



SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

300 Lakeside Drive, P.O. Box 12688
Oakland, CA 94604-2688
(510) 464-6000

2015

Thomas M. Blalock, P.E.
PRESIDENT

Tom Radulovich
VICE PRESIDENT

Grace Crunican
GENERAL MANAGER

DIRECTORS

Gail Murray
1ST DISTRICT

Joel Keller
2ND DISTRICT

Rebecca Saltzman
3RD DISTRICT

Robert Raburn, Ph.D.
4TH DISTRICT

John McPartland
5TH DISTRICT

Thomas M. Blalock, P.E.
6TH DISTRICT

Zakhary Mallett, MCP
7TH DISTRICT

Nicholas Josefowitz
8TH DISTRICT

Tom Radulovich
9TH DISTRICT

September 15, 2015

Mr. Michael Moore, Foreperson Pro Tem
2015-2016 Contra Costa Civil Grand Jury
725 Court Street
P.O. Box 431
Martinez, CA 94553-0091

Dear Mr. Moore,

In accordance with your letter on August 20, 2015, the Bay Area Rapid Transit District Board of Directors approved the attached response to Grand Jury Report 1504 "Averting Bay Area Rapid Transit District Strikes" at its meeting on September 10, 2015.

Sincerely,

A handwritten signature in blue ink that reads "Grace Crunican". The signature is fluid and cursive.

Grace Crunican
General Manager

Attachment



SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
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2015

July 27, 2015

Thomas M. Blalock, P.E.
PRESIDENT

Tom Radulovich
VICE PRESIDENT

Grace Crunican
GENERAL MANAGER

Sherry Rufini, Foreperson
Contra Costa County Civil Grand Jury
725 Court Street, P.O. Box 431
Martinez, CA 94553-0091

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Subject: District Response to Grand Jury Report 1504: "Averting Bay Area Rapid Transit Strikes"

Dear Ms. Rufini:

We appreciate the opportunity to comment on the 2014-2015 Contra Costa County Grand Jury (Grand Jury) report findings and recommendations on averting future work stoppages by the employees of BART, either through strikes or lockouts. On behalf of the San Francisco Bay Area Rapid Transit District, we offer the following response.

As you will read in our comments below, the District generally agrees with the findings of the Grand Jury. We are working diligently to correct the underlying symptoms that led to the breakdown in 2013 negotiations and are encouraged by our progress.

The BART Act creates the framework for collective bargaining with our labor organizations, with which the Board of Directors and staff are required to comply. Legislative attempts to amend the labor provisions of the BART Act have failed. Therefore, we will continue to work within this statutory framework to advance improvements in labor relations, with the intent of achieving fair contracts with our labor organizations without any disruption to service.

Specific responses to the Grand Jury's findings and recommendations are as follows:

Findings.

F1. *BART is an essential part of the San Francisco Bay Area transportation system.* BART agrees with this finding. BART is an essential part of the San Francisco Bay Area transportation system.

F2. *A strike by BART employees or a lockout causes significant disruption to the riders, citizens, and counties of Alameda, Contra Costa, San Francisco, San Mateo and Santa Clara.* BART agrees with this finding. Work stoppages at BART due to labor disputes have caused significant disruption to the riders and citizens in the enumerated Bay Area counties.

F3. *An interruption of BART service disrupts riders and impacts BART income, and indirectly affects the environment, the roads, employment, businesses surrounding BART sites, and other means of transportation.* BART agrees with this finding. Interruption in BART service results in the enumerated impacts and effects as stated in the finding.

F6. *In previous years BART management and its labor unions have had an adversarial and distrustful relationship.* BART partially disagrees with this finding. BART management and its labor unions have had an adversarial and distrustful relationship; however, this is a generalization that does not account for the day-to-day interaction between BART management and the unions representing BART employees; through which many issues at all levels of the organization are resolved. As an illustration of this, BART has 24 contractually mandated joint labor-management committees that meet routinely to consider matters of common concern.

F7. *The modified baseball type negotiation model presents a better likelihood of success, unlike the current method, which was not able to avert the last strike.* BART partially disagrees with this finding. Modified baseball negotiations have not been tested at BART, and the current method has ended in settlement more often than it has ended in strike. Modified baseball negotiations are only one approach among many to resolve negotiations disputes. In the limited jurisdictions in which baseball type arbitration has been utilized, it has not consistently prevented various forms of work slowdowns, such as during negotiations between San Francisco Municipal Transit Agency and Transport Workers Union in June 2014. Further, as the Grand Jury report points out, the various legislative initiatives to amend BART's bargaining process to mandate interest arbitration in any form have surfaced in the State Legislature but have thus far not been successful. Finally, although its deployment is permissive, the BART Act does provide for binding arbitration upon impasse in labor negotiations.

