

**California Public Transit Agencies
Labor Relations Guide**

***Second Edition
September 2013***

I. Introduction and Overview of Public Transit Districts in California

This Guide is intended to provide advocates and neutrals with a resource for understanding the legal framework for labor relations between California Transit Districts and their collective bargaining representatives and employees. Although every effort has been made to ensure accuracy of this Guide, it is not intended to provide legal advice or to substitute for the services of legal counsel.

A. California Public Utilities Code Transit Districts

California has sixteen active Transit Districts established by various provisions of the California Public Utilities Code (PUC). The current, established¹ PUC Transit Districts are:

1. Alameda-Contra Costa Transit District (PUC § 24501 et seq. [AC Transit])
2. Golden Empire Transit District (PUC § 101000 et seq. [GET Bus])
3. Los Angeles County Metropolitan Transportation Authority (PUC § 130050.2, 30000 et seq. [LA Metro or LAMTA])
4. Marin County Transit District (PUC § 70000 et seq.) [Golden Gate Transit]
5. Monterey-Salinas Transit District (PUC § 106000 et seq.)
6. North County Transit District (PUC § 125000 et seq.) [NCTD]
7. Orange County Transportation Authority (PUC § 40000 et seq.) [OCTA]
8. Sacramento Regional Transit District (PUC § 102000 et seq.) [RT]
9. San Diego Metropolitan Transit System (PUC § 120050 et seq.) [MTS]
10. San Francisco Bay Area Rapid Transit District (PUC § 28500 et seq. [BART])
11. San Mateo County Transit District (PUC § 103000 et seq.) [SamTrans and Caltrain]
12. Santa Barbara Metropolitan Transit District (PUC § 95000 et seq.) [MTD Santa Barbara]
13. Santa Clara Valley Transportation Authority (PUC § 100000 et seq.) [VTA]

¹ Two PUC Transit Districts have PUC enabling statutes but have not been formed as Transit Districts: (1) Fresno Metropolitan Transit District (PUC Appendix A) and (2) West Bay Rapid Transit Authority (PUC Appendix B). Some PUC Transit Districts have been significantly reorganized since they were initially established by various mergers and acquisitions, or reconfigured to encompass new territory and services. For example, LAMTA was originally called Southern California Rapid Transit District or SCRTD (PUC § 30000 et seq.). As another example, San Diego Metropolitan Transit Development Board, (originally established by the San Diego County Transit District Act of 1965 [PUC § 90000 et seq.]) is currently part of the San Diego Metropolitan Transit System (PUC § 120000 et seq.) which includes San Diego Trolley, commuter rail, and light rail services. (See <http://sdmts.com/MTS/timeline.asp>.) The list above identifies each of the PUC Transit Districts as they exist in September 2013. The defunct PUC Transit Districts are not further discussed in this Guide.

14. Santa Cruz Metropolitan Transit District (PUC § 98000 et seq.) [Santa Cruz Metro]
15. Sonoma-Marín Area Rail Transit District (PUC §§ 105000 et seq.) [SMART]
16. San Joaquin Regional Transit District (PUC § 50000 et seq.) [San Joaquin RTD]

Each of the Acts creating these PUC Transit Districts (with the exception of the Monterey-Salinas Transit District Act) contains provisions for labor relations.² These labor relations provisions govern the bargaining relationship between the PUC Transit District, as employer, and the employee organizations, or unions, representing bargaining units of employees. The labor relations provisions also cover procedures for recognizing employee organizations to represent employees for bargaining purposes, and for determining and establishing appropriate bargaining units.³ These labor relations provisions for the PUC Transit Districts are the primary subject of this Guide.

Appendix A to this Guide contains a chart setting forth the relevant code sections and summarizing the labor relations provisions contained in each Transit District Act.⁴

B. California Government Code Labor Relations Acts Applicable to MMBA Transit Agencies

Most other California public employees are covered by one of eight labor relations Acts contained primarily in the Government Code. These Government Code Acts govern labor relations between other types of public employers (such as school districts, public universities, the Superior Courts, and local agencies) and the unions of their employees. The Government Code Acts also contain separate procedures for recognizing employee organizations and determining appropriate bargaining units.

² A useful summary of the history and adoption of the various Transit District Acts may be found in *Sacramento City Unified School District (1987) PERB Order No. IR-49* and *Central Contra Costa Transit Authority (2012) PERB Decision No. 2263-M*.

³ Representation disputes with respect to the Sonoma-Marín Area Rail Transit District are covered by the MMBA and under PERB's jurisdiction. (PUC, § 105140.) None of the other Transit District Acts contain this provision.

⁴ Under the 1964 Urban Mass Transit Act (now known as the Federal Transit Act, codified at 49 USC § 5301 et seq), federal funds were allocated to state and local governments for the purchase of private transit systems. Under section 13(c) of the Act (49 USC § 5333), this funding was made contingent upon preserving existing collective bargaining rights. Accordingly, many California Transit Districts entered into "Section 13(a) Agreements" with incumbent employee organizations to continue existing collective bargaining relationships.

C. The Public Employment Relations Board

The Public Employment Relations Board (PERB or Board) has authority to enforce and interpret the Government Code Acts. PERB also has jurisdiction over labor relations for *supervisory* employees of the Los Angeles Metropolitan Transportation Authority.⁵ PERB has promulgated regulations to administer the Acts within its jurisdiction, at Title 8, California Code of Regulations, sections 31001 et seq.

PERB is governed by a Board, which consists of up to five members, and acts as an appellate body and issues precedential decisions concerning legal issues within its jurisdiction under the Government Code Acts. These precedential decisions, along with general information about PERB, are available on PERB's website, at www.perb.ca.gov.

The statutory Acts enforced by PERB are:

- (1) Educational Employment Relations Act, covering school district employers and employees. (Gov. Code, § 3540 et seq. [EERA].)
- (2) Higher Education Employer-Employee Relations Act, covering public university employers and employees. (Gov. Code, § 3560 et seq. [HEERA].)
- (3) Dills Act, covering State agency employers and employees. (Gov. Code, § 3512 et seq. [Dills Act].)
- (4) Meyers-Milias-Brown Act, covering city, county and special district employers and employees. (Gov. Code, § 3500 et seq. [MMBA].)
- (5) Trial Court Employment Protection and Governance Act, covering employees of the Superior Courts. (Gov. Code, § 71600 et seq. [Trial Court Act].)
- (6) Trial Court Interpreter Employment and Labor Relations Act, covering interpreters employed by the Superior Courts. (Gov. Code, § 71800 et seq. [Court Interpreter Act].)
- (7) Los Angeles Metropolitan Transportation Authority Transit Employer-Employee Relations Act, covering *supervisory* employees only of the Los Angeles Metropolitan Transportation Authority. (PUC § 99560 et seq. [TEERA].) While this unique Act is contained in the Public Utilities Code, it is treated herein as being one of the Government Code Acts.
- (8) In-Home Supportive Services Employer-Employee Relations Act, covering certain providers of in-home supportive services. (Gov. Code, § 110000 [IHSS-EERA].)

It is not uncommon for local agencies— primarily cities and counties—to provide public transit services. These local agencies, which are not PUC Transit Districts, are generally subject to the MMBA and to PERB's jurisdiction. For example, the San Francisco Municipal Transit Agency is treated as a division of the City and County of

⁵ The Los Angeles Metropolitan Transportation Authority is one of the PUC Transit Districts. (See fn. 1, *ante*.)

San Francisco, and is considered to be covered by the MMBA. (See, e.g., *IFPTE, Local 21, AFL-CIO (Hosny)* (2011) PERB Decision No. 2192-M.) Other examples of MMBA transit providers are: Omnitrans, which is considered a public agency under the MMBA and operates bus services in several Southern California communities (See, e.g., *Omnitrans* (2010) PERB Decision No. 2143-M); the Fresno Area Express (FAX), operated by the City of Fresno (<http://www.fresno.gov/DiscoverFresno/PublicTransportation/default.htm>); and the Golden Gate Bridge and Highway Transportation District (*Golden Gate Bridge Highway & Transportation District* (2004) PERB Decision No. 1669-M). The subject of labor relations for employers and employees in these non-PUC Transit Districts is beyond the scope of this guide.⁶

D. The State Mediation and Conciliation Service

The California State Mediation and Conciliation Service (SMCS) is a neutral state agency which provides a wide range of mediation and conciliation services for public employees and employers, primarily with respect to representation issues and labor disputes. SMCS is authorized and enabled by California Labor Code Sections 65 through 67. SMCS's communications and records relating to mediation are confidential. (Labor Code, § 65.)

The SMCS was established in 1947 as a division of the California Department of Industrial Relations (DIR). Effective July 1, 2012, SMCS was made part of PERB. SMCS continues its same work and role as a neutral provider of mediation and conciliation service for labor disputes. Applicable statutes and regulations have been modified (or are in the process of being modified) to reflect technical and administrative changes.

As discussed in more detail below, SMCS plays a very important role in mediating labor disputes which arise under the Transit District Acts. SMCS also has the primary responsibility for setting and holding elections where there is a question concerning representation of employees in Transit Districts.⁷ More information about SMCS is available on the PERB website.⁸

⁶ For a general legal treatise covering PERB's jurisdiction over California employer-employee relations, see Zerger, et al., *California Public Sector Labor Relations* (2012).

⁷ California Code of Regulations, Title 8, sections 93000 et seq.

⁸ For a general guide to the functions of SMCS, see Fecher, *Pocket Guide to Public Sector Mediation in California* (July 2012). For a discussion of the functions of SMCS relative to representation matters for PUC Transit Districts, see Zerger, et al., *California Public Sector Labor Relations* (2012) pp. 7-1 to 7-15.

