggregate cost of
12 living change since 2009.

13 The Union has prepared a summary of its analysis of management's August 4, 2013
14 proposals on two typical BART classifications it represents: Utility Worker and Maintenance
15 Worker III. That summary is attached as Exhibit 10. (At the present time the proposal of a
16 \$134.00 flat fee is merely a verbal proposal, not reduced to writing.)

17 **X. THE UNIONS' PROPOSAL ON WAGES, HEALTHCARE**
18 **PREMIUMS, AND PENSION**

19 At the current time the Unions' current proposal to the District is a 5% per year wage
20 increase over a 3 year term, inclusive of cost of living. In other words, the difference between the
21 actual cost of living as measured year to year based on the BLS data, and the remainder a "true
22 wage increase" up to the maximum total of 5%. On the healthcare side the Unions' have
23 proposed a 5% increase above the 3% escalator which is already provided for in the Labor
24 Agreement. Finally, with respect to pension, to the extent the employer wishes the employees to
25 begin once again to pay their pension contribution, the Unions propose the employer should
26 provide a commensurate "swap" of wages onto the base. We have negotiated, and are willing to
27 negotiate further with the District regarding the value of that "swap" as it relates to roll-up costs
28 in the payment of a base wage increase. The Unions believe that this is fair both historically, and
 because otherwise, any purported wage increase like that proposed by the District will simply be

1 eroded by the pension contribution. Such "swaps" for employee contribution into the pension
2 plan have been negotiated in numerous jurisdictions including, but not limited to, the City and
3 County of San Francisco, and the Port of Oakland.

4 **XI. THE LIKELY EFFECT OF A "COOLING OFF PERIOD" UPON THE**
5 **SUCCESSFUL CONCLUSION OF THESE NEGOTIATIONS**

6 The ultimate question of whether or not a cooling off period should be established rests
7 with the Governor. The SEIU's particular experience in this round of negotiations with this
8 employer suggests that it will not have the effect of moving the parties to an agreement. We have
9 bargained unsuccessfully with this employer from May 13 to June 30, 2013 with no true
10 indication from the District that it intended to reach an agreement. Even after the conclusion of
11 the 4-day strike in July, and the resumption of negotiations, the District's behavior since then has
12 not demonstrated any willingness to make a deal. We have no reason to believe that if a 60 day
13 cooling off period were created, we would not be standing then on the precipice of another work
14 stoppage without agreement as was true on June 30, and August 4.

15
16 Respectfully submitted on behalf of SEIU Local 1021.

17 Dated: August 7, 2013

WEINBERG, ROGER & ROSENFELD
A Professional Corporation



18
19
20 By: Vincent A. Harrington, Jr.
21 Attorneys for Petitioner/Plaintiff SERVICE
22 EMPLOYEES INTERNATIONAL UNION,
23 LOCAL 1021

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28
134347/728880

1 **I. IN THE PROCEEDINGS UNDER GOVERNMENT CODE § 3612**
2 **REGARDING BAY AREA RAPID TRANSIT DISTRICT AND SEIU LOCAL 1021,**
3 **ATU, LOCAL 1555**

- 4 1. Exhibit 1 – Labor Agreement covering July 1, 2009 to June 30, 2013, Exhibit 1;
- 5 2. Exhibit 2 – Summary of status of outstanding proposals—SEIU/ATU General
6 Articles;
- 7 3. Exhibit 3 – Summary of current status of outstanding SEIU 1021 and BART
8 District proposals—supplemental provisions;
- 9 4. Exhibit 4 – Fact sheet on concessions by SEIU 1021 BART employees since 2008
10 as compared to CPI increases;
- 11 5. Exhibit 5 – Consumer Price Index—urban wage earners and clerical year 2003-
12 2013;
- 13 6. Exhibit 6 – San Francisco Chronicle “Report: Basic Cost of Living Soars in Bay
14 Area,” October 5, 2011;
- 15 7. Exhibit 7 – “The Self-Sufficiency Standard for San Francisco County, California,
16 2011,” published by Insight Center for Community Economic Development in Oakland,
17 California.
- 18 8. Excerpt of 1979-82 Agreement;
- 19 9. SEIU evaluation of BART’s projected budget surplus fiscal year 2013-fiscal year
20 2016;
- 21 10. Summary of Impact of District Proposals on Two Typical BART Classifications.

22
23
24
25
26
27 134347/728955
28

EXHIBIT H



American Federation of State, County and
Municipal Employees
Local 3993
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BOARD OF INVESTIGATION

Bay Area Rapid Transit District August 7, 2013

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LISA HARLOW

The American Federation of State County and Municipal Employees (AFSCME) Local 3993 submits the following for your consideration.

Introduction

AFSCME Local 3993 represents 210 BART employees in the Professional and Supervisors bargaining unit. A list of the specific classifications is attached.

AFSCME Local 3993 and BART have been in negotiations involving twenty meetings since the first week of April 2013. We have exchanged forty-three proposals and reached agreement on all 10. Most of the remaining proposals, while not unimportant, could be resolved within a day at most. Two issues are the subject of unfair labor practice litigation filed within the past week in the Alameda Superior Court. These, too, could be resolved at the bargaining table as part of a final settlement.

The exceptions to the above are the main economic proposals of salaries, health plan contributions, pension contributions and the classification and compensation pay scheme for the bargaining unit represented by AFSCME Local 3993. The classification and compensation issue does not affect the other two unions in the current labor dispute.

