

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



AMALGAMATED TRANSIT UNION,
LOCAL 1605,

Charging Party,

v.

CENTRAL CONTRA COSTA TRANSIT
AUTHORITY,

Respondent.

Case No. SF-CE-711-M

PERB Decision No. 2263-M

May 8, 2012

Appearances: Neyhart, Anderson, Flynn & Grosboll by William J. Flynn and Eileen M. Bissen, Attorneys, for Amalgamated Transit Union, Local 1605; Hanson Bridgett by Patrick M. Glenn, Attorney, for Central Contra Costa Transit Authority.

Before Martinez, Chair; Dowdin Calvillo and Huguenin, Members.

DECISION

MARTINEZ, Chair: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the Amalgamated Transit Union, Local 1605 (ATU) from a Board agent's dismissal of its unfair practice charge. The charge alleged that the Central Contra Costa Transit Authority (Authority) violated the Meyers-Miliias-Brown Act (MMBA)¹ by issuing a written warning to the union president for conduct that occurred during a meeting with management to discuss a personnel matter involving another union member. The charge alleged that the action taken by the Authority against the union president constituted violations of MMBA sections 3503, 3505 and 3506, PERB Regulation 32603(a),² and local rules.

¹ The MMBA is codified at Government Code section 3500 et seq. Unless otherwise noted, all statutory references are to the Government Code.

² PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

The Office of the General Counsel determined that the Authority, a joint powers agency, is not a “public agency” within the meaning of subdivision (c) of MMBA section 3501 and that PERB was without jurisdiction to entertain the charge. As jurisdiction is a threshold matter, the Office of the General Counsel had no cause to determine whether a complaint should issue on the underlying charge allegations.

The Board has reviewed the appeal, the response thereto, the warning and dismissal letters and the entire record in this matter. Based on the Board’s review of the record and application of the relevant law, the Board finds that the Authority is a public agency within the meaning of MMBA section 3501, subdivision (c). Having established the Board’s jurisdiction and authority to proceed, the Board hereby grants the appeal and remands this matter to the Office of the General Counsel to investigate the underlying charge allegations.

BACKGROUND

The issue presented on appeal involves a question of jurisdiction and while the issue is ultimately a legal one, its resolution is predicated on the existence of certain foundational facts. Because this matter has never gone beyond the charge processing stage, we rely on ATU’s factual allegations and supporting documentation for the narrative that follows. Such assertions are deemed to be true for purposes of our review. (See *Amador Valley Joint Union High School District* (1978) PERB Decision No. 74.) Where not in conflict, assertions made by the Authority in written submissions to the Office of the General Counsel during the charge processing stage provide additional factual context. (See *Chula Vista Elementary School District* (2003) PERB Decision No. 1557.)

The ATU is recognized by the Authority as the exclusive representative for bus operators employed by the Authority. The Authority and the ATU entered into its most recent memorandum of understanding for the term of February 1, 2007 through January 31, 2011 (MOU).

The MOU

The MOU was prepared in accordance with the requirements of the MMBA.³ The MOU sets forth the parties' agreement regarding, among other things, health and welfare benefits including employee medical benefits available through the Authority's participation in the Public Employees' Medical and Hospital Care Act (PEMHCA), and retirement benefits and retiree medical benefits from the California Public Employees' Retirement System (CalPERS).

Local Rules

Regarding employer-employee relations, the Authority operates under local rules contained in the Employer-Employee Organization Relations Resolution, revised June 20, 1985 (EEORR). The EEORR's "Statement of Purpose" states that the EEORR implements the MMBA by providing orderly procedures for the administration of employer-employee relations between the Authority and its employee organizations.

The Authority

The Authority is a joint powers agency of 11 local jurisdictions including the cities of Clayton, Concord, Danville, Lafayette, Martinez, Moraga, Orinda, Pleasant Hill, San Ramon and Walnut Creek, and Contra Costa County (County). The Authority provides the central County with both fixed-route bus and paratransit transportation services.

The Authority operates under the Joint Exercise of Powers Agreement (Agreement) as a "public entity separate and distinct from member jurisdictions." The Agreement acknowledges the need for public transportation services and the desire of the member jurisdictions to "secure the efficiencies of joint operation and service that are available through a unified, cooperative effort."

³ Section 1.01 of article 1 of the MOU states: "This Memorandum of Understanding ('MOU') has been prepared to meet the requirements of the California Government Code Section 3500, et seq."

The Agreement enumerates the powers of the Authority including, among other things, the power to own, develop, operate, maintain and administer a public transportation system; to enter into contracts; to apply for, receive and expend monies from public transportation funding sources; to hire agents and employees; to sue and be sued; to acquire, hold or dispose of real and personal property; and to incur debt, liabilities and obligations. The member jurisdictions are not liable for the debts, liabilities or obligations of the Authority. The Treasurer of the County serves as the depository for the Authority and maintains custody of the Authority's funds from whatever source.

The Authority is governed by a Board of Directors. Each member jurisdiction appoints one regular representative to the board and one alternate. According to the Bylaws adopted by the Authority, the governing body of each member jurisdiction appoints a Director to represent that jurisdiction for a two-year term of office. A Director may be an elected or other public official, or a private person. The Directors serve without compensation. A Director may be replaced by the appointing member jurisdiction. In that event, the Director being replaced ceases to represent the appointing member jurisdiction and the appointing member jurisdiction is required to appoint a new Director to serve the unexpired balance of the outgoing Director's term of office. Regular meetings of the Board of Directors are subject to the open meeting and notice requirements of the Ralph M. Brown Act, section 54950 et seq.

The Bylaws set forth the Basic Level of Service to be provided by the Authority under the Agreement. The Authority may request that member jurisdictions contribute to the Authority from their general funds or other locally-controlled funds as necessary to support the Authority's budget. No member jurisdiction is required to make such contributions except upon the approval of the member jurisdiction's governing body. If a member jurisdiction fails to contribute as requested, the Authority may equitably reduce the public transportation services provided in that jurisdiction as necessary to compensate for the budgetary shortfall,

according to guidelines set forth in the Bylaws, provided that no reduction in the Basic Level of Service results.

