

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

SB 598 (Pan)
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Fiscal: Yes
Urgency: No
TSG

SUBJECT

Sacramento Regional Transit District: employee relations

DIGEST

This bill gives bargaining units within Sacramento Regional Transit (SacRT) the option of transferring jurisdiction over all their unfair labor practice disputes from the judicial system to the Public Employee Relations Board (PERB).

EXECUTIVE SUMMARY

PERB is an administrative law body that oversees most of the public sector collective bargaining in California – but not all. Either because they were established before the PERB came into being or because they were exempted from PERB’s purview, there are a number of public entities that handle labor disputes outside of the PERB process, under their own separate statutes. SacRT is one such public entity.

Currently, when SacRT is unable to resolve unfair labor practice disputes through negotiation or arbitration, the matter winds up in the courts. The proponents of this bill assert that such court proceedings are unnecessarily costly and time-consuming. With that in mind, this bill gives bargaining units within SacRT the option of placing jurisdiction for these disputes under the PERB instead.

The bill is sponsored by the American Federation of State, County and Municipal Employees. Support is from organized labor. There is no known opposition. The bill passed out of the Senate Labor, Public Employment, and Retirement Committee by a vote of 5-0.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Governs collective bargaining in the private sector under the federal National Labor Relations Act (NLRA) but leaves to the states the regulation of collective bargaining in their respective public sectors. While the NLRA and the decisions of its National Labor Relations Board (NLRB) often provide persuasive precedent in interpreting state collective bargaining law, public employees generally have no collective bargaining rights absent specific statutory authority establishing those rights. (29 U.S.C. § 151 *et seq.*)
- 2) Provides several statutory frameworks under California law to provide public employees collective bargaining rights, govern public employer-employee relations, and limit labor strife and economic disruption in the public sector through a reasonable method of resolving disputes regarding wages, hours and other terms and conditions of employment between public employers and recognized public employee organizations or their exclusive representatives. These include the Meyers-Milias-Brown Act (MMBA) which provides for public employer-employee relations between local government employers and their employees, including some, but not all public transit districts. (Gov. Code § 3500 *et seq.*)
- 3) Establishes PERB, a quasi-judicial administrative agency charged with administering certain statutory frameworks governing employer-employee relations, resolving disputes, and enforcing the statutory duties and rights of public agency employers and employee organizations, but provides the City and County of Los Angeles, respectively, local alternatives to PERB oversight. (Gov. Code § 3541.)
- 4) Does not cover California's public transit districts by a common collective bargaining statute. Instead, while some transit agencies are subject to the MMBA, the majority of transit agencies are subject to labor relations provisions found in each district's specific Public Utilities Code (PUC) enabling statute, in joint powers agreements, or in articles of incorporation and bylaws. (See, e.g., Pub. Util. Code § 28500.)
- 5) Provides transit employees not under the MMBA with basic rights to organization and representation, but does not define or prohibit unfair labor practices. Unlike other California public agencies and employees, these transit agencies and their employees have no recourse to PERB. Instead, they must rely upon the courts to remedy any alleged violations. Additionally, they may be subject to provisions of the federal Labor Management Relations Act of 1947 and the 1964 Urban Mass

Transit Act, now known as the Federal Transit Act. (Pub. Util. Code § 24501 *et seq.*; 49 U.S. C. § 5333(b).)