As of today, August 7, 2013 we have not reached an agreement and the AFSCME Local 3993 has authorized a strike action if our contract dispute is not settled.

Issues in Dispute

AFSCME Local 3993 has an identical interest in the salary, health plan and pension contribution issues and expects the same settlement as the other unions. AFSCME Local 3993 fully supports the fair settlement of the issues specific to each of the other unions and will support whatever action they deem necessary to reach a fair settlement.

As the Service Employees International Union (SEIU) and the Amalgamated Transit Union (ATU) will present the most up to date information on our main general economic issues we will focus on the classification and compensation proposals which is the primary issue specific to AFSCME Local 3993.

Public's Health, Safety, or Welfare

In regards to the main charge to the Board of Investigation, AFSCME Local 3993 cannot comment on what the Governor might consider a danger to the public's health, safety, or welfare. A strike will certainly be a great inconvenience to BART riders and Bay Area commuters. The Governor himself must decide if this inconvenience constitutes a danger to the public's health, safety, or welfare. AFSCME Local 3993 does not believe it does and asks that he not call for an extended cooling off period.

BART's Financial Ability to Reach a Fair contract

AFSCME Local 3993 believes BART has the ability to reach an agreement without serious financial impact on the District.

During the previous four year contract, BART workers made \$100 million in concessions which included a four year wage freeze. BART's pension obligations are 92% funded which places it in a highly favorable position. Further, as BART workers are not covered by Social Security the District is not required to pay the 6.2% payroll tax to cover this benefit thereby offsetting their contributions made for the employees share for pensions.

In addition to these labor cost savings, BART's claims of financial stress or hardship are based on questionable budget assumptions, questionable business practices and unrealistic projections of future capital expenditures.

BART's ridership projections drive the need for the high capital expenditures yet seem highly unrealistic. And it's unclear if decisions are made on these or even higher, more unrealistic projections. Currently ridership is at the 400,000 level. BART projects 500,000 in the next 5 year, another 100,000 in the 5 years after that then 750,000 "soon thereafter". This, then, is used to justify the fleet of 1000 new BART cars in the next 10 years.

Even if, by some miracle these inflated projections were to be realized the system cannot handle 1000 new cars. It will take far longer than 10 years to upgrade the system to handle these new cars. Platform retrofits, increased power capacity, enhanced train control technologies to insure safe operations of the trains operating much closer to each other (especially in the trans-bay tube), additional crossovers and a whole host of support issues make it impossible to absorb 1000 new cars within the projected 10 year time frame. In fact, a more likely time period would be 20 years.

Recent history demonstrates the challenges-and expense-of project failures and delays. The Automated Advanced Train Control (AATC) project is considered a \$100 million bust. The cross-over project in Lafayette was projected to take 1 year but has taken 6. BART is a wonderful system but it has consistently taken more time to complete projects than projected.

Yet BART continues to move money from operations to capital budgets based on the 10 year projection at \$125 million per year.

But more importantly BART does not consider the workforce in its vision for the future. Fundamentally it takes people to run the system. The BART workforce has shrunk by 8% since the last contract while ridership increased by 25,000. At all levels of the BART workforce more work is being done by fewer people. In the AFSCME Local 3993 there are not enough people to handle the current business transactions let alone a projected much larger BART system.

One place to see this would be in the accounts receivable line items in the balance sheets. BART carries over \$100 million in receivables some of which is due to inadequate staffing. Some is a mystery which should be looked into.

BART clearly has the money available to reach a fair contract.

THE BART PAY BAND SALARY SCHEME FOR PROFESSIONALS AND SUPERVISORS

SUMMARY

At BART, the pay band salary scheme for the AFSCME Local 3993 bargaining unit:

1. Is not administered according to any established standards or criteria.
2. Has no criteria for initial salary placement.
3. Does not provide any opportunity for predictable salary progression based on established standards or criteria.
4. Does not pay according any merit factors such as job performance, education, difficulty of job or longevity.
5. Discriminates based on race, gender and age.
6. Fosters poor morale.
7. Fosters constant friction between peers as well as between superiors and subordinates.

PAY BAND SALARY SCHEME

In the Professional and Supervisory bargaining unit, the salary scheme is an open salary range. In other words there is a minimum salary and a maximum salary. An employee can be placed at any point within the range. This type of salary arrangement,

theoretically, enables an employee to be compensated on "merit". Like many theories it doesn't always work well in the real world.

Merit encompasses many factors. Education, skills, experience, actual performance, continuing education or development of skills, work habits or ethic. Some can be measured objectively while some measurements are purely subjective. There is no perfect system to gauge merit but some employers have used this form of compensation scheme with varying degrees of success.

At BART the range system is an unmitigated disaster. This is no secret even to top management, the Board of Directors and the consultants who have periodically been hired, at great expense, to look at BART's compensation methodology. This issue has been an AFSCME Local 3993 priority since 2001 negotiations. It has been addressed in the bargaining each time since then. There have been two independent consultant studies (2008 and 2012). Since 2006 an internal labor management committee has been meeting continuously to correct the pay band problems. The BART Board of Directors, when it was presented in January 2011 to the Board by AFSCME 3993 with the support of SEIU Local 1021, instructed the then General Manager to report back on the problem. Her report said "I am well aware of the need to make adjustments in the pay structure for AFSCME". It's easy to understand why she was aware. What's not easy to understand is why nothing was done by the Board or the management to actually make any corrections.