The Authority is identified as a public agency on the Roster of Public Agencies maintained by the Office of the Secretary of State of the State of California.⁴

DECISION OF THE OFFICE OF THE GENERAL COUNSEL

The Office of the General Counsel dismissed the charge for lack of jurisdiction on the basis that the Authority does not fall within the definition of “public agency” in MMBA section 3501, subdivision (c). In *National Labor Relations Board v. Natural Gas Utility District of Hawkins County, Tennessee* (1971) 402 U.S. 600 (*Hawkins County*), the United States Supreme Court developed a test under the National Labor Relations Act (NLRA)⁵ for determining whether an entity comes within the NLRA’s exemption for a “State or political subdivision thereof.” Using that test, the Office of the General Counsel determined that the Authority did not appear to be a “governmental subdivision” of the State of California within the meaning of MMBA section 3501, subdivision (c). It was also determined that the Authority did not appear to be a public or quasi-public corporation or a public service corporation within the meaning of MMBA section 3501, subdivision (c), or a public agency by virtue of a single employer, joint employer or alter ego theory of employment.

⁴ After having provided the parties to this case with notice and opportunity to be heard by letter of the Board’s Appeals Assistant dated February 3, 2010, and having received no response from either party, the Board takes notice of the updated Statement of Facts/Roster of Public Agencies Filing of the Authority (Filing), filed in the Office of the Secretary of State of the State of California by an agent of the Authority on September 9, 2011. Pursuant to section 53051, the Secretary of State is required to establish and maintain an indexed Roster of Public Agencies of which the Authority’s Filing is a part. This material is subject to judicial notice as an official act of the executive department of the State of California. (See Evid. Code, § 452, subd. (c).)

⁵ The NLRA is codified at 29 U.S.C. section 151 et seq.

DISCUSSION

Background

The sole issue on appeal is whether PERB has jurisdiction over the Authority, which turns on whether the Authority, a joint powers agency, is a public agency within the meaning of MMBA section 3501, subdivision (c). As observed in the dismissal letter, a party's invocation of PERB's jurisdiction by the filing of an unfair practice charge does not confer jurisdiction on PERB. (*Public Employment Relations Bd. v. Modesto City Schools Dist.* (1982) 136 Cal.App.3d 881.) PERB has only such jurisdiction and powers as have been conferred on it by statute. (*North Orange County Regional Occupational Program* (1990) PERB Decision No. 857 (*North Orange County*)). Where PERB is without jurisdiction, it cannot acquire jurisdiction by the parties' consent, agreement, stipulation or acquiescence, or by waiver or estoppel. (*Ibid.*) And, finally, the absence of jurisdiction cannot be overcome by the established practices or customs of this Board. (*Ibid.*)⁶

As the ATU points out, the MOU and the EEORR reflect the parties' longtime mutual understanding that their conduct in the area of labor relations is governed by the MMBA, and where permitted, by the Authority's local rules. As the ATU also points out, the Board has on prior occasion decided cases under the MMBA where the public employer was a joint powers agency. (See, e.g., *Omnitrans* (2010) PERB No. 2121-M [involving a dispute between an employee organization representing a bargaining unit of coach operators and a public employer formed as a joint powers agency to provide public bus service in San Bernardino County].)

⁶ The substantive holding in *North Orange County* that a regional occupational center operated by a joint powers agency was not a public school employer within the meaning of the Educational Employment Relations Act (EERA) (codified at § 3540, et seq.) was superceded by legislative enactment, which is discussed on pages 7-9, *post*. The Board's discussion in *North Orange County* of foundational jurisdictional principles, however, remains Board precedent.

As the dismissal letter rightly points out, neither the parties' mutual understanding nor the Board's past practice have the effect of conferring jurisdiction on the Board where none exists. These facts are perhaps only illustrative of a different proposition. A court will reject a construction of a statute that would lead to absurd results. (*Baker v. Workers' Comp. Appeals Bd.* (2011) 52 Cal.4th 434, 442.) With the rare benefit of hindsight, we can see no signs of absurd results either at the Board level or in the relationship between the parties⁷ from an interpretation that recognizes a joint powers agency to be a public agency for purposes of administering the MMBA.

Before we examine the statutory text at issue, it should be noted that the issue of whether a joint powers agency is a public employer within PERB's jurisdiction was raised and extensively debated in the context of EERA. The Board's decision in *Joint Powers Board of Directors, Tulare County Organization for Vocational Education, Regional Occupational Center and Program* (1978) PERB Decision No. 57 (*Tulare County*) involved an entity established through a joint powers agreement among nine school districts in Tulare County to provide vocational training at regional occupational centers. The entity was found to be a public school employer or employer⁸ subject to the Board's jurisdiction under EERA section 3540.1, subdivision (k). The Board's majority observed that the employees of the entity performed the same duties for the same purpose as employees in traditional school districts. The Board noted that each member district was itself a public school employer

⁷ The parties have been operating under the MMBA framework for at least 15 years, successfully having resolved at least one strike and negotiated successive memoranda of understanding. See discussion of *Local 1605 Amalgamated Transit Union, AFL-CIO et al. v. Central Contra Costa County Transit Authority* (N.D. Cal. 1999) 73 F.Supp.2d 1117 (*Local 1605*) in footnote 13, *post*.

⁸ "Public school employer" or "employer" was then defined under EERA section 3540.1, subdivision (k) as "the governing board of a school district, a school district, a county board of education, or a county superintendent of schools."

within the meaning of the EERA, and that to treat the employees of the subject entity as falling outside the protections of the EERA would be to undermine the EERA's stated legislative purpose of affording a uniform system of employer-employee relations in the public school system. The Board's dissent emphasized that the definition of public school employer in the EERA was clear on its face and did not include the type of entity involved.

The Board's dissent in *Tulare County* was adopted by the Board's majority in *North Orange County*.⁹ The Board's majority explicitly overruled *Tulare County*, finding that a regional occupational center operated by a joint powers agency was not a public school employer or employer within the meaning of the EERA. The Board's dissent viewed the majority's interpretation of the statute as leading to an absurd result. The Legislature appears to have agreed, and amended EERA section 3540.1, subdivision (k), to include a joint powers agency within the definition of public school employer or employer under the EERA where certain conditions are met. (Stats. 2011, ch. 674, § 1 (AB 501).)¹⁰

⁹ In *San Jose/Evergreen Community College District* (2007) PERB Decision No. 1928 (*Evergreen*), the most recent Board decision to touch on this issue, the Board found that a joint powers agency and a public school district were not in a joint employment relationship and therefore employees of the joint powers agency were not entitled to bring an unfair practice charge under the EERA. The Board's decision in *Evergreen* was based implicitly on the holding in *North Orange County* that PERB had no jurisdiction under the EERA where the public school employer or employer is a joint powers agency.