- 6) Provides that the following provisions shall govern disputes between exclusive bargaining representatives of public transit employees and local agencies not covered by the MMBA:
 - a) the disputes shall not be subject to any fact-finding procedure otherwise provided by law;
 - b) each party shall exchange contract proposals not less than 90 days before the expiration of a contract, and shall be in formal collective bargaining not less than 60 days before that expiration;
 - c) each party shall supply to the other party all reasonable data as requested by the other party; and
 - d) at the request of either party to a dispute, a conciliator from the California State Mediation and Conciliation Service shall be assigned to mediate the dispute and shall have access to all formal negotiations. (Gov. Code § 3611.)
- 7) Establishes the Sacramento Regional Transit District (SacRT) and provides that its employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. (Pub. Util. Code § 102000 *et seq.*).
- 8) Provides for an arbitration process to resolve disputes between the district and its employees' representatives. (Pub. Util. Code § 102401.)
- 9) Provides that the MMBA does not apply to SacRT, as specified. (Pub. Util. Code § 102410.)
- 10) Requires public employers regulated by specified labor relations statutes to provide employee contact information and comply with other provisions facilitating communication between employees and their exclusive employee representatives. (Gov. Code § 3555 *et seq.*)

This bill:

- 1) Gives PERB jurisdiction to enforce the statutes governing SacRT labor relations as to all unfair labor practice charges involving a bargaining unit after that bargaining unit has given notice to PERB of its irrevocable submission to PERB jurisdiction.
- 2) Provides that exclusive representatives shall have the right to represent their bargaining unit members in employer-employee relations with the district, and employees shall have the right to representation by their exclusive representative. The bill states that there is no intent to affect adversely any rights afforded to

exclusive representatives or district employees under existing law, as the Legislature may amend it from time to time.

- 3) Requires SacRT to give reasonable written notice to an exclusive representative of its intent to make any change to matters within the scope of representation of the employees represented by the exclusive representative for purposes of providing the exclusive representative a reasonable amount of time to negotiate with the district regarding the proposed changes.
- 4) Defines certain acts by SacRT as unlawful, including:
 - a) interfering with employees' rights to organize and collectively bargain, as specified (including the rights of new job applicants and rehires);
 - b) denying rights guaranteed to unions by SacRT's enabling act as amended by this bill;
 - c) refusing or failing to meet and negotiate in good faith. Such refusal or failure includes knowingly giving a union inaccurate information, whether or not in response to a request for information, constitutes a refusal or failure of the district to meet and negotiate in good faith;
 - d) dominating or interfering with the union's formation or administration or contributing financial or other support to it, or in any way encouraging employees to join any union in preference to another; and
 - e) refusing to participate in good faith in mutually agreed upon impasse procedures.
- 5) Defines certain acts by a union as unlawful, including:
 - a) interfering with employees exercising their rights under the enabling act, as specified;
 - b) refusing or failing to meet and negotiate in good faith with the district concerning any of the employees of which it is the exclusive representative; and
 - c) refusing to participate in good faith in mutually agreed upon impasse procedures.
- 6) Maintains existing provisions for court jurisdiction over a specified cooling off, impasse resolution, and injunctive relief procedures, but clarifies that PERB has exclusive jurisdiction over the initial determination whether an unfair labor practice charge is justified, and if so, what the appropriate remedy is, with the proviso that PERB may not award strike related damages.
- 7) Authorizes any charging party, respondent, or intervener aggrieved by PERB's final decision or order, except a decision not to issue a complaint, to petition for a writ of extraordinary relief in the relevant district court of appeal.

- 8) Provides that the bill should not be interpreted to conflict with existing collective bargaining agreements and shall not implement the bill in a manner to abrogate an agreement entered into before January 1, 2021.
- 9) Requires that specified provisions related to unlawful activities by the employer and petitions of extraordinary relief be interpreted in a manner consistent with PERB's interpretation of parallel provisions in other labor relation statutes it enforces.
- 10) Makes the Public Employees Communication Act, which requires the employer to provide specified employee information to unions, applicable to SacRT.