F8. *During the last strike BART management was working to address the problems confronting management, and labor unions were working to address the problems confronting labor.* BART agrees with this finding. Each side was working to address its respective issues in bargaining. Both the District and the unions have the duty to represent the interests of their respective memberships and constituencies, and in good faith attempt to achieve agreement that reasonably addresses the range of interests.

F9. *BART's labor unions have not agreed to refrain from a strike when there is no contract in place.* The District partially disagrees with this finding. The statement does not fully reflect the situation that can and does arise after the Agreements have expired. Typically, as long as the parties continue to negotiate, following long-held precedent established by the National Labor Relations Board, the contract remains in place, with the exception of no-strike and grievance procedure clauses. The unions are barred from striking unless and until an impasse has been reached. In the event impasse is reached, after expiration of the contracts, unions representing BART employees have gone on strike.

F10. A report from Agreement Dynamics, Inc. was commissioned by BART which resulted in 63 recommendations on what problems existed during the last negotiation process and how to address the many problems between management and labor unions. BART agrees with this finding. The Agreement Dynamics report was commissioned by the Board of Directors in 2014. As stated, the report contains 63 recommendations which the Labor Negotiations Review Ad Hoc Committee of the Board of Directors has been convened to address.

F11. *Some believe there is not enough time for BART and its labor unions to correct enough of their problems in order to conduct productive negotiations in 2017. BART disagrees with this finding.* The District disagrees that insufficient time exists to make corrective actions that would permit productive negotiations in 2017. Multiple initiatives are well underway that the District believes will lead to productive negotiations in 2017 and in subsequent rounds.

F12. *There is currently nothing in place which ensures that if a contract expires that BART service will continue. The District agrees with this finding.* The District agrees that guarantees that uninterrupted service would continue once a labor agreement expires are not in place. However, as long as the parties continue to negotiate, the normal custom is for contracts to continue day-to-day.

F13. *The overall impact of a strike is too damaging to the San Francisco Bay Area to allow a strike to occur. The District partially agrees with this finding.* The strike in 2013 was very disruptive to the Bay Area. However, although the District agrees that BART strikes are damaging to the Bay Area, the District cannot disallow strikes, and the California Legislature has declined to do so. The BART Act does provide for binding arbitration to resolve negotiations disputes as long as both parties agree to submit to the prescribed process.

Recommendations.

R1. *BART Board of Directors should adopt a negotiation method that is built on trust, communication and transparency. This recommendation has been implemented.* The District has taken numerous actions to improve labor relations, which will continue through and beyond 2017 negotiations. Activities have included, but are not limited to, the following:

- In 2014 the General Manager hired a new Assistant General Manager for Employee Relations and a new Chief Employee Relations Officer. These individuals have extensive experience in personnel management and labor relations.
- The General Manager meets monthly with Union Presidents and Vice-Presidents to discuss matters of mutual interest and concern.
- Labor Relations staff meets with the unions monthly to encourage dialogue and problem-solving.
- The Board of Directors has extended its Labor Negotiations Ad Hoc Review Committee to the end of 2015. The Ad Hoc Committee meets monthly to consider the recommendations in the Collective Bargaining Report. These meetings are attended by both District and union representatives.

Resolution of grievances, both unresolved matters and new issues that arise from time to time, are getting close attention. Longstanding issues are being settled or adjudicated, as appropriate.

R2. ***BART Board of Directors should immediately re-open negotiations with their labor unions to agree on the process for future negotiations.*** This recommendation requires further analysis. Labor Relations staff is working with its Board of Directors' Labor Negotiations Review Ad Hoc Committee to consider improvements to the bargaining process for future negotiations. The District will have an update on its progress within six months of the publication of the Grand Jury's report. It should be noted that process improvements do not necessarily require the re-opening of contract negotiations; any re-opening of negotiations would require agreement from unions representing BART employees as well as the District.

R3. ***BART Board of Directors should review and negotiate the use of an independent arbitrator during labor negotiations, who can decide any major financial and work rule issues pursuant to the baseball style arbitration process.*** This recommendation requires further analysis. The District has not taken a position on the use of independent arbitrators in 2017 negotiations, or more specifically on baseball-style arbitration. The Board of Directors is working directly with the unions to consider safeguards against labor disputes, which is recommended in the Agreement Dynamics report.

R4. ***BART Board of Directors should monitor the implementation of the recommendations made in Agreement Dynamics, Inc.'s report that it has chosen to adopt.*** This recommendation has been implemented. The Board of Directors' Labor Negotiations Review Ad Hoc Committee (Committee) was convened for this purpose. The Committee meets monthly with District staff and union officers to consider the recommendations that were made in Agreement Dynamics, Inc.'s report and to review implementation status.

Please feel free to contact me if additional information or clarification is required regarding the District's response.

Sincerely,



Grace Crunican
General Manager

cc: BART Board of Directors