¹⁰ The dissent finds support for its position in the history of the Board's decision-making leading up to the EERA amendment, stating that the amendment was enacted in direct response to the Board's decision in *North Orange County*. The argument is that in the absence of a similar amendment to the MMBA, a local public employer operating as a joint powers agency falls outside PERB's jurisdiction. As discussed in footnote 10, *ante*, the Board's decision in *Evergreen* applied the Board's holding in *North Orange County* that a regional occupational center operated by a joint powers agency was not a public school employer or employer within the meaning of EERA. The legislative history of the EERA amendment sheds some light on the significance of the Board's decision-making in discerning the intent of the Legislature in enacting the amendment. The Senate Rules Committee's Office of Senate Floor Analysis, Third Reading, states:

According to the author: "This bill stems from two erroneous Public Employment Relations Board (PERB) decisions that

The legislative reaction to the evolution of the Board's decisions in the EERA cases does not, however, lead to the conclusion that the absence of an explicit reference to a joint powers agency within the definition of public agency in MMBA section 3501, subdivision (c) requires the Board to find that it is without jurisdiction in this case. The various arguments concerning PERB's jurisdiction under the MMBA in cases involving a joint powers agency are similar to the arguments made in the EERA cases. The primary focus of any statutory construction analysis, however, is the language of the statute itself. With that focus in place, it can be seen that the statutory text defining a public agency under the MMBA bears no

prevented . . . the organization of employees of a JPA comprised of public school entities. . . ." The author also points out that in [*Evergreen*], the PERB ruled that employees of a JPA consisting of public schools were not eligible for organization. Here, school employees were considered "public school employees" for purposes of the EERA until the JPA was created, although they continued to perform the same work. This decision allowed districts to circumvent the EERA and deny their employees union representation.

Finally, the author notes that "This bill would clarify [existing law] to reflect the intention of the Legislature that public school employees have a right to join [a] representative organization of their own choice, and that any person employed by a JPA that is composed of one or more public school employers is a public school employee."

(Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Assem. Bill No. 501 (2011-2012 Reg. Sess.) as amended April 6, 2011, pp. 4-5; see, Evid. Code, § 452, subd. (c) [official acts of the Legislature subject to judicial notice].)

It does not appear to be the case that the intent of the Legislature in enacting the amendment to EERA was to sanction either the Board's interpretation of the then-existing statutory scheme as it concerned PERB's authority to assert jurisdiction over a joint powers agency under EERA or the Board's deferral to the Legislature on this issue. It is more likely the case that the Legislature viewed the amendment process as a way to correct what it considered to be an "erroneous" interpretation of EERA by the Board. (*Kaufman & Broad Community, Inc. v. Performance Plastering, Inc.* (2005) 133 Cal.App.4th 26, 39 [legislative history documents communicated to the Legislature as a whole constitute evidence of legislative intent]; *Guillermín v. Stein* (2002) 104 Cal.App.4th 156, 166 [Senate Rules Committee reports and analyses noticed as cognizable legislative history]; *Pacific Gas & Electric Co. v. Department of Water Resources* (2003) 112 Cal.App.4th 477, 497 [Office of the Senate Floor analyses noticed as cognizable legislative history].)

resemblance in content or scope to the statutory text defining a public school employer or employer under the EERA. Without commenting on whether the amendment to the definition of public school employer or employer in the EERA occasioned by the passage of Assembly Bill 501 was a clarification of existing law or an expansion, for the reasons described below, we conclude that the current definition of a public agency under the MMBA is broad enough to encompass the Authority, a joint powers agency.

Public Transit Districts

The court in *Rae v. Bay Area Rapid Transit Supervisory and Professional Association* (1980) 114 Cal.App.3d 147, 150 (*Rae*) recognized that when the George M. Brown Act (predecessor to the MMBA) was enacted, other legislation already existed concerning labor relations for certain public employees, among them the employees of various transit districts. Relying on MMBA section 3500,¹¹ the court found that the MMBA was not intended to “supplant such existing legislation.” (*Id.* at p. 151.) Consequently, transit districts with their own “statutorily prescribed method of administering employer-employee relations” do not fall within PERB’s jurisdiction under the MMBA. (See, e.g., *San Francisco Bay Area Rapid Transit Dist. v. Superior Court* (1979) 97 Cal.App.3d 153, 161, fn. 5 (*SF BART*) [court found MMBA not applicable to BART given its own statutorily prescribed method of administering employer-employee relations under the Public Utilities Code].)

These statutorily prescribed schemes for administering employer-employee relations in transit districts are generally found in the Public Utilities Code. (See, e.g., Pub. Util. Code,

¹¹ Specifically, the court relied on the following language in the MMBA:

Nothing contained herein shall be deemed to supersede the provisions of existing state law . . . that establish and regulate a merit or civil service system or which provide for other methods of administering employer-employee relations.

(MMBA, § 3500, subd. (a).)

§ 70120 et seq. governing the Marin County Transit District.) Here, the Authority is not a transit district, let alone a transit district with its own statutorily prescribed method of administering employer-employee relations. Accordingly, the Authority is not exempt from coverage under the MMBA on this basis alone.

In response to the unfair practice charge, the Authority filed a position statement in which it seemingly agreed with this conclusion. The Authority stated:

[The Authority] is a joint powers authority formed pursuant to the Joint Exercise of Powers Act. Gov. Code §6500 et seq. Transit operators with their own statutorily prescribed method of administering employer-employee relations are not subject to the MMBA. See *Rae v. Bay Area Rapid Transit Supervisory Etc. Assn.* (1980) 114 Cal. App. 3d 147, 150-151, 170 Cal. Rptr. 448. As a joint powers agency, however, [the Authority] does not have an enabling statute or any statutorily prescribed method of addressing employer-employee relations. Contra Costa County and the cities that created [the Authority] all are subject to the MMBA's jurisdiction.

