

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

SB 957 (Laird)
Version: March 9, 2022
Hearing Date: April 26, 2022
Fiscal: Yes
Urgency: No
TSG

SUBJECT

Public Employment Relations Board: Santa Cruz Metropolitan Transit District

DIGEST

This bill transfers jurisdiction over unfair labor practice charges involving the Santa Cruz Metropolitan Transit District (SCMTD) 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 are 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. SCMTD is one such public entity. Currently, when SCMTD 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. The proponents believe that PERB will be able to adjudicate claims involving SCMTD more effectively since it is an administrative entity customized to deal with public employment labor disputes. With that in mind, this bill proposes to place jurisdiction over labor disputes involving SCMTD with PERB instead of the courts.

The bill is author-sponsored. Support comes from organized labor who asserts that PERB jurisdiction will be beneficial to resolving labor disputes. There is no opposition on file. The bill passed out of the Senate Labor, Public Employment and Retirement Committee by a vote of 5-0. If the bill passes out of this Committee, it will next be heard in the Senate Appropriations Committee.

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 that provide collective bargaining rights to public employees, govern public employer-employee relations, and limit labor strife and economic disruption in the public sector through dispute resolution mechanisms 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 unique enabling statute within the Public Utilities Code (PUC), 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 Santa Cruz Metropolitan Transportation District (SCMTD) 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 § 98000 *et seq.*).

- 8) Provides that all SCMTD employees are to be free from interference, coercion, and restraint in associating themselves together for their mutual benefit in connection with their employment. They may designate representatives of their own choosing and, collectively or individually, may exercise their right of petition to the board concerning wages, hours, or other conditions of employment. (Pub. Util. Code § 98162(a).)

- 9) Specifies that SCMTD employees have the right to self-organization; to form, join, or assist labor organizations; and to bargain collectively through representatives of their own choosing for the purpose of collective bargaining. (Pub. Util. Code § 98162(a).)

- 10) Obligates SCMTD to bargain in good faith with a duly designated or certified labor organization and, when an agreement is reached, to execute a written collective bargaining agreement with the labor organization covering the wages, hours, and working conditions of the employees represented by the labor organization in an appropriate unit, and, thereafter, to comply with the terms of the agreement. (Pub. Util. Code § 98167.)

- 11) Vests PERB with jurisdiction over any question which may arise within SCMTD with respect to whether a majority of the employees in an appropriate unit desire to be represented by a union.

This bill:

- 1) Gives PERB jurisdiction to enforce the statutes governing SCMTD labor relations as to all unfair labor practice charges.

COMMENTS

1. About 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. (Sen. Com. on Labor, Public Employment and Retirement, Analysis of Assem. Bill No. 355 (2019-2020 Reg. Sess.) as introduced Feb. 14, 2019, at p. 4.)

2. About SMCTD

The SCMTD was formally established in 1968. (SB 1377, Grunsky, Ch. 978, Stats. 1967.) Originally, it provided transportation services only between Santa Cruz, Capitola and Live Oak.¹ Today, SCMTD services all of Santa Cruz County, operating 24 bus lines, a paratransit service, and a commuter bus line going into San Jose, among other things.² Its current annual operating budget is around \$57 million³ and it has about 321 full time

¹ *History of the Santa Cruz Metropolitan Transit District*. Santa Cruz Metropolitan Transit District <https://web.archive.org/web/20080517171700/http://www.santacruzpl.org/history/trans/scmtd.shtml> (as of Apr. 15, 2022).

² *Frequently Asked Questions*. Santa Cruz Metropolitan Transit District <https://www.scmtd.com/en/agency-info/faq#faq3> (as of Apr. 15, 2022).

³ *FY22 & FY23 Final Budget* (Jun. 25, 2021) Santa Cruz Metropolitan Transit District <https://www.scmtd.com/images/departments/finance/financials/finaloperatingbudgetfy22fy23-FTE.pdf> (as of Apr. 15, 2022) at p. 3.

employees.⁴ According to SMCTD, its mission is: “To provide a public transportation service that enhances personal mobility and creates a sustainable transportation option in Santa Cruz County through a cost-effective, reliable, accessible, safe, clean and courteous transit service.”⁵

3. Potential benefits of administrative adjudication

This bill would transfer jurisdiction over unfair labor practice involving the SCMTD from the court system to PERB, an administrative body devoted to adjudicating public sector labor disputes.

Administrative adjudicatory systems have some virtues in comparison to the courts. First, administrative legal systems typically dispense with some of the stricter formalities found in courtrooms, such as strict adherence to the rules of evidence. This generally makes administrative legal systems easier and cheaper to navigate. Second, administrative agencies often 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 had 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 significantly decreased its caseload and adjudication times.⁶

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 in the matter they oversee. 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. In fact, PERB even has its own body of case law.

⁴ *Id.* at p. 9.

⁵ *Mission Statement*. Santa Cruz Metropolitan Transit District <https://www.scmttd.com/en/agency-info/administration/mission-statement> (as of Apr. 15, 2022).

⁶ *Board Continues to Improve Processing Times in FY 2020-2021*. Public Employment Relations Board <https://perb.ca.gov/news/board-continues-to-improve-processing-times-in-fy-2020-2021/> (as of Apr. 15, 2022).

4. Arguments in support of the bill

According to the author:

SB 957 adds the Santa Cruz Metropolitan Transit District (Santa Cruz METRO) to the list of public transit agencies already covered under the Public Employee Relations Board (PERB). The PERB is a quasi-judicial agency that oversees and administers most, but not all, public sector collective bargaining statutes in California. Some public entities, many of them transportation districts, fall outside of PERB's jurisdiction and, as such, cannot make use of PERB's administrative dispute resolution process. This bill would move jurisdiction over unfair labor practices to PERB, thereby eliminating the existing, costly, and inefficient process of employee organizations having to seek a writ in the court system - aligning with previously passed legislation. SB 957 specifies that SCMTD employees and their organizations will enjoy the same rights as other employees and employee organizations subject to PERB.

In support, the Brotherhood of Locomotive Engineers & Trainmen, California State Legislative Board writes:

PERB is an established and trusted agency that specializes in public employer-employee conflict resolution. Moving jurisdiction over ULPs to PERB will allow SCMTD and its employees to access a timelier and much more cost-effective process to settle disputes, as well as increase confidence that a dispute will be adjudicated by a body with extensive knowledge of labor law. This bill 957 will not establish new statutory collective bargaining frameworks for the SCMTD and its employees, it simply places certain matters governing these relations under the jurisdiction of the PERB for an easier adjudication process.

SUPPORT

American Federation of State, County and Municipal Employees, AFL-CIO
Brotherhood of Locomotive Engineers & Trainmen, California State Legislative Board
California Teamsters Public Affairs Council
International Association of Sheet Metal, Air, Rail and Transportation Workers, Sheet
Metal Workers' Local Union No. 104
Monterey Bay Central Labor Council, AFL-CIO
SMART-Transportation Division, California State Legislative Board
SMART-Transportation Division Local 0023

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

SB 598 (Pan, Ch. 492, Stats. 2021) gave unions representing Sacramento Regional Transit District (SacRT) the option of transferring jurisdiction over unfair labor practices for their represented bargaining units from the judicial system to PERB.

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, Governor 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. 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. 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, 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.

SB 1377 (Grunsky, Ch. 978, Stats. 1967) establishes the Santa Cruz Metropolitan Transit District and defines the area to be included in the district and prescribes the purpose, organization, powers, and duties of the district.

PRIOR VOTES:

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