COMMENTS

1. Background on PERB

As explained by the Senate Labor, Public Employment, and Retirement Committee:

PERB consists of a five-member board appointed by the Governor and supported by approximately 60 staff divided into the following major organizational elements: the Office of the General Counsel, the Division of Administrative Law, the Representation Section, State Mediation & Conciliation Service, and the Division of Administration. The state established PERB in the 1970s, when it authorized public sector collective bargaining, to enforce the statutory duties and rights of public employers and public employee unions. Supporters of this framework contend that PERB provides administrative efficiency and expertise in complicated public sector labor law to provide stability in labor relations and avoid public sector labor disruptions that had previously troubled California. Absent PERB, public employer and public employee unions could only seek recourse for their disputes in superior court through expensive and time-consuming litigation or through disruptive labor unrest.

2. Potential benefits of administrative adjudication

This bill would transfer adjudication of unfair labor practice challenges from the court system to PERB, an administrative process. Administrative adjudicatory systems have some virtues in comparison to the courts.

First, administrative legal systems typically lack some of the stricter formalities, such as strict adherence to the rules of evidence, found in courtrooms. This makes administrative legal systems easier and generally cheaper to navigate.

Second, administrative agencies frequently move more quickly than the courts. In this regard, however, it should be noted that PERB has been tasked with a wider scope of authority in recent years and a backlog of cases developed as a result. This appears to have been the primary motivation behind then-Governor Jerry Brown's veto of several bills that were similar to this one back in 2018. However, PERB recently received increased funding and has added staff to address its workload issues. Additionally, due to efficiency reforms instituted at PERB in the last 3 years, the agency has decreased its caseload and adjudication times. Finally, according to the author, PERB heard 233 total cases between 2017 and 2019. For the same period, there were approximately three labor disputes at SacRT that might have required PERB intervention. The author therefore contends that this bill would only increase the workload of PERB by a small fraction.

The last potential benefit from the switch between judicial and administrative adjudication is that, while the courts deal with a wide range of matters, an administrative agency like PERB generally specializes in a narrow body of laws. As a result, administrative adjudicatory systems tend to develop deep expertise and sometimes their own bodies of administrative case law. In the case of PERB, the agency deals exclusively with public sector labor relations issues, providing it with knowledge and experience in the field that few judges are likely to be able to match.

3. Conforming changes to SacRT-related statutes

In addition to giving PERB jurisdiction over unlawful labor practices involving SacRT, the bill makes a series of conforming changes to the existing statutes that govern SacRT. In effect, these changes have the effect of applying to SacRT the same rules that apply to other public entities under PERB's jurisdiction.

For example, the bill text contains a section laying out the procedures by which aggrieved parties could seek review of final PERB rulings through a petition for a writ of extraordinary relief in the relevant district court of appeal. These provisions would not be unique to SacRT. Rather, they are lifted nearly verbatim from Government Code Section 3509.5, which governs how parties currently under PERB's jurisdiction can seek review in the event they are dissatisfied with the outcome they got from PERB itself.

Similarly, to the statutes governing SacRT, the bill adds provisions making it an unlawful labor practice for the district to act in specified ways, including things like retaliating against employees exercising their rights under these laws and refusing to engage in good faith negotiations. These provisions are lifted nearly verbatim from Government Code Section 3506.5 which applies to other public entities under PERB's jurisdiction.

4. Impact of recent amendments

The bill was amended on April 12, 2021. Although those amendments initially appear quite extensive, they are in fact far more limited in their substantive effect.

In the new sections 3, 4, 5, and 6, the phrase “labor” organization is taken out and replaced with “employee” organization; the phrase “accredited” representative is swapped out for “exclusive” representative; and the correct, updated name for the California State Mediation and Conciliation Service is added in. These are technical, non-substantive amendments. The new sections 7, 9, 11, 13, 15, 17, and 19 are all simply reorganization of the bill into a more logical order.

The only substantive element to the amendments comes in section 16 of the bill in print. That new section allows the union to make an irrevocable election to bring individual bargaining units under PERB jurisdiction. Ordinarily, all employees of an employer would be either in or out of PERB jurisdiction. Under the amendments to this bill, some employees could move to PERB jurisdiction while others do not, depending upon what bargaining unit they are part of and whether that bargaining unit has requested PERB jurisdiction. In essence, this change allows each bargaining unit to control its jurisdictional fate. Those bargaining units within the SacRT that wish to join the PERB system may do so and if any bargaining units are resistant to the change for any reason, they are free to remain under the jurisdiction of the courts.