II. Applicability of the MMBA to Transit District Labor Relations

Many of the PUC Transit District Acts specifically provide either that the MMBA does not apply or that the Government Code in general does not apply. In addition, PERB and the courts have both held that the Legislature did not intend to make the PUC Transit Districts and their employees subject to the MMBA or PERB's jurisdiction under that Act. (*Rae v. Bay Area Rapid Transit Supervisory etc. Assn.* (1980) 114 Cal.App.3d 147 [*Rae v. BART Sup. Assn.*]; *San Francisco Bay Area Rapid Transit Dist. v. Superior Court* (1979) 97 Cal.App.3d 153 [*BART v. Sup. Ct.*]; *Public Transportation Services Corporation* (2004) PERB Decision No. 1637-M; *San Diego Trolley, Inc.* (2007) PERB Decision No. 1909-M.)

In *Rae v. BART Sup. Assn.*, the Court of Appeal held that a Transit District with its own statutorily prescribed method of administering employer-employee relations is not subject to the MMBA. (*Rae v. BART Sup. Assn.*, *supra*, 114 Cal.App.3d at p. 151.) The Transit District Act covering BART (PUC, § 28500 et seq., [BART Act]) does not have an exclusion for MMBA or the Government Code; it is silent on the matter. Nevertheless, the Court clearly held that the MMBA does not apply to disputes arising under the BART Act. (*Rae v. BART Sup. Assn.*, *supra*, 114 Cal.App.3d at p. 151.)

Generally, however, the MMBA does apply to public transit services that are not operated by Transit Districts. In *Central Contra Costa Transit Authority*, *supra*, PERB Decision No. 2263-M, PERB held that a transportation agency operated as a Joint Powers Agreement (JPA) was a public agency subject to the MMBA. PERB held that the definition of "public agency" for the purposes of the MMBA is broad enough to encompass a JPA agency. However, PERB noted the rule articulated by *Rae v. BART Sup. Assn.*, *supra*, 114 Cal.App.3d 147, that the PUC Transit Districts are treated differently, in part because they were formed before the MMBA was enacted. (*Central Contra Costa Transit Authority*, *supra*, PERB Decision No. 2263-M, at p. 10.)

III. Statutes Governing Public Transportation Labor Disputes

Government Code sections 3610 et seq. provide for the resolution of public transportation labor disputes.⁹ These sections provide for two types of dispute resolution procedures: (1) authorizing the Governor to appoint a Board of Investigation (BOI) in the event of a threatened or actual strike or lockout, with an initial seven-day "cooling off" period (Gov. Code, §3612) during which the BOI gathers facts with respect to the labor dispute and prepares a report for the Governor; and (2) mediation of bargaining disputes involving agencies that are not subject to the MMBA (Gov. Code, § 3611, subd. (d).) In addition, these sections specifically provide for a type of injunctive relief action, to be brought by the Attorney General in the discretion of and upon request

⁹ These sections were previously codified at Labor Code sections 1137 et seq. These sections were moved to the Government Code, without substantive change, when the SMCS was transferred to PERB in 2012. (Stats. 2012, ch. 46, § 11.)

by the Governor once he or she receives the BOI's report, to provide an additional "cooling off" period of 60 days. (Gov. Code, §3614.)

A. BOI Proceedings

Government Code section 3612 provides that the Governor may appoint a BOI at the request of either party when, in the opinion of the Governor, a threatened or actual strike or lockout will "significantly disrupt public transportation services and endanger the public's health, safety, or welfare." (Gov. Code, § 3612, subd. (a).) The BOI process creates a "cooling-off" period in order to avert or delay a work stoppage, and provide an opportunity for additional negotiations between the parties.

Section 3612 does not distinguish between strikes/lockouts involving public transit employees of MMBA-covered employers, and strikes/lockouts involving employees of the PUC Transit Districts. Although "local agency" and "public transit employee" are broadly defined for the purposes of the statutory chapter,¹⁰ these terms are not used in Government Code section 3612. The BOI provisions appear to apply to any strike/lockout which would significantly disrupt public transportation, without limiting application to a specific type of public employer.

The BOI, if appointed, consists of up to five members, one of whom is designated as by the Governor as chairperson. (Gov. Code, § 3613.) The BOI may hold public hearings to ascertain the facts regarding the causes and circumstances of the dispute, and has statutory authority to summon witnesses and require the production of documents. (*Ibid.*) The BOI must make a written report to the Governor within seven days of appointment. (Gov. Code, § 3612, subd. (a).) The report must include a statement of the facts and the positions of the parties, but must not contain recommendations. (*Ibid.*) A strike or lockout during the seven-day investigation period is prohibited. (*Id.*, subd. (b).)

Upon receiving the BOI report, the Governor may request that the Attorney General seek a court injunction to prohibit a threatened strike or lockout for an additional period of 60 days. (Gov. Code, § 3614.) The court "shall" issue an injunction if the court finds that the strike or lockout will significantly disrupt public transportation services and endanger the public's health, safety or welfare. (*Ibid.*) There appear to be no significant reported cases, regulations, or attorney general opinions which discuss the BOI proceedings or reports.¹¹

¹⁰ "Local agency" means a city, county, special district or other public entity in the state, including a charter city or a charter county. (Gov. Code, § 3610, subd. (a).) "Public transit employee" means an employee of PUC Transit Districts, the Golden Gate Bridge and Highway Transportation District (GGBHTD), and employees of local agencies who work for transit services. (Gov. Code, § 3610, subd. (b).)

¹¹ A summary of selected BOI reports is attached to this Guide as Appendix D.

Historically, SMCS and the DIR's Office of the Director, Legal Unit (OD-Legal) provided administrative assistance to the Governor's Office in planning for and facilitating BOI proceedings. With the transfer of SMCS to PERB, these functions will continue to be performed by SMCS. The BOI statutes provide for very short timelines, and a substantial effort by all parties is necessary to ensure that the panel is correctly requested and quickly convened. Cooperation of all parties is essential to holding a full public hearing on very short notice. Parties contemplating or participating in a BOI proceeding must ensure that they communicate regularly with SMCS and promptly alert the Chief of SMCS regarding any developments which may give rise to a BOI.

SMCS will provide administrative support for BOI proceedings (those duties formerly performed by SMCS and OD-Legal) upon request by the Governor's Office, including: (1) receiving and transmitting as appropriate nonconfidential information from the parties or SMCS mediators regarding potential transit strikes/lockouts; (2) providing the Governor's Office with contact information and details regarding the parties to a dispute; (3) assisting the Governor's Office in identifying possible BOI panel members; (4) arranging for transportation, accommodations, and payment for BOI panel members; (5) arranging for the public hearing and court reporter; (6) providing technical and computer support for the BOI process; (7) assisting the panel with document management; (8) directing press inquiries as appropriate; (9) assisting the BOI panel with preparation of the written report; and (10) providing information and assistance in furtherance of the Attorney General's statutory authority to seek an injunction upon request by the Governor. If the BOI report results in a request by the Governor to the Attorney General to seek a 60-day injunction against the occurrence or continuation of a strike/lockout, SMCS should maintain communications with those offices to monitor any ensuing court actions, and to provide additional assistance to the parties upon request.

B. Mediation of Bargaining Disputes

Government Code section 3611 provides that, notwithstanding any other law, the following provisions "shall" govern disputes between unions of public transit employees and covered employers: (1) such disputes are not subject to any fact-finding procedure otherwise provided by law; (2) parties shall exchange proposals ("sunshine") at least 90 days prior to the expiration of an MOU, and begin formal bargaining at least 60 days prior to expiration; (3) each party shall supply to the other party all reasonable data as requested by the other party; (4) at the request of either party, a SMCS mediator will be assigned to mediate the dispute, and shall have access to all formal negotiations. Parties who are covered under the MMBA are expressly excluded from this provision.¹²

The purpose of this provision is to provide a mechanism for resolving collective bargaining disputes between Transit Districts and their employees, because they are

¹² Government Code section 3611 states that it governs disputes between exclusive bargaining representatives of public transit employees and local agencies, and expressly provides that section 3611 itself does not apply to any local agency subject to the MMBA.

not covered by the MMBA. By its terms, this provision supersedes any factfinding requirements contained in the various Transit District Acts.¹³ This provision also requires that SMCS mediators have access to all formal negotiations, to ensure that they will be fully informed of all positions and best able to help the parties reach a mediated settlement. This provision also requires the parties to fully exchange information and data upon request.¹⁴

C. Injunction Proceedings for Public Transportation Labor Disputes

Government Code section 3614 provides that the Governor, upon receiving the BOI report, may request the Attorney General to, and he or she shall, petition any court of competent jurisdiction to enjoin a strike or lockout, or the continuing thereof, for a period of 60 days. (Gov. Code, § 3614.) If the court finds that a threatened or actual strike or lockout would significantly disrupt public transportation services and endanger the public's health, safety or welfare, the court "shall" issue an order enjoining the strike or lockout. (*Ibid.*)

IV. Representation Procedures and Issues for Transit Districts and Their Employee Organizations

The PUC Transit District Acts generally grant employees the right to form and choose an employee organization to represent them in good faith negotiations with the employer concerning wages, hours, and other terms and conditions of employment.¹⁵ The nature and extent of these rights are described and phrased differently under the different applicable PUC sections.

The Transit District Acts also authorize SMCS¹⁶ to resolve disputes over questions of representation. SMCS plays a significant role in helping to resolve labor disputes for

¹³ Although several of the Transit District Acts contain provisions for factfinding, these provisions are abrogated by Government Code section 3611, subdivision (a)

¹⁴ PERB has held that a similar requirement to provide information applies to bargaining under the Government Code Acts it administers. (*Stockton Unified School District* (1980) PERB Decision No. 143 [EERA]; *City of Burbank* (2008) PERB Decision No. 1988-M [MMBA].)

¹⁵ As noted above, Representation disputes with respect to the Sonoma-Marín Area Rail Transit District are covered by the MMBA and under PERB's jurisdiction. (PUC, § 105140.) None of the other Transit District Acts contain this provision. Also, as indicated elsewhere in this Guide, the Monterey-Salinas Transit District Act does not include provisions for labor relations.

¹⁶ As noted above, effective July 2012, SMCS was transferred from DIR to PERB. Technical changes were made to all applicable statutes and regulations. Previous references to the DIR Director are now to the Supervisor of SMCS.

the PUC Transit Districts and the labor organizations of their employees. The PUC section for each Transit District which authorizes SMCS to resolve representation disputes is identified in the chart at Appendix A to this Guide.