All the other unions at BART have a compensation plan with salary steps based solely on longevity, all other AFSCME employees in similar bargaining units at other Bay Area transit agencies (AC Transit, SamTrans and Valley Transit Agency) have salary step plans, and, when a salary study was done by BART Management, it revealed that BART is one of only two transit agencies in the country that doesn't have a salary step plan.

AFSCME Local 3993 is asking for a salary step system which provides automatic and predictable movement through the salary range over time for our members. We have been engaged in some form of negotiations BART on this issue since 2001. After each contract negotiations (2001, 2005, 2009) we leave with a commitment to address the issue. Committees are formed, consultants hired, studies commissioned yet at some point the issue dies until revived in the next negotiations.

During the current negotiations, AFSCME Local 3993 has indicated its readiness to include a longevity and performance standard in the compensation plan. BART does not currently do performance evaluations and longevity counts for nothing.

When an individual is hired at BART into an AFSCME position, he/she is placed somewhere on the salary range. There was, and still is, no clear criteria to determine the location. When the next person was hired into the same job classification they too are placed at some random point. Some Professional and Supervisory employees are placed in a higher salary range than those with greater longevity, including those who

have actually trained the higher paid employees. While this appears to have been somewhat addressed by the new language (2012) in the Collective Bargaining Agreement, which provides for all members in the same classification to be brought up to the new hire's salary, this section was written to enable BART avoid implementing this simple step towards equity. Further, the language added in 2012 doesn't address the years of inequities created previously and does not address salaries relative to new hires in other bargaining units who are doing similar work. In addition, because of changes to the Public Employee Retirement System (PERS), the new hires actually end up in an inequitable position because of larger contributions to their retirement.

The problem is compounded by the bizarre bargaining unit structure at BART. BART may be the only employer in the country where employees doing the same job, at the same work site, under identical working conditions and under the same supervision are represented by three separate unions and compensated using three separate salary plans (although more typical at BART is two unions and two salary plans). The main issue is that AFSCME Local 3993 covered employees are placed arbitrarily on a pay range and languish, almost without exception, at that point for their careers at BART. Many have expressed concern at a "bait and switch" approach during recruitment where a salary peak is promised but which is actually unattainable. Meanwhile, employees covered by the two other unions, are compensated using a step system which provides automatic and predictable movement through the salary range based on longevity only. Typically, they move past the AFSCME Local 3993 covered employee to the top of their salary range.

More disturbing is the evidence that, in some instances, males land at higher points on the salary range than women and that white employees are placed higher than minority workers. Is this clear and intentional discrimination? Or just an unintended consequence of a totally arbitrary compensation scheme that tends to favor those most recently hired. Some evidence seems to show if you were hired in, say, 1995 you are likely at a lower point on the salary range than if you were hired in 2005. Recruitment in 1995 could be done with lower salaries and, since the person hired then has not moved since their initial placement, they will most likely be compensated at a lower level than someone hired in a more expensive 2005 job market. The consequence of this random and arbitrary system yields discriminatory results. Regardless of BART's motives, this is simply wrong. Perhaps a federal judge can determine motive. It is clear however that BART management and Board of Directors have known about the problem for years.

Another consequence of using different salary schemes for employees who work in the same career fields is the misalignment of salaries between supervisors and those they supervise. At BART the supervisor is held constant on the salary range while the employee they supervise is moving in a predictable and structured manner often right past them. The insanity of this speaks for itself.

The current pay band plan has a deleterious and expensive impact on recruiting. One example is in the Train Controller classification. Historically, one area of successful recruitment to fill vacancies in the Train Controller classification was from the BART

Foreworker ranks. But the Controllers are stagnant in a pay band while the Foreworkers, represented by another Union with salary steps, have moved through a step system to salary levels above the Controllers making recruitment almost impossible. The result has been less qualified applicants and a high drop-out rate from the rigorous twelve month training program. Over \$1 million dollars was wasted training 15 potential Controllers over the last 4 years only six of whom actually became certified. Five of the six were internal BART candidates three of whom took pay cuts to accept the position.

The result of the above is, and has been for at least a decade, constant friction and growing animosity between peers, between supervisors and line workers, between line workers, professionals, supervisors and upper management.

There will need to be several steps necessary to get an agreement. We have engaged on the first part which is to establish rules to govern a compensation system. Next we need to agree on the actual pay bands. The district seems to favor a new set of pay bands which will make things a little more complicated. Then we need to begin a transition involving the appropriate placement of current employees in the pay bands, whether current or new bands, to remedy past discriminatory pay practices. This will be very complicated because the current placement is so out of whack.

And, of course, we need agreement on the big issue which is funding a new pay structure. We are prepared to come up with some concessions from the existing agreement but, frankly, we had absolutely no involvement in allowing the current system to get so out of control and did not place a single employee on any pay band, so the district should bear the brunt of the cost. We are prepared to phase in a pay band implementation over the course of the agreement to reduce costs. But we need to see a real and guaranteed commitment to resolving the problem.

Attached are a series of an Excel spreadsheets which depict our problem.

The first charts plot placement of all employees within each classification represented by the American Federation of State County and Municipal Employees (AFSCME) Local 3993. It includes each an employee's hire date. It should be expected that employees with greater tenure are placed at higher points on the pay band. If BART had any system whatsoever to rate performance, it is possible merit might explain a variation from this theory. But BART does not measure performance and hasn't for years. The result is that people are just placed, thereby compensated, randomly and arbitrarily. The result is a complete mess but also yields every kind of salary discrimination possible.