5. Arguments in support of the bill

According to the author:

Most of California’s public sector employees fall under the jurisdiction of the Public Employment Relations Board (PERB) to settle employer-employee conflicts. Due to historical precedent, many of California’s public transit districts remain outside of PERB’s jurisdiction. To settle an unfair labor practice (ULP) charge, these districts must file a writ in Superior Court, which is time-consuming and prohibitively expensive for all parties.

SB 598 would move ULP jurisdiction to PERB for Sacramento Regional Transit, giving the district access to a more streamlined, labor-specific resolution process. This bill would update Sacramento Regional Transit’s outdated labor relations statutes, align the district with several others that have moved to PERB jurisdiction, and foster labor peace at the district.

As sponsor of the bill, the American Federation of State, County and Municipal Employees writes:

Transit agencies should have access to the same well-regarded employer-employee conflict resolution process as most public employees. While employer-employee relations at Sacramento Regional Transit are copacetic, employee organizations and the district agree that PERB is a more timely, accessible, and labor-focused venue to resolve any future ULP conflicts that may arise.

SUPPORT

American Federation of State, County and Municipal Employees (sponsor)
California-Nevada Conference of Operating Engineers (sponsor)
International Brotherhood of Electrical Workers, Local 1245
Sacramento Regional Transit

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

AB 2850 (Low, Ch. 293, Stats. 2020) gave PERB jurisdiction over unfair labor practices involving Bay Area Rapid Transit.

AB 355 (Daly, Ch. 713, Stats. 2019) gave PERB jurisdiction over unfair labor practice disputes involving the Orange County Transportation Authority.

AB 2886 (Daly, 2018) would have transferred the jurisdiction over the adjudication of unfair labor practices for the OCTA and San Joaquin Regional Transit District from the judicial system to PERB, among other provisions. In his message vetoing AB 2886, AB 2305, and AB 3034, then-Governor Jerry Brown wrote:

Over the years, the Legislature has expanded the [PERB's] jurisdiction, but the necessary funding for the increased workload has not kept pace. This has resulted in significant backlogs at the [PERB] - both labor and employers have complained about this problem. This Administration has recently increased the [PERB's] funding to help correct this problem. The [PERB's] jurisdiction should not be expanded again until the ability to handle its previously expanded caseload is established.

AB 2305 (Rodriguez, 2018) would have expanded the jurisdiction of the PERB relating to peace officer employee organizations, among other provisions. Then-Governor Brown vetoed AB 2305 under the same rationale he used to veto AB 2886 and AB 3034.

AB 3034 (Low, 2018) proposed to amend the Public Utility Code by placing supervisory, professional, and technical employee units of the San Francisco Bay Area Rapid Transit District under the MMMBA; thereby, granting them certain statutory rights related to the employer-employee relationship, and bringing them within the jurisdiction of the PERB. Then-Governor Brown vetoed AB 3304 under the same rationale he used to veto AB 2886 and AB 2305.

AB 530 (Cooper, 2017) would have expanded the jurisdiction of the PERB to include Penal Code Section 830 peace officers, and would have authorized a peace officer or labor union representing peace officers to bring specified actions in court, among other provisions. In vetoing AB 530, then-Governor Brown wrote: "No other group has both of these rights and I'm unconvinced that providing such a unique procedure is warranted."

AB 199 (Oropeza, Ch. 833, Stats. 2003) gave PERB jurisdiction over unfair labor practice disputes involving the Los Angeles County Metropolitan Transportation Authority.

PRIOR VOTES:

Senate Labor, Public Employment, and Retirement Committee (Ayes 5, Noes 0)