Effective July 1, 2013, regulations covering representation procedures and issues under the Transit District Acts are at California Code of Regulations, Title 8, sections 93000 et seq (herein, Representation Regulations).¹⁷ SMCS administers these regulations. The regulations, and SMCS's application of them, generally follow relevant federal law and administrative practice developed under the Federal Labor Management Relations Act of 1947, as amended (codified at 29 USC § 159 et seq. [commonly known as the Taft-Hartley Act]). The Representation Regulations provide that, in resolving representation matters, SMCS "shall apply" relevant federal law and administrative practice developed under the Taft-Hartley Act. (Representation Regulations, §93080.)

Again, supervisory employees of the Los Angeles Metropolitan Transportation authority are excluded from the Representation Regulations, as they are covered under TEERA and under PERB jurisdiction. Representation proceedings for employers subject to the MMBA are determined by local rules adopted by the local agency pursuant to Government Code section 3507, or, in the absence of local rules, by PERB laws and regulations.

A. Types of Petitions

Section 93005 of the Representation Regulations provides procedures by which an employee organization can be certified, or recognized, to represent a group of employees employed by the Transit Districts. The Representation Regulations provide that these types of petitions are intended to be as defined in the same was as they are under the FLMRA.

If the petition seeks to include employees covered by an existing labor agreement, it must be filed within a "window" period of 90 to 120 days before the date the agreement expires, or is subject to amendment or modification. Or, the petition may be filed after the agreement expires, if there is no successor agreement in place. Representation Regulation 93005 (a) provides that the window period requirement applies to "any petition."

Petition for Certification

None of the Transit District Acts provide a specific procedure for voluntary recognition of

¹⁷ These regulations were previously codified at Title 8, California Code of Regulations, sections 15800 et seq. The regulations were updated and renumbered after SMCS was made part of PERB in July 2012. The regulations were revised to clarify language and to change former references to the Director of Industrial Relations to the PERB Board. Government Code section 3603, subdivision (c), provides the statutory authority for these changes.

employee organizations. However, several of the Transit District Acts require the employer to recognize an employee organization if a majority of the employees in an appropriate unit indicate a desire to be represented by that organization.¹⁸

A petition for certification¹⁹ to represent employees of a Transit District is governed by sections 93005(a) and 93010 of the Representation Regulations. The certification petition is filed with SMCS.

A certification petition may be filed by an employee, a group of employees, or an employee organization claiming to represent a majority of employees in an appropriate unit, alleging that a substantial number of employees wish to be represented for purposes of collective bargaining. (Representation Regulations, § 93005 (a).) The employer may also file a certification petition alleging that an employee organization presented it with a claim for recognition. (*Ibid.*)

The certification petition must contain certain information about the district, incumbent employee organizations, effective labor agreements, the employees, the petitioner, and any other relevant facts. (Representation Regulations, § 93010 (b).) If the petition is filed by an employee organization, it must also contain: a statement that the district declines to recognize the petitioner as the employee representative, or that the organization is currently recognized but desires certification; and information relating to any strike or picketing that may be in progress. (Representation Regulations, § 93010 (c).)

If the petition is filed by the employer, it must state that the Transit District has received a recognition claim and must contain information relating to the claimants, incumbent employee organizations, effective labor agreements, and any strike or picketing currently in progress. (Representation Regulations, § 93010 (d).)

If a certification petition is filed by an employee organization, it must show proof of support (authorization to represent or membership) of at least thirty percent of the employees in the proposed bargaining unit. (Representation Regulations, § 93015 (a).) Proof of support must be signed and dated within six months before the date of the petition. (*Ibid.*) Proof of support is not required in certain situations where the Transit District has acquired a new facility, however, if SMCS finds there is an adequate showing that: (1) the petitioner represented employees in a facility at the time the facility was acquired by the Transit District, (2) the Transit District assumed the existing labor

¹⁸ For example, it appears that voluntary recognition is available for employee organizations under the Alameda Contra Costa Transit District. (PUC, § 25051.) Again, the exact phrasing of representation rights is different under the various Transit District Acts, and the specific statutory language should be consulted for each Transit District.

¹⁹ These petitions are defined as those which would arise under paragraphs (1)(A)(i) and (1)(B) of Section 9(c) of the FLMRA.

agreement as part of the acquisition, and (3) the proposed unit is identical to the existing unit. (Representation Regulations, §93015 (b).)

Petition for Decertification

Sections 93005(b) and 93010(e) of the Representation Regulations provide for decertification petitions.²⁰ A petition for decertification alleges that an employee organization that has been certified or that is currently recognized as the bargaining representative is no longer the representative. The petition may be filed by an employee, a group of employees, any individual, or an employee organization. Like a certification petition, it must be filed with SMCS along with proof of support

The decertification petition must contain, in addition to the information required for certification petitions, additional information about the incumbent employee organization, effective labor agreements, information relating to any strike or picketing that may be in progress, and an allegation that the current employee organization is no longer the representative for the appropriate unit.

Clarification of Bargaining Unit or Amendment of Certification

Section 93005(c) of the Representation Regulations provides for petitions for clarification of an existing bargaining unit or for amendment of certification.²¹ An amendment of certification petition seeks to amend an existing certification where the certified union has undergone a change, such as merger or affiliation. Either a labor organization or the employer may file such petitions. Petitions are generally filed in accordance with the regulations on petitions for certification set forth in Representation Regulation 93005(a), and include the information required for certification petitions.

Representation Regulation section 93010(f) provides that petitions for clarification shall contain the following additional information: the name and identifying information about the certified representative; a description of the proposed clarification; information about the number and job classifications of the employees; and a statement setting forth the reasons why the petitioner seeks clarification of the unit.

Representation Regulation section 93010(g) provides that petitions for amendment of certification shall contain the following additional information: the name and identifying information about the certified representative, and a statement setting forth the reasons for the requested amendment.

²⁰These petitions are defined as those which would arise under paragraph (1)(A)(ii) of Section 9(c) of the FLRMA.

²¹These petitions are defined as those which would arise under Section 9(b) of the FLMRA.

B. Investigations, Consent Election Agreements, Interventions, and Hearings

When a petition has been filed, the affected parties may, with the approval of SMCS, enter into a consent election agreement. (Representation Regulations, § 93020) The consent election agreement must include a description of the appropriate unit, the time and place of the election, and the payroll period to be used in determining what employees in the unit will be eligible to vote. A consent election is conducted by SMCS in accordance with its regulations on elections. Election procedures are described below in section C.

If no consent agreement is reached with respect to a petition for certification or decertification, *and* if SMCS determines that there is reasonable cause to believe that a question of representation exists, SMCS will investigate and hold a hearing to decide the question of representation. (Representation Regulations, § 93025.) SMCS will provide notice of a hearing at least ten days in advance, and give notice to any known interested parties.

With respect to a petition for clarification of a bargaining unit or amendment of certification, SMCS may decide the questions presented without a hearing, or it may decide to hold a hearing as it would do for certification and decertification petitions.

If SMCS determines that any type of petition does not provide reasonable cause to believe that there is a question of representation, or if the petition is not filed in accordance with the regulations, SMCS may dismiss the petition without a hearing or approve the withdrawal of the petition. (Representation Regulations, § 93025(c).) Determinations made by SMCS with respect to the investigation process may be appealed to the PERB Board pursuant to PERB Regulations. (Representation Regulations, § 93025(d).)

Section 93035 of the Representation Regulations allows an interested party to intervene in representation proceedings if certain conditions are met. An employee organization or "other person" may move to intervene. Intervention must be granted to an employee organization if: (1) it is a party to a labor agreement covering employees in the alleged appropriate bargaining unit, or (2) it shows proof of support of at least 10 percent of the employees in the alleged appropriate unit. However, if an intervening employee organization seeks a different bargaining unit configuration, it must show proof of support by at least 30 percent of the employees in the unit it claims to be appropriate. The Transit District is deemed to be a party to each proceeding under the Representation Regulations; it does not need to intervene.

Section 93030 of the Representation Regulations governs the conduct of hearings. Hearings are conducted by the SMCS Supervisor or designee. Prior to July 2012, decisions were issued by the Director of DIR. Upon the transfer of SMCS to PERB, the former responsibilities of the DIR Director were designated as the responsibilities of the SMCS Supervisor.

The designated hearing officer has authority to rule on motions, issue subpoenas, and request briefs. (Representation Regulations, §§ 93040, 93045, 93050.) The parties and the hearing officer may call, examine, and cross-examine witnesses, and may introduce any relevant evidence. (Representation Regulations, § 93040.) Witnesses must be examined under oath, but general rules of evidence are not controlling. (*Ibid.*)

Section 93055 of the Representation Regulations sets forth the duties of the hearing officer following the hearing. After the hearing, the hearing officer prepares a proposed decision and order. The proposed decision includes an analysis of the record, the arguments of the parties, findings of fact, and a determination upon the issues submitted. If the hearing officer determines that an election must be held, the hearing officer must identify the appropriate unit and the categories of employees who will be eligible to vote. The hearing officer then forwards the proposed decision and the entire record (consisting of all documents, exhibits, briefs, and transcripts) to the SMCS Supervisor. The hearing officer's decision shall be final, unless it is appealed.

Section 93060 of the current Representation Regulations provides that hearing officer decisions may be appealed to the PERB Board by filing exceptions to the decision under PERB regulations. (See Title 8, Cal. Code Regs., § 32300 et seq.)

Under the former version of Representation Regulation 93055, the hearing officer's decision was reviewed and approved by the Director of DIR, and the Director's Decision became the final decision. The DIR Director also ruled on any exceptions filed to his or her decision. While these Director's Decisions were not precedential, and were binding only on the parties to the proceeding, SMCS has retained some archived versions of the Director's Decisions which were issued.

Appendix C contains summaries of selected Director's Decisions. These decisions are not precedential, and are binding only on the parties to the dispute. However, these decisions may serve members of the public as a useful illustration to understanding SMCS's evaluation of fact-specific representation matters.