The first tabs are the classification graphs. We have requested, since January, for an explanation for these salary placements. We are told they (BART representatives at the table) don't know but maybe it's because.... but only maybe. Then again maybe not. BART does not do performance evaluations. BART does not do desk audits or job reviews of any kind. BART representatives have been unable to explain the basis for a

single placement on any salary band. Not one. And, now proposes to continue a compensation system that easily lends itself to further abuse and discrimination

There is a second series of graphs showing how people were placed on the pay bands based on the point value of their jobs. The points are the product of a very expensive study commissioned by BART which ranks jobs according to a variety of factors. The more points the more valuable the job classification. You'll notice a point value at the top of each of the classification graphs. Each of the six pay bands is populated by classifications within a point range i.e. 600 to 650 Band A, 651 to 700 Band B (not the actual pay bands) etc. Just a cursory glance tells us that the higher the points does not always mean a higher placement which is the theory of the points. Actually it shows even more discriminatory pay practices than the first classification graphs.

Looking from left to right, the dots represent the placement of employees in order of their point values. The levels from top to bottom represent their salary. Theoretically the job at the far left should be placed lowest on the pay band while the job on the far right should have the highest placement on the salary band. In other words, the trend line should be moving up, from left to right, in a linear fashion as it reflects increasing point values hence increasing salaries. Instead, the line is simply a scatter gram.

There is, however, one level at BART where the pay band system seems to work well which is the upper reaches of management. While salaries have been frozen with virtually no movement within the pay bands and no general salary increases in the Professional and Supervisor classifications, maintenance or administrative support positions, the positions in upper management, non-represented employees, have seen significant increases based on "contractual bonuses", "merit" or cleverly disguised "promotions due to reorganization". These devices have increased salaries of 118 top managers since 2009. Salaries have been virtually frozen and desk audits cancelled for AFSCME Local 3993 members since before 2009, yet management has received millions of dollars in these salary increases. The deputy general manager alone received 3 such increases of \$30,000 during that time.

The San Francisco Bay Area is one of the most competitive employment markets in the country while having one of the highest costs of living. Top candidates have their pick of dynamic well-paying jobs with benefits such as fully-funded health care, employer funded Social Security payments of both the employer and employee contribution, matching 401K programs, stock options, etc. BART is already finding it difficult to attract IT professionals, engineers and highly skilled trades' people (electricians, elevator/escalator repair persons). If BART has any wish to attract smart, well-qualified employees who will help move the organization into the future, it has to create a better pay and benefit program, not gut the programs it has. The BART General Manager is fond of talking about how you have to maintain your house in order to keep the value and not face even more expensive repairs in the future. Well, BART's house is falling down all around and management needs a skilled and motivated workforce. They need a workforce willing to invest years of their lives to obtain the specialized knowledge that

makes BART work, not fly-by-night contractors who take all their knowledge with them when they move to the next job. There will be no "Fleet of the Future" or "BART Metro" without this motivated workforce. Improving infrastructure is only half the story--what makes BART work are long term workers who are invested in our success and compensated appropriately.

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO

13 **PEOPLE EX REL. EDMUND G. BROWN**
14 **JR., Governor of the State of California,**
15
16 **v.**
17
18 **AMALGAMATED TRANSIT UNION,**
LOCAL 1555; SERVICE EMPLOYEES
INTERNATIONAL UNION, LOCAL 1021;
19 **AMERICAN FEDERATION OF STATE,**
COUNTY AND MUNICIPAL
20 **EMPLOYEES, LOCAL 3993; SAN**
FRANCISCO BAY AREA RAPID
21 **TRANSIT DISTRICT; and DOES 1**
through 5000,
22
23 Respondents.

Case No.
**PETITIONER'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF EX PARTE
APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND ORDER
TO SHOW CAUSE RE INJUNCTION**

Date: August 11, 2013
Time: 9:00 a.m.
Dept: 304
Judge: Curtis Karnow
Trial Date: N/A
Action Filed: August 9, 2013

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 Governor Edmund G. Brown Jr. respectfully petitions this Court for a temporary
4 restraining order and order to show cause why an injunction should not issue precluding a strike
5 by Amalgamated Transit Union, Local 1555; Service Employees International Union, Local
6 1021; and American Federation of State, County and Municipal Employees, Local 3993
7 (collectively, the “Unions”), or any of them, as well as a lockout by the San Francisco Bay Area
8 Rapid Transit District (the “District”).

9 **STATEMENT OF FACTS**

10 Amalgamated Transit Union, Local 1555 (“ATU”) represents approximately 920 District
11 employees in classifications that include train operators and station agents. Service Employees
12 International Union, Local 1021 (“SEIU”) represents approximately 1,450 District employees in
13 the maintenance, clerical and professional classifications. ATU and SEIU are the two largest
14 unions representing District employees. The American Federation of State, County and
15 Municipal Employees, Local 3993 (“AFSCME”) represents approximately 220 supervisory and
16 professional personnel employed by the District. (Respondents ATU, SEIU and AFSCME are
17 collectively referred to herein as the “Unions.”)