On appeal, the very opposite is urged.¹² The Authority argues that it is a public transit district with its own statutory framework for administering labor relations. By statutory

¹² As reported in *Local 1605, supra*, 73 F.Supp.2d 1117, ATU and individual members of its negotiating committee sued the Authority 14 years ago in federal district court seeking compensation for time spent in collective bargaining negotiations during a lawful strike, which ensued upon the expiration of the parties' 1995-1998 memorandum of understanding and their failure to reach agreement on new terms. The Authority had compensated plaintiffs for pre-expiration negotiations conducted during time periods they would not otherwise have been on duty, but refused to compensate them for negotiations conducted during the strike. During an approximately two-week long strike, the bus operators refused to report to work and the Authority cancelled all regularly scheduled public transportation. The parties' negotiations during the strike resulted in a new three-year agreement and a return to work by the bus operators. In the litigation, ATU brought two claims against the Authority for unpaid wages in federal district court, a federal claim under the Fair Labor Standards Act, 29 U.S.C.S. § 201 et seq., and a claim under the MMBA pursuant to the court's supplemental jurisdiction over state law claims. Regarding the latter, the court found that the Authority violated the meet and confer requirements under MMBA section 3505 by unilaterally changing its policy regarding compensation for negotiating activity. Observing that the "MMBA governs labor relations for local public employers throughout California, including [the Authority]," the court proceeded to discuss, and then reject, the Authority's arguments that it had not violated the MMBA. (*Id.* at p. 1125.) Notably, the Authority argued that compensation for negotiating activities was a statutory requirement under MMBA section 3505.3 rather than a matter of policy. (*Ibid.*)

framework, the Authority is referring to its own EEORR. The Authority's argument is misplaced for three reasons.

First, "statutory framework" as used by the Authority or "statutorily prescribed method" as used by the courts, necessarily refers to a framework or method based in statute. "Statute" is defined as an "act adopted by the Legislature of this State or by the Congress of the United States, or a statewide initiative act." (§ 811.8.) The Government Code distinguishes a statute from an enactment, which is defined as "a constitutional provision, statute, charter provision, ordinance or regulation." (§ 810.6.) While the EEORR may be a legislative enactment of a local agency, it is not by definition a statute and therefore does not constitute a statutory framework or statutorily prescribed method for administering labor relations.

Second, the cases discussed above, *Rae* and *SF BART*, are premised on the notion that, prior to passage of the George M. Brown Act, other legislation already existed governing labor relations for certain public employees, most notably transit district employees. The import of these cases was to clarify that the MMBA was not intended to supplant this existing legislation. Instead, the MMBA and the existing legislation were intended to co-exist as parallel and independent statutory schemes. As the Authority originally pointed out in its position statement, the Authority is not a transit district, nor was it created under an enabling statute of the type found in the Public Utilities Code. Therefore, the exemption from coverage under the MMBA enjoyed by transit districts operating under a statutory scheme that provides for the administration of labor relations is not available to the Authority.

Absent from the court's discussion of the Authority's arguments was any indication that the Authority had taken the position that it was not a public agency within the scope of MMBA coverage, as it does in this matter on appeal. (*Id.* at pp. 1124-1126.)

Third, the logical extension of the Authority's position on appeal is that any local agency providing transportation services is necessarily a transit district that automatically enjoys a blanket exemption from coverage under the MMBA so long as it enacts a set of rules governing labor relations in its jurisdiction. Neither the MMBA nor the cases interpreting it support the Authority's current view of labor relations.

The MMBA was enacted to "promote the improvement of personnel management and employer-employee relations within the various public agencies in the State of California *by providing a uniform basis* for recognizing the right of public employees to join organizations of their own choice and be represented by those organizations in their employment relationships with public agencies." (§ 3500; emphasis supplied.) The MMBA makes no distinction between public agencies that provide transportation services and public agencies that serve some other function. The stated statutory emphasis is on uniformity. While public agencies may adopt reasonable rules and regulations for the administration of employee-employer relations (§ 3507), such local control is permitted only as contemplated by the MMBA itself and is not a factor in the analysis of jurisdiction.

Therefore, the Authority does not come within the rule that exempts transit districts with their own statutorily prescribed method for the administration of labor relations from coverage under the MMBA. As there is nothing to preclude coverage under the MMBA based on the Authority's status as a provider of transportation services,¹³ we now turn to the next question, which is whether the Authority is a public agency within the meaning of MMBA section 3501, subdivision (c).

¹³ See, e.g., *Inlandboatman Union of the Pacific* (2007) PERB Decision No. 1919-M (status of the Golden Gate Bridge, Highway & Transportation District as a provider of transportation services not a factor in the analysis of whether it is a public agency within the meaning of the MMBA for purposes of establishing the Board's jurisdiction).

Public Agency Under the MMBA

To establish jurisdiction, the Authority must qualify as any one of the enumerated entities included within the definition of “public agency” in MMBA section 3501, subdivision (c). It provides:

Except as otherwise provided in this subdivision, “public agency” means every governmental subdivision, every district, every public and quasi-public corporation, every public agency and public service corporation and every town, city, county, city and county and municipal corporation, whether incorporated or not and whether chartered or not. As used in this chapter, “public agency” does not mean a school district or a county board of education or a county superintendent of schools or a personnel commission in a school district having a merit system as provided in Chapter 5 (commencing with Section 45100) of Part 25 and Chapter 4 (commencing with Section 88000) of Part 51 of the Education Code or the State of California.

The Authority is a joint powers agency. A joint powers agency is not listed in the above definition of “public agency” under the MMBA. The question presented is whether the absence of a specific reference to a joint powers agency in the enumerated list of covered public entities precludes assertion of the Board’s jurisdiction in this matter.

The term “public agency” is used in the definition in two ways. It is first used generically within quotation marks to refer to all of the individual public entities such as cities and counties that fall within PERB’s MMBA jurisdiction. It is then used again in a more specific way to capture a certain category of public entities, i.e., “every public agency.” The issue here is whether the Authority is a public agency, referring to the latter usage, within the broader definition of “public agency.”

We are guided in our analysis by the fundamental rule of statutory construction that a court should ascertain the intent of the Legislature to effectuate the purpose of the law; and if the language of a statute is clear and unambiguous, then the intent of the Legislature is

reflected in the plain meaning of the statute. (*Reid v. Google* (2010) 50 Cal.4th 512, 527.) As the Supreme Court explained,

“Under settled canons of statutory construction, in construing a statute we ascertain the Legislature’s intent in order to effectuate the law’s purpose. [Citation.] We must look to the statute’s words and given them ‘their usual and ordinary meaning.’ [Citation.] ‘The statute’s plain meaning controls the court’s interpretation unless its words are ambiguous.’ [Citations.] ‘If the statutory language permits more than one reasonable interpretation, courts may consider other aids, such as the statute’s purpose, legislative history, and public policy.’ [Citation.]” (*Imperial Merchant Services, Inc. v. Hunt* (2009) 47 Cal.4th 381, 387-388 [97 Cal.Rptr.3d 464, 212 P.3d 736].)