C. Election Procedures

As noted above, the Transit District and employee organization may agree to a consent election, with the approval of SMCS. (Representation Regulations § 93020.) SMCS directs and supervises consent elections and certifies the results.

If there is no consent election agreement, the hearing officer, after a hearing on certification or decertification petition, may direct an election. (Representation Regulations, § 93055.) The hearing officer's decision identifies the appropriate unit within which the election will be held and the categories of employees who are eligible to vote. If the hearing officer's decision is appealed to the PERB Board, via the exceptions procedures, the Board then makes the decision whether to direct an election. (Representation Regulations, §§ 93060; 93065.)

SMCS conducts all elections by secret ballot pursuant to Representation Regulation 93070. A party named on the ballot may have its name removed from the ballot, upon approval of the SMCS Supervisor.²² (Representation Regulations, § 93070(a).) The parties to the election may be represented by observers of their own selection. (*Ibid.*) The parties and SMCS may challenge for good cause the eligibility of any person to vote in the election, and SMCS will impound any challenged ballots. (*Ibid.*)

After the election, SMCS must furnish a tally of the ballots to the parties. (Representation Regulations, § 93070(a).) Within five days thereafter, any party may file objections to the election with SMCS. (*Ibid.*) Election objections must include a statement of reasons for the objection and be served on the other parties. (*Ibid.*)

SMCS will certify the election results, including the certification of the representative where appropriate, if three conditions are met: (1) no timely election objections were filed; (2) the number of any challenged ballots is insufficient to affect the results of the election; and (3) no runoff election is needed. (Representation Regulations, § 93070(b).)

If election objections are filed, or if the number of challenged ballots is sufficient to affect the results of the election, then the SMCS Supervisor will investigate and prepare a report, which is served on the parties. (Representation Regulations, § 93070(c).) Within ten days, any party may file exceptions to the report. (*Ibid.*) If no exceptions are filed, the SMCS Supervisor may issue a written decision in conformity with the report. (*Ibid.*) If exceptions are filed, SMCS may appoint a hearing officer to consider the exceptions and issue written recommendations. (Representation Regulations, § 93070(d).) The written recommendations may be further appealed by filing exceptions with the SMCS Supervisor or the PERB Board (depending on the nature of the exceptions) as provided in Representation Regulation section 93070 (d) and (e).

A runoff election may be conducted if the ballot provided three or more choices, and the election resulted in no choice receiving a majority of valid votes case. Procedures for runoff elections are set forth by Representation Regulation section 93075. Runoff elections are conducted using the same general procedures as ordinary elections. (Representation Regulation, § 93070(e).)

²² There is a narrow exception to this rule. When the Transit District files a petition for certification or decertification, and the incumbent recognized employee organization wishes to have its name removed from the ballot, the organization must notify all parties and SMCS that it disclaims interest in representing the employees in the bargaining unit. (Representation Regulations, § 93070(a).)

D. Applicability of Federal Law and Procedure to Representation Issues

Fourteen of the Transit District Acts make one of three provisions regarding the applicability of Federal Law²³ to representation disputes.

- (1) five of the Transit District Acts provide that SMCS “shall apply” Federal Law (Los Angeles Metropolitan Transit Authority; North County Transit District Act; San Mateo County Transit District; Santa Clara Valley Transportation Authority; and Santa Cruz Metropolitan Transit District)
- (2) five of the Transit District Acts provide that SMCS “shall be guided” by Federal Law (Golden Empire Transit District; Marin County Transit District; Orange County Transportation Authority; Sacramento Regional Transit District; and San Diego Metropolitan Transit Development Board)
- (3) four of the Transit District Acts make no provision regarding the applicability of Federal Law. (Alameda-Contra Costa Transit District; San Francisco Bay Area Rapid Transit District; Santa Barbara Metropolitan Transit District; and San Joaquin Regional Transit District)

In addition, one of the Transit District Acts (Sonoma-Marín Area Rail Transit District) provides that representation issues are governed by the MMBA, and one contains no labor provisions (Monterey-Salinas Transit District).

Section 93080 of the Representation Regulations provides that, in resolving questions of representation, SMCS (and the PERB Board) “shall apply” relevant federal law and administrative practice developed under the FLMRA. This regulatory language conforms to the first category of labor provision noted above. This regulation was originally enacted in 1983 as Title 8, California Code of Regulations, section 15875.1.

However, where state law differs from federal law, federal law will not necessarily be applied under the Transit District Acts. For example, in a 1993 Director’s Decision involving BART employees, the Director determined that federal law was not controlling in determining the appropriate bargaining unit placement of certain employees with supervisory duties. The Transit District Act covering BART is silent on the question of whether federal law applies to representation matters. (See, e.g., PUC, § 28851.) The Director’s determination found that federal law was not relevant in the treatment of supervisors, in light of the differences between the FLMRA and the various Transit District Acts, including the one covering BART. (See also *Rae v. BART Sup. Assn.*, *supra*, 114 Cal.App.3d 147.)

In *North San Diego County Transit Development Bd. v. Vial* (1981) 117 Cal.App.3d 27 (*Vial*), the Court of Appeal considered a representation matter (a question of

²³ The Transit District Acts and the Representation Regulations refer to the FLMRA, as amended, which has generally been interpreted to include law developed by the National Labor Relations Board (NLRB).

successorship of a union) under the North County Transit District Act. The applicable statute under that Act, PUC section 125521, provided that SMCS “shall apply” relevant federal law. The Director in that case had certified a successor union as the bargaining representative of certain employees of the North San Diego County Transit Development Board, without holding an election. The Court held that under federal law, where there is a question presented regarding the continuity of the successor union, an election is required. (*Id.* at p. 34, citing *Retail Store Employees Union v. NLRB* (9th Cir. 1975) 528 F. 2d 1225.) Therefore, the Court held, the Director should have ordered an election.

In *Santa Clara Valley Transportation Authority (SCVTA) v. Rae* (2006) 140 Cal.App.4th 1303, The Court of Appeal examined the impact of the Santa Clara County Transit District Act’s provision, in PUC section 100301, that relevant federal law “shall apply” to representation proceedings. The Court held that federal law was not relevant in that case because the PUC provided a more specific mandate governing the representation issue in section 100309.

E. Reimbursement to SMCS for Certain Services

Effective July 1, 2010, parties must reimburse SMCS for certain types of services it provides. (Title 8, Cal. Code Regs., §32998 [former § 17300].)

This regulation provides that representation services—other than certain types of election services—relating to PUC Transit Districts shall be reimbursed at the rate of \$115.00 per hour (prorated for amounts of time less than a full hour). Representation services are defined as “all services related to the investigation and resolution of questions concerning representation of transit district employees other than election services.” The same charge applies to certain types of training and facilitation services, which are listed in the regulation.

Separate charges apply to certain types of election services. The parties are not charged for election services for representation elections, including certification, decertification and unit clarification elections. The parties are also not charged for agency shop elections or card checks for petitions for recognition or certification. However, charges will apply to other types of elections, such as contract ratification votes.

Under circumstances where SMCS charges for an election involving a Transit District, a flat fee is charged based on the size of the bargaining unit. The charges are as follows:

- | | |
|---|-------------|
| (A) Bargaining units of 1 to 49 employees: | \$1,000.00; |
| (B) Bargaining units of 50 to 199 employees: | \$1,250.00; |
| (C) Bargaining units of 200 to 999 employees: | \$2,000.00; |
| (D) Bargaining units of 1000 or more employees: | \$4,000.00. |

The regulation also identifies who pays for election services, as follows: “The cost of election services shall be split equally between or among the parties unless otherwise specified in local rules or agreed to by the parties. Which party or parties shall be responsible for reimbursement of SMCS, and in what amount, shall be determined at the initial set up meeting and will be recorded in the memorandum of election agreement.”

Attachments

Appendix A: Chart of PUC Provisions
Appendix B: List of Cases
Appendix C: Selected Director’s Decisions
Appendix D: Summaries of Selected BOI Reports

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Appendix A

Chart of PUC Transit Districts

Name of District and Usual Abbreviation	PUC Enabling Sections and Labor Provisions	MMBA or Government Code Exclusion	Applicability of Federal Law and Authorization of SMCS to Resolve Disputes	Services Provided and Misc. Notes
<p><u>AC Transit</u> Alameda-Contra Costa Transit District</p>	<p>PUC §24,501 et seq. (1955) Labor Provisions at §§25,051-25,057 (1955, amend 2004)¹</p>	<p>No provision regarding MMBA or Government Code</p>	<p>No reference to applicability of Federal Law. SMCS authorization at PUC § 25,052</p>	<p>Operates AC Transit</p>
<p><u>Fresno Metropolitan Transit District</u> (Not Enabled-Defunct)</p>	<p>PUC App. A</p>			<p>Not enabled and appears defunct</p>
<p><u>GET</u> Golden Empire Transit District</p>	<p>PUC §101,000 et seq. (1971) Labor Provisions at §§101,340-101,348 (1971, amend 2004)</p>	<p>No provision regarding MMBA or Government Code</p>	<p>Shall be guided by Federal Law SMCS authorization at PUC § 101344</p>	<p>Provides bus services in Bakersfield; also referred to as GET, for Golden Empire Transit</p>

¹ Most amendments made in 2004 were to include a prohibition against discrimination under the Fair Employment and Housing Act, Government Code section 12940 et seq.