18 The District operates the BART rail system. The District has been negotiating with ATU
19 and SEIU for new contracts for approximately four months, and began negotiations with
20 AFSCME even earlier. (Petition, Ex. C.) The existing collective bargain agreements by their
21 terms were to expire on June 30, 2013. At the end of June, the District and AFSCME entered into
22 a day-to-day contract extension that contained a “most favored nation” provision on economic
23 terms. *Ibid.*

24 The negotiations between the District and ATU and SEIU were not successful. On June 27,
25 2013, ATU and SEIU gave 72-hours notice of their intent to strike on July 1, following a strike
26 vote in which 99% of ATU voters and 98.5% of SEIU votes authorized the strike. *Ibid.* At 12:01
27 a.m. on July 1, ATU and SEIU workers went on strike and many AFSCME workers honored the
28 strike. *Ibid.* The strike caused the District to shut down Bart service and lasted four and one-half

1 days.

2 The Unions and the District reached an agreement on July 4, 2013 to extend the existing
3 collective bargaining agreements for 30 days, and BART service resumed on the afternoon of
4 July 5, 2013. *Ibid.* The District and the Unions also agreed that, during the 30-day period, they
5 would return to the bargaining table to attempt to resolve their dispute, with the assistance of the
6 State and Federal mediators. Despite the assistance of the mediators, the District and the Union
7 have been unable to resolve their differences and reach a settlement. The thirty-day extension
8 agreement expired at midnight on August 4, 2013.

9 In anticipation of the expiration of the extension agreement, on August 1, 2013, the Unions
10 again gave notice of a strike to commence at 12:01 a.m. on August 5, 2013. On August 4, 2013,
11 Governor Edmund G. Brown, upon request by the General Manager of the District, appointed a
12 Board of Investigation pursuant to Government Code section 3612.¹ (Petition, Exs. A and B.)
13 The effect of the Governor's action was to prohibit any strike or lockout during the period of the
14 Board's investigation. (Govt. Code, § 3612, subd. (b).) The Board made its report to the
15 Governor on August 8, 2013. (Petition, Ex. C.)

16 The Governor thereafter made his written request on August 9, 2013, that the Attorney
17 General bring this action to enjoin the strike or lockout and to impose a 60-day "cooling-off"
18 period pursuant to Government Code section 3614 Unless enjoined, the threatened strike will
19 significantly disrupt public transportation services in the greater San Francisco Bay Area and will
20 endanger the health, safety, and welfare of people dependent upon District services to meet their
21 transportation needs, as well as the many others who live and work in the San Francisco Bay
22 Area. (Petition, Exs. C, E.)

23 ARGUMENT

24 I. The Strike Should Be Enjoined For 60 Days

25 _____
26 ¹ Former Labor Code sections 1137-1137.6 were repealed and reenacted in June 2012 as
27 sections 3610-3616 of the Government Code without substantive change. (Stats. 2012, ch. 46,
28 § 91 [repealing Labor Code provisions]; Stats. 2012, ch. 46, § 11 [enacting Govt. Code, §§ 3610-
3616].)

1 A strike by or lockout of Union members will significant disrupt the Bay Area's public
2 transportation services and endanger the public's health, safety or welfare. Accordingly, this
3 Court should enjoin such a strike or lockout for 60 days, pursuant to Government Code
4 section 3614.

5 Government Code sections 3610 et. seq., are patterned after the emergency procedures of
6 the National Labor Relations Act, 29 United States Code sections 176-78. There are no reported
7 decisions interpreting the California statute,² but the federal courts have outlined the courts'
8 powers and duties under the corresponding federal law. The dual purpose of these statutes is to
9 alleviate a threat to the public health and safety and to promote settlement of the underlying
10 dispute. (*Seafarers Int'l Union. v. United States* (9th Cir. 1962) 304 F.2d 437, 442.) In meeting
11 these objectives, the courts have "a relatively minor role."

12
13 ² To the best of counsel's knowledge and belief, the statute has been invoked on the
14 following previous occasions. In 1982, Governor Brown petitioned to prevent a strike against the
15 Southern California Rapid Transit District (*People ex rel. Edmund G. Brown v. United*
16 *Transportation Union*, Los Angeles County Superior Court No. C418040). In 1985, Governor
17 Deukmejian petitioned to prevent a strike against the same entity (*People ex rel. George*
18 *Deukmejian v. United Transportation Union*, Los Angeles Superior Court No. C535164). In
19 1988, Governor Deukmejian petitioned to prevent a Bay Area Rapid Transit District strike
20 (*People ex rel. George Deukmejian v. Amalgamated Transit Union et al.*, San Francisco Superior
21 Court No. 894528). In 1991, 1994, and 1997, Governor Wilson petitioned the Contra Costa
22 Superior Court to prevent Bay Area Rapid Transit District strikes (*People ex rel. Pete Wilson v.*
23 *Amalgamated Transit Union et al.*, Contra Costa Superior Court No. C91-03113, *People ex rel.*
24 *Pete Wilson v. Amalgamated Transit Union, et al.*, Contra Costa Superior Court No. C94-03159,
25 and *People ex rel. Pete Wilson v. Service Employees International Union, et al.*, Contra Costa
26 Superior Court No. C97-02764). In 1997, Governor Wilson also petitioned the Santa Barbara
27 Superior Court to prevent a Metropolitan Transit District strike (*People ex rel. Pete Wilson v.*
28 *International Brotherhood of Teamsters, Local 186, et al.*, Santa Barbara Superior Court No.
221054). In 2000, Governor Davis petitioned the Los Angeles Superior Court to prevent an MTA
strike (*People ex rel. Gray Davis v. United Transportation Union, et al.*, Los Angeles Superior
Court No. BS064171). In 2001, Governor Davis also petitioned to prevent a Bay Area Rapid
Transit District strike (*People ex rel. Gray Davis v. Service Employees International Union, et al.*,
San Francisco Superior Court No. 322675 and *People ex rel. Gray Davis v. American Federation*
of State, County and Municipal Employees, San Francisco Superior Court No. 323545), and also
to prevent a North County Transit District strike in San Diego (*People ex rel. Gray Davis v.*
Teamsters et al., San Diego Superior Court No. GIC777724). In 2003, Governor Davis
petitioned to prevent strikes against the Los Angeles Metropolitan Transit District (*People ex rel.*
Gray Davis v. United Transportation Union, Los Angeles Superior Court No. BC299296 and
People ex rel. Gray Davis v. Amalgamated Transit Union-Local 1277, Los Angeles Superior
Court No. BC300663). In 2007, Governor Schwarzenegger petitioned to prevent a strike against
the Orange County Transportation Authority (*People ex rel. Arnold Schwarzenegger v.*
Teamsters, Local 952, et al., Orange County Superior Court No. 07CC05635).

