

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

AB 2524 (Kalra)
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Fiscal: Yes
Urgency: No
TSG

SUBJECT

Santa Clara Valley Transportation Authority: employee relations

DIGEST

This bill authorizes transfer of jurisdiction over unfair labor practice charges involving the Santa Clara Valley Transportation Authority (VTA) from the judicial system to the Public Employee Relations Board (PERB), upon written request of the union.

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. VTA is one such public entity. Currently, when VTA 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 VTA more effectively since it is an administrative entity customized to deal with public employment labor disputes. With that in mind, this bill authorizes PERB to assume jurisdiction over labor disputes involving VTA upon service of a written request by the union.

The bill is sponsored by the American Federation of State, County, and Municipal Employees. Support comes from organized labor. Opposition comes from the VTA itself who contends that the existing dispute-resolution works well. The bill passed out of the Senate Labor, Public Employment and Retirement Committee by a vote of 4-0. 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 Relations 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 Clara Valley Transportation Act which governs employer-employee relations at the VTA, including representation by a labor organization, unit determination, collective bargaining, personnel, and provisions relating to retirement benefits. (Pub. Util. Code §§ 100000 *et seq.*)

This bill:

- 1) Gives PERB authority to exercise jurisdiction to enforce the statutes governing VTA labor relations as to all unfair labor practice charges, upon written request from an employee organization representing VTA employees.

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 VTA

According to VTA, it is “an independent special district that provides sustainable, accessible, community-focused transportation options that are innovative, environmentally responsible, and promote the vitality of our region. VTA has over 2,100 employees and approximately 90 percent of them are represented by four bargaining units, or unions.”

3. Potential benefits of administrative adjudication

This bill would authorize transfer of jurisdiction over unfair labor practice involving the VTA 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 has 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.¹

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. Arguments in support of the bill

¹ *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).

According to the author:

Many transit districts are able to utilize the PERB to resolve Unfair Labor Practice (ULP) cases. Currently, [the VTA] does not have access to the PERB, nor do they have the option to elect into the PERB's jurisdiction. This leaves the VTA to seek resolution for ULP's through the California Superior Court, which can take years to resolve because the courts are overburdened and underfunded. Our court systems can be costly to navigate, which can be detrimental to small employee organizations that have limited resources to pursue conflict resolutions for workplace violations. [Waiting a long time] for cases to be resolved can contribute to tension in the workplace. [...] This bill would give VTA employee organizations the option to move into the PERB's jurisdiction to serve as a neutral entity to help resolve ULP claims. By allowing VTA's employee organizations the option to move under the PERB can address pending cases waiting to be resolved and assist with other claims in a timely manner.

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

[VTA's] establishing statute lies within the Public Utilities Code and therefore VTA does not fall under PERB's jurisdiction by default. To seek resolution for an unfair labor practice (ULP), VTA or its employees must file a writ in Superior Court. This process can be time-consuming, prohibitively expensive, and may involve a judge who has no experience with public sector employer-employee relations. Furthermore, California's chronically under-resourced court system has a backlog that has been exacerbated by the COVID-19 pandemic. Delays wrought by the existing process can carry on for years, contribute to labor tension and complicate contract negotiations. PERB is a more timely, accessible, and labor-focused venue to resolve any future ULP conflicts that may arise. Transit agencies should have access to the same well-regarded employer-employee conflict resolution process as most California public employees.

5. Arguments in opposition to the bill

In opposition to the bill, the Santa Clara Valley Transportation Authority (VTA) writes:

Presently, VTA resolves unfair labor practice (ULP) complaints through productive and collaborative relationships with all its

unions. Most disputes are resolved without resort to legal processes. For those issues that cannot be resolved informally, the unions have the ability to invoke their contractual dispute resolution processes (grievance procedures) for disputes covered by their collective bargaining agreements or to file court actions for any unfair labor practice allegations not covered by the contracts. These processes have afforded both parties efficient and effective dispute resolution mechanisms for many years. The addition of PERB oversight adds a layer of administrative review not needed in the labor-management relationships at VTA.

SUPPORT

American Federation of State, County, and Municipal Employees (sponsor)
California State Legislative Board, Sheet Metal Air Rail and Transportation Workers –
Transportation Division
International Federation of Professional and Technical Engineers Local 21
Service Employees International Union Local 521
Service Employees International Union Local 1021

OPPOSITION

Santa Clara Valley Transportation Authority

RELATED LEGISLATION

Pending Legislation: SB 957 (Laird, 2022) 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). SB 957 is currently pending consideration before the Assembly Appropriations Committee.

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 3034 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 4, Noes 0)

Assembly Floor (Ayes 56, Noes 19)

Assembly Appropriations Committee (Ayes 12, Noes 4)

Assembly Public Employment and Retirement Committee (Ayes 4, Noes 2)