Name of District and Usual Abbreviation	PUC Enabling Sections and Labor Provisions	MMBA or Government Code Exclusion	Applicability of Federal Law and Authorization of SMCS to Resolve Disputes	Services Provided and Misc. Notes
<p><u>LAMTA</u> or LA Metro</p> <p>Los Angeles Metropolitan Transit Authority</p> <p>Also known as:</p> <p>Southern California Rapid Transit District</p>	<p>PUC §30,000 et seq (1964)</p> <p>Labor Provisions at: §§30,750-30,756 (1964, amend 2004)</p>	<p>Government Code exclusion at §30,750 (2004): The obligation to bargain collectively shall not be limited or restricted any other provision of law (as amended, predecessor section referred to Gov Code).</p> <p>Supervisors are covered under TEERA – PUC §§99560-99570 – which is under PERB jurisdiction</p>	<p>Shall apply Federal Law</p> <p>SMCS authorization at PUC § 30751</p>	<p>Abbreviated as LA Metro or LAMTA</p> <p>Provides rail and bus service in Los Angeles</p> <p>In 1993, the Southern California Rapid Transit District merged with the Los Angeles County Transportation Commission to form the Los Angeles Metropolitan Transit Authority</p> <p>PUC §§ 130,370-130,373 (1979) pertain to the adoption of labor relations rules by the Los Angeles County Transportation Commission</p>
<p><u>Golden Gate Transit</u></p> <p>Marin County Transit District</p>	<p>PUC §70,000 et seq. (1964)</p> <p>Labor Provisions at §§70,120-70,129 (1964, amended 2004)</p>	<p>Government Code exclusion at §70,126 (1964): The obligation to bargain in good faith shall not be limited or restricted by the Government Code or other statutes.</p>	<p>Shall be guided by Federal Law</p> <p>SMCS authorization at PUC § 70122</p>	<p>Uses contractors to provide services, including Golden Gate Transit buses</p>

Name of District and Usual Abbreviation	PUC Enabling Sections and Labor Provisions	MMBA or Government Code Exclusion	Applicability of Federal Law and Authorization of SMCS to Resolve Disputes	Services Provided and Misc. Notes
<u>Monterey-Salinas Transit District</u>	PUC §§106,000 et seq. (2010)	Contains no provisions on collective bargaining or labor relations.	No provisions regarding SMCS or representation issues.	Dissolved the Monterey-Salinas Transit Joint Powers Agency which previously provided transit services in this area. District has taken on the powers and responsibilities of the former JPA.
<u>NCTD</u> North County Transit District Act	PUC §125,000 et seq. (1975) Employee Relations at §§125,520-125,527 (1975, amended 2006)	Specific MMBA exclusion at §125,527 (1975): In the event an exclusive representative is selected, the MMBA is not applicable to the District.	Shall apply Federal Law SMCS authorization at PUC § 125,521	Abbreviated as NCTD. Prior to 2005, was called the North San Diego County Transit Development Board.
<u>OCTA</u> Orange County Transportation Authority	PUC §40,000 et seq (1965) Labor provisions at §§40,120-40,129 (1965, amended 1991.)	Government Code exclusion at §40,126: Provides that the obligation to bargain in good faith shall not be limited or restricted by the provisions of the Government Code or other laws and statutes. Subjects of bargaining are the same as for a private employer.	Shall be guided by Federal Law SMCS authorization at PUC § 40,122	In 1991, the former Orange County Transit District became Orange County Transportation Authority (OCTA).

Name of District and Usual Abbreviation	PUC Enabling Sections and Labor Provisions	MMBA or Government Code Exclusion	Applicability of Federal Law and Authorization of SMCS to Resolve Disputes	Services Provided and Misc. Notes
<p><u>Sacramento RT</u></p> <p>Sacramento Regional Transit District</p>	<p>PUC §§102,000 et seq. (1971)</p> <p>Employee Relations at §§102,400-102,410 (1971, amended 2004)</p>	<p>Specific MMBA exclusion at §102,410 (1971):</p> <p>In the event an exclusive representative is selected, the MMBA is not applicable to the District.</p>	<p>Shall be guided by Federal Law</p> <p>SMCS authorization at PUC § 102,403</p>	<p>Operates bus and light rail service; abbreviated as RT.</p> <p>Began operations in 1973 when it acquired the Sacramento Transit Authority</p>
<p><u>San Diego County Transit District</u></p>	<p>PUC, §§90,000 et seq. (1965)</p>			<p>This Transit District appears not to presently be in operation, and may be defunct.</p>
<p><u>San Diego MTS</u></p> <p>San Diego Metropolitan Transit Development Board</p>	<p>PUC §§120,000 et seq (1975)</p> <p>Employee Relations at §§120,500-120,508 (1978)</p>	<p>Government Code exclusion at §120,506: Provides that the obligation to bargain in good faith shall not be limited or restricted by the provisions of the Government Code or other laws and statutes.</p> <p>Subjects of bargaining are the same as for a private employer.</p>	<p>Shall be guided by Federal Law</p> <p>SMCS authorization at PUC § 120,505</p>	<p>Abbreviated as MTS</p> <p>Also known as the San Diego Metropolitan Transit System (PUC, §120,050)</p> <p>Also known as the Mills-Deddeh Transit Development Act (PUC, §120,000)</p>

Name of District and Usual Abbreviation	PUC Enabling Sections and Labor Provisions	MMBA or Government Code Exclusion	Applicability of Federal Law and Authorization of SMCS to Resolve Disputes	Services Provided and Misc. Notes
<u>BART</u> San Francisco Bay Area Rapid Transit District	PUC §§28,500 et seq (1957) Labor Provisions at §§28,850-28,855	No provision regarding MMBA or Government Code	No reference to applicability of Federal Law SMCS authorization at PUC § 28,851	Operates Bay Area Rapid Transit, or BART
<u>Sam Trans/ CalTrain</u> San Mateo County Transit District	PUC §§103,000 et seq (1974) Employee Relations at §§103,400-103,407 (1974, amended 2004)	Specific MMBA exclusion at §103,407 (1974): In the event an exclusive representative is selected, the MMBA is not applicable to the District.	“Shall apply” Federal Law SMCS authorization at PUC § 103,401	Operates Sam Trans and CalTrain; uses contractors to provide services
<u>MTD Santa Barbara</u> Santa Barbara Metropolitan Transit District	PUC §§95,000 et seq, (1965) Labor Provisions at §§95,650-95,656 (1965, amended 1971, and 2004.)	No provision regarding MMBA or Government Code	No reference to applicability of Federal Law SMCS authorization at PUC § 95,651	Operates bus service in the Santa Barbara area. Abbreviated as MTD Santa Barbara.
<u>VTA</u> Santa Clara Valley Transportation Authority Former name: Santa Clara County Transit District	PUC §§100,000 (1969; amended to change name in 1999) Employee Relations at §§100,300-100,307 (1969)	Specific MMBA exclusion at §100,307 (1969, amended 1996)	Shall apply Federal Law SMCS authorization at PUC § 100,301	Abbreviated as VTA.

Name of District and Usual Abbreviation	PUC Enabling Sections and Labor Provisions	MMBA or Government Code Exclusion	Applicability of Federal Law and Authorization of SMCS to Resolve Disputes	Services Provided and Misc. Notes
<p><u>Santa Cruz Metro</u></p> <p>Santa Cruz Metropolitan Transit District</p>	<p>PUC §§98,000 et seq (1967)</p> <p>Labor Provisions at §§98,160-98,168 (1967; amended 1990 & 2004)</p>	<p>Partial MMBA exclusion at §98,167 (1990): Provides that District has obligation to bargain in good faith; this section supersedes the MMBA if there is any conflict, but in all other situations the MMBA governs.</p>	<p>Shall apply Federal Law</p> <p>SMCS authorization at PUC § 98,162.5</p>	<p>Abbreviated as Santa Cruz Metro.</p> <p>Provides bus service in Santa Cruz region.</p>
<p><u>SMART</u></p> <p>Sonoma-Marín Area Rail Transit District</p>	<p>PUC §§105,000 et seq. (2002)</p> <p>Employee Relations at §§105,140-105,155 (2004)</p>		<p>Questions concerning employee representation and conduct of employer-employee relations are governed by the MMBA.</p> <p>PUC § 105,140</p>	<p>Abbreviated as SMART.</p> <p>No current service. District formed in 2003. Light rail expected to start in 2014. Lines are presently being built.</p> <p>Includes provisions regarding transfer of employees from GGBHTD at §105,150 et seq</p> <p>Provides that PERB has jurisdiction over unit disputes between GGBHTD (§105,152)</p> <p>Provides that questions concerning representation shall be governed by MMBA (§105,140)</p>

Name of District and Usual Abbreviation	PUC Enabling Sections and Labor Provisions	MMBA or Government Code Exclusion	Applicability of Federal Law and Authorization of SMCS to Resolve Disputes	Services Provided and Misc. Notes
<p><u>San Joaquin RTD</u></p> <p>San Joaquin Regional Transit District (1994)</p> <p>Former Name: Stockton Metropolitan Transit District (1963)</p>	<p>PUC §§50,000 et seq. (1963, amended 1994)</p> <p>Labor Provisions at §50,120-50,126 (1963,amended 2004)</p>	<p>No provision regarding MMBA or Government Code</p>	<p>No reference to applicability of Federal Law</p> <p>SMCS authorization at PUC § 50,121</p>	<p>Abbreviated as San Joaquin RTD. Operates bus services in the Stockton Metropolitan and San Joaquin County areas.</p>
<p><u>West Bay Rapid Transit Authority</u></p> <p>(Not enabled; defunct)</p>	<p>PUC App. B (1964)</p>			<p>Appears not to exist and was never formed</p> <p>Would have covered County of San Mateo</p>

Appendix B
Selected Cases Involving Transit Districts and Labor Relations

California Court Decisions

Grier v. Alameda-Contra Costa County Transit (1976) 55 Cal.App.3d 325

The Court of Appeal held that the Transit District was not exempt from the provisions of Labor Code section 2928 prohibiting certain wage deductions. Finding that the Transit District was not exclusively governed by PUC sections 24501 et seq., the court determined that it was subject to other laws, including the Labor Code. Unlike three other Transit District Acts (the Southern California Rapid Transit District Act; the Orange County Transit District Act; and the San Diego Metropolitan Transit District Act), which expressly provided that those Acts were not limited or restricted by provisions of the Government Code or other laws, the Alameda-Contra Costa Transit District Act did not include such a provision and was silent on the matter. Moreover, the Transit District was not exempt merely because it was a public entity. Finally, the Court of Appeal concluded that a provision in the Transit District's collective bargaining agreement that conflicted with Labor Code section 2928 was unenforceable.