1 First, the only purpose for which an injunction may be entered . . . is to enjoin a strike
2 or lock-out, or the continuing thereof which, if permitted to occur or to continue,
3 would imperil the [public] health or safety. Second, the only function which such an
4 injunction may serve is to maintain the status quo as it existed before the actual or
5 threatened strike or lock-out. Third, in considering whether to grant or deny such an
6 injunction, the courts may not enter into general inquiries of a character which would
7 be entirely appropriate under other circumstances. Fourth, if an injunction is issued it
8 must be industry-wide, and may not be fashioned to permit selective relief on some
9 basis deemed adequate to meet the needs of the [public] health and safety. Fifth, the
10 injunction must be discharged [within the statutory time frame].

11 Subject only to these limitations as to purpose, function, scope and duration, however,
12 the courts have full power to fashion an injunction which will meet the situation.

13 (*Id.* at pp. 442-43, citations and footnotes omitted.)

14 In determining whether an injunction should issue, the courts' evidentiary inquiry is also
15 limited.

16 All that is left for the courts in deciding whether to issue an injunction, is a
17 determination as to whether a strike or lock-out, threatened or actual, affects an
18 industry of the kind described in the statute in such a manner that, if permitted to
19 occur or continue, will imperil the [public] health or safety. If findings of this kind
20 are made, the court has no alternative but to issue the injunction.

21 (*Id.* at 442-43, fn. 8, citation omitted. Accord *United Steelworkers v. United States* (1959) 361
22 U.S. 39, 40-41; *United States v. Pacific Maritime Ass'n* (N.D. Cal. 2001) 229 F.Supp.2d 202,
23 1008-1010, 10015 (the district court's inquiry ends when the statutory findings are made).)

24 In reaching its decision, the Court should give deference to the determinations of the
25 requesting executive. (*United Steelworkers of America v. United States* (1959) 361 U.S. 39, 48
26 (concurring opinion of Justices Frankfurter and Harlan.)) In a situation where the public welfare
27 is at stake and time is limited, the government should not be put to an unreasonable evidentiary
28 burden. (*Id.* at p. 52.) Review of the wisdom of the petitioning executive's approach is not a
matter within the court's concern. (*Id.* at p. 58.)

29 The California statute is essentially the same as the federal law except that it is narrower in
30 its scope of application. In California, the emergency injunctive procedure applies only to public
31 transit strikes and/or lockouts. (Government Code § 3610 et seq.) However, the courts' role and
32 their powers and duties under the statute are identical.³

33 ³ In the 1982, 1985 and 2003 cases relative to the Metropolitan Transit Authority, the Los
34 Angeles Superior Court entered its 60-day injunction on no evidentiary showing other than the
(continued...)

1 Upon finding that a strike or lockout will “significantly disrupt transportation services and
2 endanger the public’s health, safety, or welfare” a court “shall issue an order enjoining such strike
3 or lockout” for 60 days. (Gov. Code, § 3614.)

4 In the present case, the Board of Investigation determined that “a strike will cause
5 significant harm to the public’s health, safety, and welfare.” (Petition, Ex. C, p. 7.) The
6 unrebutted evidence presented at the hearing supports that conclusion. Approximately 400,000
7 passengers ride BART each workday. (*Ibid.*) During the July strike, morning peak hour driving
8 times between Walnut Creek and West Oakland increased by approximately 140%. (*Id.*, p. 6.)
9 The increased traffic congestion generated almost 16 million pounds of carbon, polluting the air,
10 and wasted almost 800,000 gallons of fuel. (Petition, Ex. E.) And this occurred during a light
11 traffic week on which the Fourth of July holiday fell.

12 Alternative modes of transit, such as regional buses and ferry service cannot come close to
13 substituting for BART. (Petition Ex. E.) A single BART car holds as many people as a single
14 ferry or bus; during peak hours there are approximately 570 BART cars circling the Bar Area.
15 (*Ibid.*) Moreover, regional buses share the highways with automobiles. During a BART strike
16 the bus system is much less productive because of the greater traffic congestion. (*Ibid.*) A work
17 stoppage by the Unions or a lockout of the Unions by the District would significantly disrupt
18 public transportation services in the greater San Francisco Bay Area.