(*Ibid.*)

The purpose and intent of the MMBA is set forth as follows: (1) to promote full communication between public employers and their employees by providing a method of dispute resolution regarding wages, hours and other terms and conditions of employment between public employers and public employee organizations; (2) to promote the improvement of personnel management and employer-employee relations within the various public agencies in the State of California; and (3) to provide a uniform basis for recognizing the right of public employees to organize and be represented in their employment relationships with public agencies. (§ 3500, subd. (a).)

The sweeping nature of the definition of public agency is consistent with the Legislature’s declaration of purpose and intent to provide public employees and public employers in the State of California with a uniform system for collective bargaining and mechanism for dispute resolution. As the Board has previously stated, “[o]n its face, the MMBA’s definition of ‘public agency’ is a broad one.” (*Public Transportation Services Corporation* (2004) PERB Decision No. 1637-M.)

In determining whether the definition of public agency in the MMBA is broad enough to cover a joint powers agency, it is instructive to consider how the status of a joint powers

agency is treated under state law. Questions regarding the organization of government and the status of local agencies are addressed, as might be expected, in the Government Code. Under title 5 (Local Agencies) of division 2 (Cities, Counties and Other Agencies) of the Government Code, section 53050 defines “public agency” as “district, public authority, public agency, and any other political subdivision or public corporation in the state, but does not include the state or a county, city and county, or city.”

Section 53051 requires the governing body of every public agency to file with the Secretary of State a “statement of public agency.” The Secretary of State is required to maintain this information in an indexed Roster of Public Agencies. As mentioned in footnote 4, *ante*, the Authority is identified as a public agency in the Secretary of State’s Roster of Public Agencies. That the Authority is treated by the Secretary of State as a public agency in terms of its basic organizational structure lends further support to the notion that the Authority is a public agency for purposes of establishing jurisdiction under the MMBA.

Like the definition of public agency in MMBA section 3501, subdivision (c), section 53050 uses the term public agency in both a generic and a specific fashion. Similarly, despite the absence of the term joint powers agency in section 53050, joint powers agencies are not relieved from their duty to file a statement of public agency with the Secretary of State under section 53051, as demonstrated by the Authority’s compliance with the roster procedures. By including the term public agency as a specific category within the umbrella of public agencies captured in both definitions, that category must be seen as including an entity, regardless of whatever other designation it may have, which has achieved the status of a public agency whether by constitutional provision or statute, case law or administrative precedent, or analysis into the public nature of its operations and characteristics unless to do so would violate the letter, purpose or spirit of the law.

The dissent takes issue with the majority's reliance on the Authority's Filing in the Secretary of State's Roster of Public Agencies, arguing that nothing in the history of section 53051 indicates that an agency's inclusion on the roster means that the agency falls within the definition of public agency for all purposes. The dissent suggests that the purpose of section 53051 is limited to determining the applicable claims procedure under the California Tort Claims Act, relying on the California Supreme Court opinion in *Tubbs v. Southern California Rapid Transit Dist.* (1967) 67 Cal.2d 671 (*Tubbs*). As the dissent points out, the Court in *Tubbs* stated that the purpose of Section 53051 is to "provide a means for identifying public agencies and the names and addresses of designated officers needed to enable or assist a person to comply with any applicable claims procedure."

Ten years after *Tubbs*, the California Supreme Court decided *Wilson v. San Francisco Redevelopment Agency* (1977) 19 Cal.3d 555 (*Wilson*), which discussed the quote from *Tubbs* relied on by the dissent. The Court held:

Our identification, in *Tubbs*, of the purpose of section 53051, has been criticized on the basis that "The dominant purpose of the roster procedure is to provide reliable information about local public agencies and thus facilitate service of process on them. [Citation.] Relieving plaintiffs of the claims presentation requirements may thus be viewed chiefly as an incentive by public entities to comply with the roster filing provisions, rather than a protection solely for those who failed to present timely claims. By diluting the incentive, *Tubbs* appears to have watered down the purpose of the roster device as well." (Van Alstyne, Cal. Government Tort Liability (Cont.Ed.Bar Supp. 1969, *supra*, p. 94.) Accepting, as we may, the proposition that the purposes of section 53051 may be multiple, we nonetheless find *Tubbs* clearly distinguishable

(*Id.* at p. 562.)

Based on the above, we disagree with the dissent that Section 53051 has no purpose outside the context of the California Tort Claims Act. As the Supreme Court stated in *Wilson*, the roster procedure under Section 53051 has multiple purposes, the dominant of which is to

provide the public with reliable identifying information about “local public agencies.” (*Ibid.*) While we agree with the dissent that the roster procedure serves no express purpose under the MMBA, we see no conflict or cross-purposes in considering the Authority’s inclusion on the Roster of Public Agencies in our overall analysis of whether the Authority is a local public agency under the MMBA.

The dissent also relies on *Alcala v. City of Corcoran* (2007) 147 Cal.App.4th 666 (*Alcala*) to support the argument that the definition of public agency for purposes of the roster procedure is limited to the article in the Government Code in which it appears. The dissent correctly states that the court in *Alcala* held that the exclusion of cities from the definition of public agency under Section 53050 did not preclude a finding that a city is a public agency under the Vehicle Code. The dissent relies on the following quote from *Alcala*:

“[Section 53050] does not pretend to define the term for use in all statutes.” (*Id.* at p. 670.) *Alcala* is distinguishable. In *Alcala*, the appellant relied on the definition of public agency in Section 53050 to argue that a city was not a “public entity” entitled to immunity under Vehicle Code section 17004.7. The court rejected that argument, finding that the terms public entity and public agency were used interchangeably in the governing Vehicle Code statutory scheme; that the current and former definitions of public agency and public entity in Vehicle Code section 1700 included cities; and, that these definitions had always been designated as applying to the entire chapter. The court concluded that there was no reason to look to the more restrictive definition of public agency found in Section 53050 when there were broader definitions found within the controlling statutory scheme. The court held that “applying this restrictive definition . . . would undermine the expressed intent of the Legislature” to increase the immunity from liability for suspect-caused accidents and resulting lawsuits, which is afforded public entities who employ law enforcement officers. (*Id.* at pp. 672-673.)

Here, by contrast, the MMBA does not provide definitions for the individual types of public entities enumerated within the broader definition of “public agency” contained in MMBA section 3501, subdivision (c). In determining whether a local public entity falls within the sub-category of “every public agency” within the broader definition of “public agency” in the MMBA, there is nothing that precludes this Board from considering the roster procedure under Section 53051, or any other relevant fact or legal principle, as an interpretative tool. Applying the underlying rationale in *Alcala*, the expressed intent of the Legislature in enacting the MMBA would be further served, not undermined, in asserting jurisdiction over the Authority in this matter. There is no reason discerned from the MMBA for treating the Authority, a joint powers agency, differently for labor relations purposes than other local public entities.