International Brotherhood of Electrical Workers v. Aubry (1996) 42 Cal.App.4th 861

The Court of Appeal reviewed a Director's Determination denying IBEW's petition to represent rail maintenance workers employed by the Los Angeles County Metropolitan Transportation Authority (governed by the Southern California Rapid Transit District Act, PUC §§ 30000 et seq.). The rail workers had previously been accreted into an existing bargaining unit composed of bus workers. The Director, applying the "community of interest" test, concluded that the rail-only unit was inappropriate because the rail workers had been properly accreted into the existing unit. Reviewing the case under the deferential "substantial evidence" standard, the Court of Appeal upheld the Director's Determination.

Los Angeles Metropolitan Transit Authority v. Brotherhood of Railroad Trainmen (1960) 54 Cal.2d 684 [overruled in part by *County Sanitation District No. 2 v. Los Angeles County Employees Assn.* (1985) 38 Cal.3d 564.]

The Los Angeles Metropolitan Transit Authority acquired two transit companies and retained their employees. The employees had a labor agreement with the acquired transit companies. The Court held that the employees had a right to strike both before and after the acquisition of the transit companies by the public entity, the Transit Authority. The decision turned, in part, on language in PUC section 30755, part of the Southern California Rapid Transit District Act. Identical language appearing in the LMRA had been held to give employees of private entities a right to strike. A later case,

County Sanitation, clarified that all non-essential public employees in California have a right to strike.

North San Diego County Transit Dev. Bd. v. Vial (1981) 117 Cal.App.3d 27.

The Court of Appeal considered a representation matter (a question of successorship of a union) under the North County Transit District Act. The applicable section of the Act, PUC section 125521, provided that SMCS “shall apply” relevant federal law. The Director in that case had certified a successor union as the bargaining representative of certain employees of the North San Diego County Transit Development Board, without providing notice to the Transit Board and without holding a hearing or an election. The Court of Appeal held that under federal law, continuity of representation by a successor union is a question of fact. (*Id.* at p. 34, citing *Retail Store Employees Union v. NLRB* (9th Cir. 1975) 528 F.2d 1225.) In all cases, therefore, notice to the employer is required; if there is reasonable cause to believe a question of representation exists, the Director should hold a hearing. If a question of representation remains, an election is required. Because the Director in this case had not provided notice to the employer or held a hearing, the Court of Appeal held, the Director should have ordered an election.

San Francisco Bay Area Rapid Transit District v. Superior Court (1979) 97 Cal.App.3d 153

After the expiration of a labor agreement between the Bay Area Rapid Transit District and the United Public Employees, the Transit District unilaterally transferred a number of employees who had engaged in a work slow-down. The Court of Appeal upheld a trial court order that the District must bargain in good faith under PUC section 28850, noting, however, that the meet and confer requirements of the MMBA (Gov. Code, §3505) did not apply to the District.

The Court of Appeal reversed the trial court’s order mandating that the District submit the dispute to arbitration, on the grounds that the applicable arbitration provision, in PUC section 28850, was permissive, not mandatory. In addition, the court found that the District’s decision to transfer the employees involved in the work slow-down was lawfully within its discretion under the circumstances.

Rae v. Bay Area Rapid Transit Supervisory and Professional Association (1980) 114 Cal.App.3d 147.

The Court of Appeal upheld an agency shop agreement between the Transit District and one of its unions. Relying on *San Francisco Bay Area Rapid Transit District v. Superior Court* (1979) 97 Cal.App.3d 153, the court noted that the MMBA did not apply to the Transit District. Thus, the provisions of the MMBA that had been held to prohibit agency shop agreements did not prohibit such agreements with the Transit District. Moreover,

unlike the MMBA, nothing in the Transit District Act prohibited an agency shop agreement.

Santa Clara Valley Transportation Authority (SCVTA) v. Rae (2006) 140 Cal.App.4th 1303

The Court of Appeal examined the impact of the Santa Clara County Transit District Act's provision, in PUC section 100301, that federal law "shall apply" to representation proceedings. In 1995, a group of Santa Clara County employees, including managers and supervisors, was transferred to the SCVTA. PUC section 100309 required SCVTA to continue to recognize the employee organizations that represented the transferred employees and observe the terms of their existing labor contracts. Following the expiration of those contracts, SCVTA argued that it was not obligated to continue recognizing bargaining units that included managers and supervisors because, under federal law, those employees did not have collective bargaining rights. The Court of Appeal observed that section 100301 referred to "relevant" federal law. In this case, however, federal law was not relevant because of the more specific mandate in section 100309. Therefore, the Court of Appeal held, SCVTA was required to continue recognizing the existing bargaining unit.

Southern California Rapid Transit District v. United Transportation Union (1992) 5 Cal.App.4th 416 [disapproved on other grounds by *Advanced Micro Devices, Inc. v. Intel Corp.* (1994) 9 Cal.4th 362, 376-377]

The Court of Appeal affirmed an arbitrator's decision finding that the Transit District violated a labor agreement by transferring some of its bus lines to another agency. The agreement required the District to condition any transfer of its assets on the acquiring agency's assumption of the District's existing labor contracts. The District acknowledged that it had failed to do so in this case, but argued that the agreement was unenforceable as against state law and public policy. The Court of Appeal disagreed, placing particular emphasis on the fact that a provision of the Southern California Rapid Transit District Act, PUC section 30753, contained a comparable requirement that when the District acquired new assets or facilities, it would assume existing labor contracts.

Stockton Metropolitan Transit District v. Amalgamated Transit Union (1982) 132 Cal.App.3d 203.

The Court of Appeal affirmed the trial court's order compelling the District (which later became the San Joaquin Regional Transit District) to submit to interest arbitration over its retirement plan. As a condition of obtaining funds under the 1964 Urban Mass Transportation Act (49 U.S.C., §§ 5301 et seq.), the District and the ATU entered into an agreement that provided for arbitration of labor disputes. ATU later proposed

changes to the District's retirement plan. After failing to reach an agreement, ATU demanded arbitration.

The District argued that the arbitration provision violated state sovereignty and was unconstitutional. The Court of Appeal rejected this argument, in light of two provisions of the authorizing statute, PUC section 50000 et seq. The first, section 50120, provided for binding arbitration of labor disputes. The second, section 50203, authorized the District to "do any and all things necessary in order to avail itself of" federal funding. Accordingly, the arbitration provision in the agreement with ATU was lawful.

Attorney General Opinions

Los Angeles Metropolitan Transit Authority Act, 32 Ops.Cal.Atty.Gen. 25 (1958)

This opinion determined that the DIR Director, rather than SMCS, should promulgate the representation regulations required by the Act. The regulations would need to be adopted pursuant to the California Administrative Procedures Act.

Labor Disputes, 18 Ops.Cal.Atty.Gen 216 (1951)

The Attorney General discussed the duties of SMCS related to labor disputes, which “can range from any small grievance of an individual worker to a full scale strike.” The opinion concludes that when requested by one of the parties to a labor dispute, SMCS “must” investigate and mediate the dispute. Moreover, when both parties agree to arbitrate a dispute, SMCS must supply an arbitrator.

Public Corporation—Union Shop, 58 Ops.Cal.Atty.Gen 376 (1975)

The Attorney General concluded that the Southern California Rapid Transit District could lawfully enter into a “union shop” agreement, requiring employees to join and maintain membership in a union. Referring to cases upholding union shop agreements in the private sector, the opinion discerned no basis for treating public sector employees differently. Moreover, unlike the labor relations statutes governing state, local government, and public school employees, the Transit District Act did not protect employees’ rights to refuse to join an employee organization.

PERB Decisions

Central Contra Costa Transit Authority (2012) PERB Decision No. 2263-M

PERB held that, under the MMBA, it had jurisdiction over the Authority, a joint powers agency. In so holding, PERB rejected the Authority's argument that it was exempt from the MMBA as a transit district with its own labor relations framework. Because the Authority's labor relations framework was established by its own ordinance rather than by statute, the Authority was not exempt from the MMBA under *Rae v. Bay Area Rapid Transit Supervisory and Professional Association* (1980) 114 Cal.App.3d 147.

IFPTE, Local 21, AFL-CIO (Hosny) (2011) PERB Decision No. 2192-M.

PERB upheld the dismissal, on untimeliness grounds, of a charge by an employee of the San Francisco Municipal Transportation Agency (Muni) against his exclusive representative. *Omnitrans* (2010) PERB Decision No. 2143-M. PERB held that Omnitrans, "a public agency that provides bus service in several southern California communities," violated the MMBA by bypassing the exclusive representative and unilaterally changing the parties' grievance procedure.

San Diego Trolley, Inc. (2007) PERB Decision No. 1909-M.

PERB upheld the dismissal of an unfair practice charge filed against San Diego Trolley, Inc., a wholly-owned subsidiary of the San Diego Metropolitan Transit System (MTS). MTS was governed by the San Diego Metropolitan Transit Development Board, which was enabled by PUC sections 120050 et seq. As a result, San Diego Trolley was not a "public agency" under the MMBA and PERB lacked jurisdiction over the charge.

Public Transportation Services Corporation (2004) PERB Decision No. 1637-M

PERB determined that the MMBA did not give it jurisdiction over PTSC, which was an organizational unit of the Los Angeles Metropolitan Transportation Authority (MTA). As the successor to the Southern California Rapid Transit District, MTA was governed by the Southern California Rapid Transit District Act, PUC sections 30000 et seq.; its labor relations provisions were contained in sections 30750 et seq. Significantly, the Legislature in 2003 placed supervisory employees of both MTA and PTSC under PERB's jurisdiction by enacting TEERA, further indicating that PERB did not have jurisdiction over PTSC's rank-and-file employees under the MMBA.