19 The economic costs of a BART strike are staggering. The Bay Area Council has estimated
20 that the direct cost of a BART strike to the region is \$73 million per day. (Petition, Ex. E.)
21 Moreover, there are substantial indirect costs – fewer people dining out and attending events, and
22 fewer visitors to the Bay Area. (*Ibid.*) The public’s health, safety and welfare includes more than
23 simply physical well-being, but also includes “the essential well-being of the economy.” (*United*

24 _____
25 (...continued)

26 Governor’s determination and the reports of the appointed Boards of Investigation. In 1988, the
27 San Francisco Superior Court issued a temporary restraining order and order to show cause on the
28 same basis. Similarly, in 1991, 1994, and 1997, the Contra Costa Superior Court issued a
temporary restraining order and order to show cause based solely on the Governor’s
determination and the report of the Board of Investigation. Petitioners received orders likewise in
the 1997 Santa Barbara, 2000 Los Angeles, and 2001 San Francisco and San Diego cases.

1 *States v. Pacific Maritime Ass'n* (N.D. Cal Cir. 2002) 229 F.Supp.2d 1008, 1011 (quoting *United*
2 *States v. Int'l Longshoremen's Ass'n* (7th Cir. Nov. 5, 1971) 1971 WL 2992, at *3); see *United*
3 *Steelworkers v. United States* (1959) 361 U.S. 39.) The economy of the Bay Area plainly will
4 suffer if another BART strike or lockout occurs.

5 But even if the public's health, safety and welfare was construed narrowly to mean the
6 physical health, safety and welfare of its citizenry, the requirements for a 60 day cooling off
7 period have been met. The increased traffic congestion from a strike can be expected to lead to
8 more traffic accidents. Emergency response vehicles responding to accidents will be hindered by
9 traffic congestion. The results of the delays could be life threatening. (Petition, Ex. C, p. 6.)
10 Persons who rely on caregivers, persons without automobiles, and children, could be substantially
11 and negatively impacted by a strike. (Petition, Ex. E.)

12 The harm that would be caused by another BART strike is not seriously disputed by the
13 Unions. ATU agrees that a strike would harm the Bay Area. (Petition, Ex. C.) SEIU took no
14 position on the issue (*ibid.*), but acknowledged in its statement of position that the "ultimate
15 question of whether or not a cooling off period should be established rests with the Governor."
16 (Petition, Ex. H.) Similarly, while the Board of Investigation found that AFSCME disagreed that
17 a strike would cause danger to the public's health, safety or welfare, AFSCME conceded in its
18 statement of position that "[a] strike will certainly be a great inconvenience to BART riders and
19 Bay Area commuters. The Governor himself must decide if this inconvenience constitutes a
20 danger to the public's health, safety or welfare." (Petition, Ex. I.)

21 In the Governor's opinion, for the reasons articulated above, a strike by the Unions or a
22 lockout by the District would result in significant disruption of public transportation and danger
23 to the health, safety, and welfare of the public transportation dependent community in the greater
24 San Francisco Bay Area.

25 CONCLUSION


26 For these reasons, petitioner respectfully requests that the Court issue a temporary
27 restraining order and order to show cause to prevent a strike by the ATU, the SEIU or the
28

1 AFSCME, or a lockout by the District, pending a hearing on petitioner's request for an injunction.
2 At the hearing on the injunction, petitioner will request that this Court issue an order enjoining a
3 strike or lockout for a period of 60 days.
4

5 Dated: August 9, 2013

Respectfully Submitted,

KAMALA D. HARRIS
Attorney General of California
DOUGLAS J. WOODS
Senior Assistant Attorney General

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People Ex Rel. Edmund G. Brown Jr.,
Governor of the State of California

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FINAL BART Memorandum in Support of Ex Parte.docx

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9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11

12
13 **PEOPLE EX REL. EDMUND G. BROWN**
JR., Governor of the State of California

14 Petitioner,

15 v.

16
17 **AMALGAMATED TRANSIT UNION,**
LOCAL 1555; SERVICE EMPLOYEES
18 **INTERNATIONAL UNION, LOCAL 1021;**
AMERICAN FEDERATION OF STATE,
19 **COUNTY AND MUNICIPAL**
EMPLOYEES, LOCAL 3993; and DOES 1
20 **through 5000,**

21 Respondents.

Case No.

22
23 **DECLARATION OF SHARON L.**
O'GRADY IN SUPPORT OF EX PARTE
24 **APPLICATION FOR TEMPORARY**
25 **RESTRAINING ORDER AND ORDER**
26 **TO SHOW CAUSE RE INJUNCTION**

27 Date: August 11, 2013
Time: 9:00 a.m.
28 Dept: 304
Judge: Curtis E.A. Karnow
Trial Date: N/A
Action Filed: August 9, 2013

22 I, Sharon L. O'Grady, hereby declare:

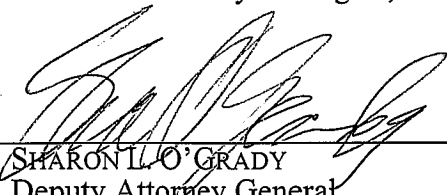
23 1. I am an attorney admitted to practice before the courts of the State of California. I
24 am a Deputy Attorney General for the State of California and the attorney of record in this case
25 for Petitioner Edmund G. Brown Jr., Governor of the State of California. The matters set forth in
26 this Declaration are true of my own knowledge, and if called as a witness I could and would
27 testify competently thereto.
28

1 2. On August 9, 2013, the Governor requested that Attorney General Kamala D.
2 Harris petition this Court for an injunction under Government Code section 3614 in connection
3 with the labor dispute between the San Francisco Bay Area Rapid Transit District (the "District")
4 and District employees represented by the Amalgamated Transit Union, Local 1555 ("ATU"); the
5 Service Employees International Union, Local 1021 ("SEIU"); and the American Federation of
6 State, County and Municipal Employees, Local 3993 ("AFSCME"), (collectively, the "Unions").