As a joint powers agency, the Authority operates pursuant to the Joint Exercise of Powers Act (JEPA).¹⁴ JEPA “provides a means by which governmental agencies may join together to accomplish goals that they could not accomplish alone, or that they might more efficiently and more effectively accomplish together.” (*Robings v. Santa Monica Mountains Conservancy* (2010) 188 Cal.App.4th 952, 962 (*Robings*).

Under JEPA, two or more “public agencies,” when authorized by their governing bodies, may enter into an agreement to exercise jointly any power common to them. (§ 6502.) An administering agency provided for by a joint powers agreement to jointly exercise these common powers is a “public entity separate from the parties to the agreement.” (§ 6507.) Under the common powers rule, “the powers that may be exercised by a joint powers agency can be no greater than the powers shared by each of the agency’s constituent members.”

¹⁴ The JEPA is codified at section 6500 et seq.

(*Robings*.) Any joint powers authority formed pursuant to a joint powers agreement, such as the Authority, is deemed to be a “public agency” in its own right. (§ 6500.)

The primary common power exercised by the Authority under the Agreement is the power to contract for and/or operate a public transportation system. The Authority also exercises the common power to claim, receive and expend all forms of regionally-allocated state or federal grants or sources of revenue available to member jurisdictions for the purpose of providing public transportation within their service area. While the powers exercised by the Authority are no different than the powers common to the individual member jurisdictions, the Agreement allows these powers to be exercised jointly in order to provide the central County with one regional public transportation system, rather than 11 smaller ones. Presumably, this is done to achieve certain operational efficiencies and economies of scale.

The Authority takes issue with ATU’s argument that because the signatories to the Agreement are themselves public agencies as defined by MMBA section 3501, subdivision (c), then, by extension, so too should the Authority be deemed a public agency. The Authority is correct to point out that the entity created by a joint powers agreement to administer the agreement is considered an entity separate from the parties to the agreement under section 6507 of the JEPA. With its reliance on the JEPA, however, the Authority must then grant that the entity so created is, in its own right, a “public agency” under Section 6500.

While it is true that the Authority is a separate entity from the signatories to the Agreement, the fact that the signatories are cities and a county and therefore all fall within the definition of public agency in MMBA section 3501, subdivision (c), is significant for a different point. Under the legal maxim of *noscitur a sociis*, which means “it is known from its associates,”¹⁵ courts will treat a list or catalogue of items in a statute as referring to

¹⁵ 81 Ops.Cal.Atty.Gen. 213, 215 (1998).

“items similar in nature and scope.” (*Moore v. California State Bd. Of Accountancy* (1992) 2 Cal.4th 999, 1011-1012.)

Because the Authority is empowered only to exercise powers common to the Authority’s constituent members, the Authority is similar to the constituent members in terms of the nature and scope of its governmental powers. The constituent members are subject to the MMBA because they fall within a list of covered public agencies. To the extent the list is intended to refer to “items similar in nature and scope,” finding the Authority to also fall within the list is consistent with the legal maxim, *noscitur a sociis*.

The Authority also argues that because the JEPA was enacted in 1949 prior to enactment of the MMBA, the Legislature could have expressly included joint powers agencies within the definition of public agency in MMBA section 3501, subdivision (c), but chose not to do so. The Authority relies on the rule of statutory construction that provides that had the Legislature so intended, the Legislature would have so stated. (*Ventura County Retired Employees’ Assn. v. County of Ventura* (1991) 228 Cal.App.3d 1594, 1598.) In enacting the MMBA, however, it was unnecessary for the Legislature to have so stated because Section 6500 of the JEPA had already statutorily designated a joint powers authority to be a public agency.¹⁶

Based on the foregoing, we conclude that the Authority is a public agency within the broader definition of public agencies encompassed by MMBA section 3501, subdivision (c), and therefore the Board may assert its jurisdiction over the Authority in this matter. In so

¹⁶ It also bears mention that according to the Authority’s argument, the Legislature also could have expressly exempted joint powers agencies from the operation of the MMBA, as it did with school districts, boards, superintendents and personnel commissions and the state in MMBA section 3501, subdivision (c), and with superior courts in MMBA section 3501.5. It could be argued that the failure of the Legislature to exempt joint powers agencies from the operation of the MMBA, as it did with these other entities, meant that the Legislature intended to include them. Exceptions in a statute are to be narrowly construed. (*Club Members for an Honest Election v. Sierra Club* (2008) 45 Cal.4th 309, 316.)

concluding, we reject the Authority's claim that the Board's assertion of jurisdiction would violate the rule of statutory construction, *expressio unius est exclusio alterius*, which provides that where a statute enumerates things upon which it is to operate, it is to be construed as excluding from its effect all those not expressly mentioned. (*Capistrano Union High School Dist. v. Capistrano Beach Acreage Co.* (1961) 188 Cal.App.2d 612, 617.) This rule does not apply because the statute's enumeration of entities subject to the MMBA expressly mentions "every public agency" of which a joint powers agency is a type.

Similarly, the decision herein does not enlarge the Board's jurisdiction beyond that which is contemplated by the statute, as also argued by the Authority. We simply rely on the plain meaning rule to interpret "every public agency" as including the Authority. This interpretation reflects the Legislature's intent, as expressed in MMBA section 3500, to provide public employees and public employers in the State of California with a uniform framework for collective bargaining and a mechanism for dispute resolution.

Hawkins County

The conclusion reached above relies on the "every public agency" part of the definition of public agency in MMBA section 3501, subdivision (c), in finding that the Authority is subject to the MMBA. The definition of public agency in MMBA section 3501, subdivision (c), also includes "every governmental subdivision." Contrary to the conclusion reached by the Office of the General Counsel, we find that the Authority is a governmental subdivision, in addition to a public agency, as an alternate ground for establishing the Board's jurisdiction.

In determining whether an entity is a governmental subdivision and therefore subject to the MMBA, PERB has relied on an analysis developed under federal law for determining whether an entity is exempt from the NLRA. The NLRA expressly excludes from coverage "any State or political subdivision thereof." (29 U.S.C. § 152, subd. (2).) Under the test

developed by the National Labor Relations Board (NLRB) and endorsed by the United States Supreme Court in *Hawkins County*, *supra*, 402 U.S. 600,¹⁷ an entity will be found to be a political subdivision of a state if it meets the following test: (1) it is created directly by the state, so as to constitute a department or administrative arm of the government; or (2) it is administered by individuals who are responsible to public officials or to the general electorate. The *Hawkins County* test is written in the disjunctive and therefore it would appear that an entity need only meet one prong of the test in order to be found to be a public sector employer exempt from coverage. Although the Court in *Hawkins County* found federal law controlling in determining whether an entity is exempt from coverage, it agreed with the NLRB that state statutory declarations and interpretations are to be given “careful consideration.” (*Id.* at pp. 602-603.) Broadly stated, the *Hawkins County* test is designed to distinguish private sector employers covered under NLRA from exempt public sector employers.