Appendix C

Selected Director's Decisions and Hearing Officer Reports

This appendix provides a summary of selected administrative decisions made by the DIR Director pursuant to the Representation Regulations, along with selected hearing officer reports concerning representation issues. As noted in the Guide, prior to July 2012, SMCS was a division of DIR, and written decisions prior to that date were issued by the Director of DIR. These decisions are not precedential and are binding only on the parties to the dispute. However, these decisions may serve members of the public as a useful illustration to understanding SMCS's evaluation of fact-specific representation matters.¹

- 1. LA Metro (1959)**
Los Angeles Metropolitan Transit Authority and Brotherhood of Railroad Trainmen, et al., and International Association of Machinists and Amalgamated Association of Street, Electric Railway, et al.
SCS-1-R-LAMTA; SCS-2-R-LAMTA; SCS-3-R-LAMTA; SCS-4-R-LAMTA
Decision and Order of Director of DIR
April 20, 1959 by DIR Director Henning
[Adopting in Part and Modifying in Part Decision of Hearing Officer Cox]

Four unions filed petitions for certification to represent employees of the Los Angeles Metropolitan Transit Authority (LA Metro). The hearing officer consolidated the petitions and determined that a question of representation was presented, which was appropriately resolved by SMCS. The hearing officer found that under the recently-enacted Los Angeles Metropolitan Transit Authority Act (now codified at PUC §30,000 et seq.) SMCS "shall be guided" by relevant federal law, including the Labor Management Relations Act (29 U.S.C. §150 et seq.), the National Labor Relations Act (29 USC 141 et seq.)

LA Metro had recently been formed following a merger of existing transit operations. The affected petitioning unions had contracts in place, but the hearing officer found that the contract bar rule did not apply due to the circumstances of the merger of operations. The Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America (Amalgamated) sought to represent most of the employees. Three other unions wanted to represent sub-groups of these employees. The hearing officer divided the employees into five voting groups. The DIR Director adopted this decision. However, the DIR Director decided that Amalgamated would be on the ballot for the elections as to all five voting groups. The DIR Director was guided by a decision of the National Labor Relations Board (NLRB), *Globe Machine & Stamping Co.* (1937) 3 NLRB 294. This decision allows voting by occupational groups, while allowing employees the option to vote for a comprehensive bargaining unit of all employees.

¹ There is not an established uniform method for citing to Director's Decisions. SMCS case numbers are provided where available.

2. SF BART (1973)
Bay Area Rapid Transit District

In the Matter of the Bargaining Units of The San Francisco Bay Area Rapid Transit District
March 6, 1973 by DIR Director White

The CMSC conducted extensive hearings to determine the boundaries of the collective bargaining units for BART employees. The DIR Director approved the decision to establish three primary units: a security unit, a supervisors unit, and an “umbrella” unit. The umbrella unit was divided further into three occupational subgroups and voting units: transportation employees, clerical employees, and maintenance employees. The employees of the subunits shall determine separately the representative who will represent them jointly in collective bargaining with the representatives of the other umbrella unit employees.

3. Sacramento RTD (1988)
Sacramento Regional Transit District and Amalgamated Transit Union

Letter Determination by DIR Director re: Petition for Clarification of Unit of Fare Inspection Officers
June 29, 1988 by DIR Director Rinaldi

Amalgamated Transit Union (ATU) petitioned to include unrepresented fare inspectors in its existing unit. Under PUC section 102403, SMCS “shall be guided” be guided by relevant federal law, including community of interest standards developed by the NLRB. The Director found that the unit clarification petition should be granted because the fare inspectors shared a community of interest with the existing unit, and should be accreted into the unit.

4. Orange County (1990)
Orange County Transit District and United Transportation Union, Local 19 and Teamsters Local No. 911

Hearing Officer’s Recommendations Regarding Exceptions to Mediation Service Report on the Objections to Orange County Transit District Union Election
March 19, 1990, by Vanessa Holton, Hearing Officer

California Teamsters Local No. 911 (Teamsters) filed a petition to represent employees of the Orange County Transit District (OCTD) who were then represented by United Transportation Union (UTU). SMCS conducted an election to determine whether Teamsters or UTU would represent the employees. Teamsters won the election. UTU filed objections to the election pursuant to the Representation Regulations. The hearing officer applied federal law in the area and found that the objections raised by UTU were not sufficient to affect the results of the election. Accordingly, the hearing officer recommended that Teamsters be certified as the bargaining representative.

5. San Diego Trolley (1990)
International Brotherhood of Electrical Workers and Julie Ann Parker and San Diego Trolley.

(C.S.M.C.S. Case No. 88-3-537)

Hearing Officer's Report re: Petition for Decertification
March 19, 1990 by Hearing Officer Julius Draznin

An individual, Ms. Parker, filed a petition for decertification of the IBEW as exclusive representative of a bargaining unit of employees of the San Diego Trolley. The hearing officer treated the petition as filed under the Southern California Rapid Transit District Law (PUC, §§30000 et seq.) The International Brotherhood of Electrical Workers (IBEW) opposed the petition, alleging that the employer had unlawfully assisted Ms. Parker with obtaining employee names and filing the petition for decertification. The hearing officer, citing to NLRB law, found there was sufficient evidence to establish that Ms. Parker was an agent of the employer. The employer is not entitled to file a petition for decertification. Therefore, the petition was dismissed. It is unclear whether this hearing officer decision was adopted by the DIR Director.

6. SFBART (1993)
San Francisco Bay Area Rapid Transit District and United Public Employees, Local 790, and Amalgamated Transit Union, Local 1555.

Final Decision and Order of the Director of DIR RE: Unit Clarification Petition and Petition for Certification of Representative

June 14, 1993, by DIR Director Aubry

[Attaching and Adopting Tentative Decision of Director Aubry, dated April 2, 1993]

Employer BART filed a petition for unit clarification with SMCS, asking to remove "foreworkers" from the "umbrella" bargaining unit and place them in the supervisory unit. Two representatives of employees in the umbrella bargaining unit—Amalgamated Transit Union (ATU) and United Public Employees (UPE)—opposed the petition. ATU filed a petition for certification as to a single position; the two petitions were consolidated. The Director dismissed both petitions on the basis that there was no evidence to demonstrate a significant and substantial change in the duties of the positions in question since the original unit determinations were made in 1973.

The Director rejected BART's argument that, under the LMRA, the foreworker positions must be removed from the bargaining unit because they are supervisory. Former Title 8, California Code of Regulations section 158751 (now Representation Regulations, § 93080) requires the application of relevant federal (LMRA) law when resolving questions of representation. However, the Director determined that there is no relevant LMRA law to apply in interpreting the particular language of the BART Act (specifically, PUC section 28851). Moreover, federal law did not control in the treatment of supervisors in light of the differences between the LMRA and the BART Act. Legislative history did not mandate the application of federal law to matters of unit clarification or certification matters. Despite variances among the various Transit District Acts, which

were adopted at different times, the legislature never amended the BART Act to specifically incorporate reference to relevant federal standards. The Director also noted that the MMBA allowed supervisors to be included in a bargaining unit of rank-and-file employees.

7. **So Cal Metro (1993)**
Southern California Rapid Transit District Metro Lines and International Brotherhood of Electrical Workers and Amalgamated Transit Union
(C.S.M.C.S. Case Nos. 90-3-086 and 91-1-830)
Final Decision and Order of the Director Re: Petition for Certification of Representative and Unit Clarification Petition
October 8, 1993 by DIR Director Aubry

The International Brotherhood of Electrical Workers (IBEW) filed a petition to represent a group of employees of the Southern California Rapid Transit District (District), primarily those who worked for the District's "Blue Line" system in Long Beach. The Amalgamated Transit Union (ATU) opposed the petition because it believed the petitioned-for unit was inappropriate. The Director adopted the Hearing Officer's decision to dismiss the petition. Exceptions were filed by both IBEW and ATU. On October 8, 1993, Director Aubry issued a Final Decision and Order adopting the Proposed Decision.

The decision found that the proposed unit was not appropriate because it constitutes an accretion to the existing unit of employees represented by ATU. The relevant inquiry is only whether a bargaining unit is "an" appropriate unit. A unit accretion is found where the proposed addition of employees does not alter the character of the unit. In determining whether a group of employees constitutes an accretion to an existing unit, the NLRB examines several factors, including but not limited to the degree of employee interchange, the commonality of supervision and similarity of conditions of employment, the similarity of job classifications, the functional integration of the units, their geographic proximity, the role the new employees play in the operations of the existing unit, the degree to which the two groups share a community of interest, bargaining history and the similarity of skills and education between the two groups of employees. The decision also found that the petition was not barred by any contractual agreements or collective bargaining agreements.

The case was appealed to the Court of Appeal, which upheld the Directors Decision. (*International Brotherhood of Electrical Workers v. Aubry* (1996) 42 Cal.App.4th 861.)

8. **SCVTA (1997)**
Santa Clara County Transit District and County Employees Management Association and Amalgamated Transit Union
Decision of DIR Director Regarding Proposed Unit Clarifications
May 14, 1997, by DIR Director Aubry

In 1995, the Santa Clara Valley Transportation Authority (SCVTA) petitioned for unit clarification, following a reorganization due to legislative enactment. On May 14, 1997, DIR Director Aubry issued a final decision which established three bargaining units represented by three different unions: (1) Amalgamated Transit Union (ATU), (2) Service Employees International Union (SEIU) and (3) County Employees Management Association (CEMA). This final decision followed several interim orders and decisions resolving the multiple issues raised in those proceedings.

9. SCVTA (2004)

Santa Clara Valley Transportation Authority and County Employees Management Association and American Federation of State, County and Municipal Employees Local 101

Final Decision and Order of the Director of DIR re: Petition for Certification
February 5, 2004 by DIR Acting Director John Rea

In 2003, the American Federation of State, County, and Municipal Employees (AFSCME) filed a petition to decertify the County Employees Management Association (CEMA) as the exclusive representative of a bargaining unit that included managers and supervisors of SCVTA. SCVTA filed a petition to clarify the bargaining unit represented by CEMA, arguing that managers and supervisors should be excluded from the unit. SCVTA relied upon the PUC and regulatory requirements that DIR “shall apply the relevant federal law and administrative practice developed under the LMRA,” arguing that since the FLMRA does not provide for representation rights for managers and supervisors, these rights do not exist for such employees of SCVTA.

