

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:

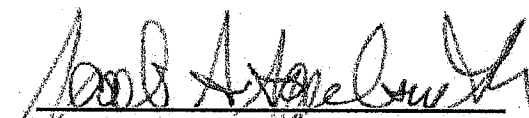
Mike Arata
Michael Cunningham
Sarah Larson
Jack Frolic
Steven Babiak
Rebecca K. Morrow
Steve Zeltzer
Jim Fink
Tim Paulson
Shelly Kesler
Josie Kamacho
Chris Finn
Jerry Holly
Chris Daly
Jon Kozlosky

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

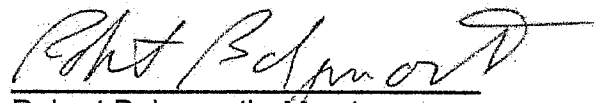
Respectfully submitted:



Jacob Appelsmith, Chairman



Micki Callahan, Member



Robert Balgenorth, Member