Under the first prong of the *Hawkins County* test, the NLRB looks at the entity that acts as the employer of the employees at issue and if the employing entity was established by private parties rather than a public body, and without any state enabling action or intent, the Board will deem the first prong to be unmet. (See, e.g., *Research Foundation of the City University of New York* (2002) 337 NLRB 965, 968.) Here, the Authority was created by state statute to be a public agency authorized to exercise public powers common to its constituent public agency members. It was established through agreement by local public entities. In providing a public transportation system for all the constituent member jurisdictions, the

¹⁷ In interpreting the MMBA, PERB may look to NLRA precedent to the extent it relates to an analogous principle imbedded in the statute. (*Fire Fighters Union v. City of Vallejo* (1974) 12 Cal.3d 608, 616-617; see *El Camino Hospital District* (2009) PERB Decision No. 2033-M [using the *Hawkins County* analysis as guidance, hospital found to be a public entity subject to MMBA where five out of six hospital board members were public officials]; see also *Options For Youth-Victor Valley, Inc.* (2004) PERB Decision No. 1701.)

Authority is carrying out a governmental function.¹⁸ Accordingly, under the first prong of the *Hawkins County* test, the Authority is an entity created directly by state law so as to constitute an arm of government.

Under the second prong of the *Hawkins County* test, the NLRB examines various factors of the entity's operations and characteristics bearing on the entity's relationship to the state to determine whether the entity has the attributes commonly associated with public bodies. (*Hawkins County, supra*, 402 U.S. 600, 604-605.) Here, the Authority is administered by a governing Board of Directors. Each member jurisdiction appoints a Director to serve on the board for a two year term of office to represent its member jurisdiction. A Director may be replaced by the appointing member jurisdiction. In that event, the Director being replaced ceases to represent the appointing member jurisdiction and the appointing member jurisdiction must appoint a new Director to serve the unexpired balance of the outgoing Director's term of office. Because Directors, even if they are private citizens, are appointed and subject to removal by the city and county member jurisdictions that make up the Authority, the Authority is administered by individuals who are responsible to public officials or to the general electorate under the second prong of the *Hawkins County* test. (See *Wheaton, supra*, 559 F.3d 979, 985 [in case interpreting the Longshore and Harbor Workers' Compensation Act using the *Hawkins County* analysis, court held that "[a]ppointment of the governing board by elected officials favors the conclusion that the entity is a subdivision of the state"].)

Additionally, regular meetings of the Board of Directors are subject to the open meeting and notice requirements of the Ralph M. Brown Act, section 54950 et seq. Employees participate in CalPERS, a state sponsored pension system, and obtain medical benefits through

¹⁸ In *Wheaton v. Golden Gate Bridge, Highway & Transportation Dist.* (9th Cir. 2009) 559 F.3d 979, 985 (*Wheaton*), for example, the court found: "The District manages a bridge, including the highway that goes over it. It also manages public transportation by bus and ferry. These are governmental functions."

PEMHCA.¹⁹ Actions taken by the Authority are by way of legislative resolutions. (See, e.g., the EEORR.) The Authority can issue bonds in its own name to finance public capital improvements (§ 6540 et seq.) and its status under state law is that of a “public agency.”²⁰ These characteristics lend further support to our conclusion regarding the second prong of the *Hawkins County* test.

Accordingly, under the analysis set forth in *Hawkins County*, the Authority would be considered “any State or political subdivision thereof” under the NLRA exemption and, by logical extension, a governmental subdivision under the MMBA. Several federal courts that have considered similar issues concerning the status of regional transportation authorities under the NLRA exemption for political subdivisions have reached the same conclusion. (See, e.g., *Moir v. Greater Cleveland Regional Transit Authority* (6th Cir. 1990) 895 F.2d 266, 271 [in case involving an authority created by state statute authorizing local entities to create transit authorities and specifically designating such authority to be a “political subdivision,” the court held “[w]hile state law declarations of an entity’s public purpose are not controlling, when considered along with [the authority’s] operations and administration, such a declaration weighs heavily in favor of finding that [the authority] is a ‘political subdivision’”]; *Crilly v. Southeastern Pennsylvania Transportation Authority* (3rd Cir. 1976) 529 F.2d 1355 [authority created by the Pennsylvania Legislature to exercise certain public powers and governed by a board appointed by elected officials falls within definition of political subdivision]; *Jacobs v. Ohio Valley Regional Transportation Authority* (N.D. W. Va. 1986) 636 F.Supp. 841 [public

¹⁹ The purpose of PEMHCA is, in part, to “[e]nable the state to attract and retain qualified employees by providing health benefit plans similar to those commonly provided in private industry.” (§ 22751, subd. (b).).

²⁰ The Authority may also be found responsible as a public entity for injury caused by a dangerous condition of its property under the California Torts Claims Act’s provisions concerning government tort liability. (See *Bonanno v. Central Contra Costa Transit Authority* (2003) 30 Cal.4th 139.)

corporation created under the Urban Mass Transportation Authority Act managed by a board appointed by governing bodies of participating governments falls within definition of political subdivision].)

CONCLUSION

We hereby conclude that the Authority, a joint powers agency, is not a transit district with its own statutorily prescribed method of administering labor relations and therefore it is not exempt from the application of the MMBA. The Authority is a “public agency” within the meaning of MMBA section 3501, subdivision (c), based on its status as a public entity falling within the sub-category of “every public agency” and its status as a governmental subdivision under the *Hawkins County* test. Accordingly, the Board has jurisdiction over the Authority in this matter, and the Office of the General Counsel may proceed to process the charge.

ORDER

The Public Employment Relations Board hereby REMANDS this case to the Office of the General Counsel for investigation of the underlying allegations in the unfair practice charge in Case No. SF-CE-711-M.

Member Huguenin joined in this Decision.

Member Dowdin Calvillo’s dissent begins on page 27.