7 3. On August 9, 2013 between approximately 9:45 a.m. and 9:55 a.m., I left voice-
8 mail messages for Katherine Hallward, counsel for ATU, and Vincent Harrington, counsel for
9 SEIU. During that same period I spoke with Matthew Burrows, counsel for the District and
10 Patricia Shuchardt, President of AFSCME. I informed them that I would appear before this Court
11 at 9:00 am on Sunday, August 11, 2013 to present this Court with an ex parte request for a
12 temporary restraining order and order to show cause re an injunction establishing the 60-day
13 cooling-off period pursuant to Government Code section 3614. I subsequently spoke with
14 counsel for ATU and SEIU and with Ms. Schuchardt. I am advised that representatives for the
15 District and for each of the Unions will attend the hearing on August 11, 2013.

16 Counsel for the ATU, SEIU and Ms. Schuchardt (for AFSCME) advised me that the Unions
17 do not oppose the 60-day cooling-off period, but may have issues with the form of order. Mr.
18 Burrows informed me that the District does not oppose the 60-day cooling off period.

19 I declare under penalty of perjury under the laws of the State of California that the
20 foregoing is true and correct and that this is executed this 9th day of August, 2013.

21
22
23 
24 SHARON L. O'GRADY
25 Deputy Attorney General
26 *Attorneys for Petitioner*
27 *People Ex Rel. Edmund G. Brown Jr.,*
28 *Governor of the State of California*

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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN FRANCISCO
12

13 **PEOPLE EX REL. EDMUND G. BROWN**
14 **JR., Governor of the State of California**

Petitioner,

15 v.
16

17 **AMALGAMATED TRANSIT UNION**
18 **LOCAL 1555; SERVICE EMPLOYEES**
19 **INTERNATIONAL UNION, LOCAL 1021;**
20 **AMERICAN FEDERATION OF STATE,**
21 **COUNTY AND MUNICIPAL**
22 **EMPLOYEES, LOCAL 3993; SAN**
23 **FRANCISCO BAY AREA RAPID**
24 **TRANSIT DISTRICT; DOES 1 through**
25 **5000**

Respondents.

Case No.

[PROPOSED] INJUNCTION

Date: August 11, 2013
Time: 9:00 a.m.
Dept: 304
Judge: Curtis Karnow
Trial Date: N/A
Action Filed: August 9, 2013

26 Upon the petition of Governor Edmund G. Brown Jr., , the memorandum of points and
27 authorities and exhibits filed in support thereof, and the record in this action, this matter was
28

1 heard Ex-Parte on August 11, 2013 at 9:00 a.m. in Department 304 before the Hon. Curtis
2 Karnow.

3 The Court hereby finds that a threatened or actual strike or lockout, if permitted to occur or
4 continue, will significantly disrupt public transportation services and endanger the public's health,
5 safety or welfare, and it appearing to the satisfaction of the Court that this is a proper case for
6 granting an injunction pursuant to Government Code section 3614,

7 THE COURT HEREBY ORDERS THAT respondents and their officers, agents, servants,
8 employees, representatives, and members and all persons in active concert or participation with
9 them are hereby restrained and enjoined from threatening or engaging in any strike or lockout, for
10 a period of 60 days, through and including midnight on October 10, 2013.

11 IT IS SO ORDERED.

12 Dated: August 11, 2013

13 JUDGE OF THE SUPERIOR COURT
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25 SA2013111711
26 Proposed Order - Injunction FINAL.doc
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**SUMMONS
(CITACION JUDICIAL)**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

AMALGAMATED TRANSIT UNION, LOCAL 1555; SERVICE
EMPLOYEES INTERNATIONAL UNION, (Continued on page 2)

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

PEOPLE EX. REL. EDMUND G. BROWN JR., Governor of the State
of California

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):

Superior Court of the State of California County of San Francisco
400 McAllister St. San Francisco, CA 94102-4514

CASE NUMBER:
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Sharon L. OGrady, 455 Golden Gate Ave., San Francisco, CA 94102, (415) 703-5899

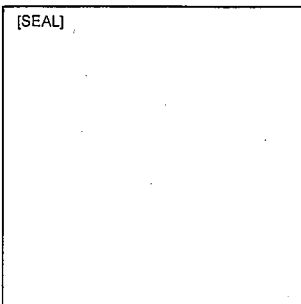
DATE:
(Fecha)

Clerk, by
(Secretario)

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):
3. on behalf of (specify):
 under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
4. by personal delivery on (date):

SHORT TITLE: People Ex. Rel. Edmund G. Brown v. Amalgamated Transit Union, et al	CASE NUMBER:
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INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

Plaintiff
 Defendant
 Cross-Complainant
 Cross-Defendant

LOCAL 1021; AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES,
 LOCAL 3993; SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT; and DOES 1 through 5000.