On February 5, 2004, Acting DIR Director Rea issued a Director’s Decision ordering an election. The Director adopted the proposed decision of a hearing officer. The Director determined that federal law was not controlling because the Legislature had granted representation rights to managers and supervisors employed by SCVTA in the bargaining unit at issue.

AFSCME won the election and was certified as the exclusive bargaining representative of the unit. SCVTA refused to recognize the exclusive representative and filed a petition for writ of mandamus to annul the Director’s determination. The court determined that DIR was required to apply federal law and ordered that the decision of the Director be set aside. DIR and AFSCME appealed and the Court of Appeal reversed the lower court.

The Court of Appeal held that supervisory and managerial employees were properly included in the bargaining unit with rank-and-file employees based on the specific PUC provisions applicable to SCVTA, and that, in this instance, federal law to the contrary was not relevant. (*Santa Clara Valley Transportation Authority v. Rea* (2006) 140 Cal.App.4th 1303.)

Appendix D

Reports by Boards of Investigation in Transit Disputes

The Governor's Office has convened Board of Investigation panels (BOIs) multiple times in past years. While the reports from these BOIs are not precedential or binding on future cases, they may provide guidance to the public regarding the nature of BOI panels and reports. Summaries of available BOI reports are provided below.

2013

Bay Area Rapid Transit District and AFSCME/ATU/AFSCME

In July 2013, three unions—American Federation of State, County and Municipal Employees Local 3993 (AFSCME), Amalgamated Transit Union (ATU), and Service Employees International Union Local 1021 (SEIU)—participated in a four-and-a-half-day strike at the Bay Area Rapid Transit District (BART). The parties agreed to a contract suspension, which temporarily halted the strike. Another strike was scheduled to start in August 2013, and Governor Brown convened a BOI. A report was issued on August 8, 2013. The BOI found that a strike would cause significant harm to the public's safety, health and welfare.

2012

Golden Gate Bridge Highway and Transportation District and Inlandboatman's Union

In 2012, the Inlandboatman's Union threatened a strike at the Golden Gate Bridge Highway and Transportation District (GGBHT District). Governor Brown convened a BOI at the request of the GGBHT District. A report was issued on June 1, 2012. The BOI specifically found that a work stoppage by the union would significantly disrupt transit services in the Bay Area and endanger the public health, safety and welfare.

2007

Orange County Transportation Authority and Teamsters Local 952

In 2007, then-Governor Schwarzenegger invoked BOI proceedings at the request of the Orange County Transportation Authority (OCTA).¹ Teamsters Local 952, representing the drivers, had voted to authorize a strike. The BOI convened and found that "all parties agreed that" a strike would significantly disrupt public transportation services in Orange County and endanger the public's health, safety and welfare. The Governor ordered a 60-day cooling-off period. According to media reports, however, the drivers

¹ According to available information, the OCTA is a successor organization which merged the Orange County Transit District (enabled by PUC section 40000 et seq.) with several other local transit agencies.

went on strike after the cooling-off period ended. This strike lasted for nine days until a successor agreement was reached.

2003

Los Angeles Metropolitan Transit Authority (LAMTA) and United Transportation Union

In 2003, then-Governor Davis invoked BOI proceedings at the request of the United Transportation Union (UTU). The BOI report states that the UTU and the employer, the Los Angeles Metropolitan Transit Authority (LA Metro Transit Authority),² agreed that a strike would significantly disrupt public transportation services and endanger the public's health safety and welfare. According to the BOI report, UTU said that it did not wish to strike, and the LA Metro Transit Authority stated it had no intention to lock out employees

2001

BART and AFSCME

In 2001, then-Governor Davis convened a BOI over a threatened strike by the American Federation of State, County and Municipal Employees (AFSCME) employed by the Bay Area Rapid Transit District (BART). BART requested the BOI, and a report was issued on August 6, 2001. The BOI concludes: "it is clear to this Board that an AFSCME strike would almost certainly significantly disrupt BART services, and that such disruption would endanger the public's health, safety or welfare."

2001

BART and SEIU/ATU

Also in 2001, then-Governor Davis convened a BOI over a threatened strike by Service Employees International Union (SEIU) and the Amalgamated Transportation Union (ATU) at BART. In that case, the unions requested the BOI. Subsequently, the Attorney General's office sought an injunction, which was granted, and the Superior Court ordered a 60-day cooling off period.³

2000

Los Angeles Metropolitan Transit Authority (LAMTA) and ATU and TCU and UTU

In July 2000, then-Governor Grey Davis convened a BOI concerning a labor dispute between the Los Angeles Metropolitan Transit Authority (LAMTA) and three unions of its

² The LA Metro Transit Authority is governed by PUC sections 30750-30756

³ The facts concerning the SEIU/ATU dispute are recited in the 2001 AFSCME report but PERB does not have a copy of the SEIU/ATU report.

employees: Amalgamated Transit Union, Local 1277 (ATU), Transportation Communication Union (TCU) and United Transportation Union (UTU). MOUs between the LAMTA and each of the three unions expired on June 30, 2000. Several days before the expiration date, members of UTU and ATU voted to authorize a strike. TCU did not take a strike vote. The BOI report summarized the principal issues involved in the bargaining dispute and the positions of the parties, and found that “according to all parties, no agreement has been reached on any issue of importance.” The BOI also noted that “all parties agree” that a strike, if permitted to occur, would significantly disrupt public transportation services and endanger the public’s health, safety and welfare.

1997

Santa Barbara Metropolitan Transit District and Teamsters

In September 1997, then-Governor Pete Wilson convened a BOI; the panel consisted of only one member. The Santa Barbara Metropolitan Transit District (SBMTD) had been bargaining with the International Brotherhood of Teamsters, Local 186 (Teamsters). Bargaining continued past the expiration of the MOU, through September 1997. The Teamsters membership voted to reject the SBMTD’s final offer, and then the Teamsters voted to authorize a strike. A two-day strike occurred; the strike was halted when the Governor ordered a BOI. The BOI report found that a strike would harm transportation-dependent people, and noted that the parties agreed that the bargaining dispute would eventually be negotiated to a resolution. On balance, the BOI found that a strike would harm the health and welfare of the public.

1994

Los Angeles County Metropolitan Transportation Authority and ATU, TCU, UTU

In June 1994, then-Governor Pete Wilson convened a BOI concerning a labor dispute between the Los Angeles County Metropolitan Transportation Authority (LACMTA) and three unions: Amalgamated Transit Union, Local 1277 (ATU), Transportation Communications Union (TCU) and United Transportation Union (UTU). The parties were bargaining over successor MOUs set to expire on June 30, 1994. In advance of the expiration, the members of the three unions voted to authorize strikes. The BOI report summarized the parties’ bargaining positions. The report states that, at the BOI hearing, the LACMTA and the three unions stipulated that a work stoppage would have an adverse effect on Southern California’s residents and its economy.

1991

Southern California Rapid Transit District and UTU, ATU

In July 1991, then-Governor Pete Wilson convened a BOI concerning a labor dispute between the Southern California Rapid Transit District (SCRTD) and two unions, the

United Transportation Union (UTU) and the Amalgamated Transit Union, Local 1277 (ATU). The parties were bargaining over successor MOUs set to expire on June 29, 2991. A few days prior to the expiration date, both unions voted to authorize a strike. The BOI report summarizes the bargaining positions of the parties, and discusses the financial condition of SCRTD. The report finds that the SCRTD provides 85% of the public transit service in Los Angeles County, and the disruption to these services from a strike will substantially impair the public's health, safety, and welfare.

1991

Bay Area Rapid Transit District (BART) and UPE, ATU

In July 1991, then-Governor Pete Wilson convened a BOI. The BART District had been bargaining over a successor MOU with two unions – United Public Employees, Local 790 (UPE) and Amalgamated Transit Unit, Local 1555 (ATU). The unions rejected the BART District's final offer. On July 1, 1991, the Unions "commenced strike action, which was terminated upon appointment of" the BOI. The BOI report sets out the bargaining positions of the parties. The BOI concluded that a work stoppage would result in severe consequences for the public. The BOI found that the parties to the dispute had not made the most effective use of the collective bargaining process and that further good faith negotiations might result in settlement of the parties' differences and avoid a work stoppage.

1985

Southern California Rapid Transit District and UTU

In February 1985, then Governor George Deukmejian convened a BOI concerning a labor dispute between the Southern California Rapid Transit District (SCRTD) and the United Transportation Union (UTU). The MOU between the parties was set to expire on January 30, 1985, but was extended to February 12, 1985. A few days before this expiration, the members of UTU voted to authorize a strike. The BOI Report summarizes the bargaining positions of the parties and the financial position of the SCRTD, noting that there was a "wide gulf" between the parties' positions. The BOI report concludes that although negotiations had reached a point of ill will, both parties professed a continued willingness to negotiate in good faith. The report states that the BOI believed that a cessation of transportation services would endanger the public health, safety and welfare, and that it hoped that the parties will reach a successful conclusion before any cessation occurred. The BOI report further notes that the statutory provisions authorizing the BOI do not permit the report to contain recommendations.

1982

Southern California Rapid Transit District and UTU, ATU, BRAC

In June 1982, then-Governor Jerry Brown convened a BOI. The report itself does not identify a specific threat of a strike or lockout, aside from a statement that UTU and ATU had “a strike issue” regarding the Transit District’s proposal to eliminate cost-of-living (COLA) pay increases. However, an attachment to the report states that a work stoppage is imminent.

The report summarizes the bargaining positions of the various parties. The Transit District had been engaged in successor negotiations with the three unions – UTU, ATU, and the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees (BRAC). It is unclear whether those negotiations were being conducted jointly. Agreements to extend the terms of the existing MOUs were in place. After multiple bargaining sessions over approximately two months, none of the parties had made a wage offer, nor had proposals been made or discussed on several other economic issues. The BOI concluded that no substantive negotiations had taken place, and that the Transit District had not provided the unions with certain financial information necessary to bargaining. The BOI “observed that the [Transit District’s opinion was that its] offer of retroactivity as set forth in the [extension agreements], should obviate the need for the unions to engage in any economic action.”