DOWDIN CALVILLO, Member: I respectfully dissent. In my view, the majority decision in this case represents an unwarranted expansion of the Public Employment Relations Board's (PERB or Board) jurisdiction beyond that vested in it by the Legislature. As noted by the majority, PERB has only such jurisdiction and powers as have been conferred on it by statute. (*North Orange County Regional Occupational Program* (1990) PERB Decision No. 857 (*North Orange County*)). Applying this principle, in *North Orange County*, the Board held that, under the Educational Employment Relations Act (EERA), it had no jurisdiction to rule on the appropriateness of a proposed bargaining unit of employees of a regional occupational program operated by a joint powers agreement between five school districts. In so doing, the Board overruled its prior decision in *Joint Powers Board of Directors, Tulare County Organization for Vocational Education, Regional Occupational Center and Program* (1978) PERB Decision No. 57, in which it had found that a similar regional occupational center operated by a joint powers agency (JPA) was a public school employer or an employer covered under EERA. Thus, the Board held that it lacked the authority to resolve the dispute before it unless or until the Legislature amended the governing statute to include programs operated by a JPA within the definition of a public school employer. (*North Orange County*, citing *Hacienda La Puente Unified School District* (1988) PERB Decision No. 685 [the Board is without power to expand the scope of its own jurisdiction where the Legislature has failed to provide that authority].) In direct response to *North Orange County*, the Legislature amended EERA to expressly include JPAs within the definition of "public school employer" or "employer" under EERA section 3540.1(k).

I find this case legally indistinguishable.¹ In the absence of statutory language giving PERB jurisdiction over JPAs, PERB has no authority to expand its jurisdiction over such entities.² Instead, I would find that if the Legislature intended to include JPAs within the scope of the MMBA, it would have done so expressly, as it did with EERA following the issuance of the Board's decision in *North Orange County*.³

I further disagree with the majority's reliance on the fact that the Central Contra Costa Transit Authority (Authority) is listed on the Secretary of State's Roster of Public Agencies (Roster) in support of its finding that the Authority is a public agency for purposes of PERB's jurisdiction under the Meyers-Milias-Brown Act (MMBA). The Roster was established in conjunction with legislation governing the filing of claims with public entities as a prerequisite to bringing suit under the California Tort Claims Act. (*Tubbs v. Southern California Rapid Transit Dist.* (1967) 67 Cal.2d 671 (*Tubbs*)). Government Code section 53051 requires public agencies, as defined in Section 53050, to file specified information with the Secretary of State and for the Secretary of State and county clerks to maintain the Roster. The purpose of Section 53051 is to "provide a means for identifying public agencies and the names and addresses of designated officers needed to enable or assist a person to comply with any applicable claims procedure."

¹ When interpreting the Meyers-Milias-Brown Act (MMBA), it is appropriate to take guidance from cases interpreting the National Labor Relations Act and California labor relations statutes with parallel provisions. (*Fire Fighters Union v. City of Vallejo* (1974) 12 Cal.3d 608.)

² The majority reads the legislative history of the EERA amendment as indicating that the Legislature intended to correct what it considered to be the Board's erroneous interpretation of the law in its prior decisions. Notably, however, the Legislature did not make the same "correction" to the MMBA. Therefore, pursuant to *North Orange County*, I continue to believe that PERB lacks authority over JPAs under the MMBA.

³ I note that the Board has exercised jurisdiction over other transit agencies apparently operating as JPAs. (See, e.g., *Omnitrans* (2010) PERB Decision No. 2121-M; *Omnitrans* (2009) PERB Decision No. 2030-M.) In those cases, however, the issue of the Board's jurisdiction under the MMBA was not raised and, therefore, they do not support the conclusion in this case that the MMBA applies to JPAs. (See *San Diego Gas & Electric Co. v. Superior Court* (1996) 13 Cal.4th 893, 943 [cases are not authority, of course, for issues not raised and resolved].)

(*Tubbs* at p. 675.) The failure of an agency to file the information required by Section 53051 relieves a claimant of the obligation to present the claim to the agency as a prerequisite to filing suit. (Gov. Code, § 946.4; *Tubbs*; see also *Wilson v. San Francisco Redevelopment Agency* (1977) 19 Cal.3d 555, 560 (*Wilson*) [substantial noncompliance by the agency with the requirements of Section 53051 unconditionally excuses the claimant from filing a claim]; *Hetzer v. North San Diego County Transit Dev. Bd.* (1980) 112 Cal.App.3d 708 [agency's failure to file information with the Secretary of State relieves claimants from claim presentation requirement].)⁴ Nothing in the language or history of Section 53051 indicates that an agency's act of filing information required under Section 53051 was intended to bring such agencies within the definition of "public agency" for all purposes.

To the contrary, the definition of "public agency" for purposes of the Roster has been found to be limited to the article in which it appears. (*Alcala v. City of Corcoran* (2007) 147 Cal.App.4th 666 (*Alcala*)). That article is found in Division 2, Part 1, Chapter 1, Article 3 of the Government Code. Article 3, entitled Roster of Public Agencies, consists solely of Sections 53050 and 53051. Thus, in *Alcala*, the court held that the exclusion of cities from the definition of "public agency" under Section 53050 did not preclude a finding that a city was a "public agency" under the Vehicle Code, stating: "Government Code section 53050's definition is expressly limited to the article in which it appears by the language, 'as used in this article'; it does not pretend to define the term for use in all statutes." (*Alcala* at p. 670.) Similarly,

⁴ I respectfully disagree with the majority's suggestion that, under *Tubbs* and *Wilson*, the determination of PERB's MMBA jurisdiction is one of the "multiple purposes" served by compliance with the Roster requirements of Section 53051. The language from *Wilson* quoted by the majority expresses concern over "diluting" the incentive for public agencies to comply with the roster filing provisions, rather than providing "protection solely for those who failed to present timely claims." (*Wilson* at p. 562.) While protection for claimants may have been one of the "multiple purposes" of Section 53051, nothing in the case law **or the legislative history** indicates that Section 53051 was intended to include the expansion of PERB's jurisdiction among such purposes.

because the definition of public agency under Section 53050 is limited to the article in which it appears governing the establishment of the Roster, and because the Roster serves an entirely different purpose than the MMBA, I do not find it relevant to establishing coverage under the MMBA.⁵

For the foregoing reasons, I would affirm the dismissal of the unfair practice charge in this case.

⁵ In addition, I agree with the PERB Office of the General Counsel that the Authority is not a “governmental subdivision” under the test set forth in *NLRB v. Natural Gas Utilities District of Hawkins County* (1971) 402 U.S. 600.