

June 9, 2009

The Honorable Arnold Schwarzenegger
Governor, State of California
State Capitol Building
Sacramento, CA 95814

RE: BART Labor Contract Negotiations

Dear Governor Schwarzenegger:

By letter dated June 5, 2009, the BART Board of Directors informed you that they will "not be requesting a 60-day cooling off period" if the parties do not reach an agreement by June 30, 2009. In addition, the Board requests that you "deny any request that a BART union may seek from you for a cooling off period." We are writing on behalf of Amalgamated Transit Union, Local 1555, Service Employees International Union, Local 1021, and the American Federation of State, County and Municipal Employees (AFSCME), Local 3993, which represent BART's operating, maintenance and professional employees, respectively, to object to this request as improper and irresponsible.

Section 1137.2(a) of the California Labor Code provides:

Whenever in the opinion of the Governor, a threatened or actual strike or lockout will, if permitted to occur or continue, significantly disrupt public transportation services and endanger the public's health, safety, or welfare, and upon the request of either party to the dispute, the Governor may appoint a board to investigate the issues involved in the dispute and to make a written report to him or her within seven days. Such report shall include a statement of the facts with respect to the dispute, including the respective positions of the parties, but shall not contain recommendations. Such report shall be made available to the public.

Upon receiving the report, the Governor may instruct the Attorney General to petition a court to enjoin a strike or lockout for a period of 60 days. Labor Code, § 1137.4.

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Although BART's labor agreements with its Unions expire on June 30, the bargaining obligation continues until the parties' reach agreement on new contracts or reach true impasse; the expiration of the contracts in and of themselves do not trigger the cooling off period.

Let us be clear: **the Unions are not now seeking a cooling off period - indeed, it would be entirely premature to do so.** As long as the District bargains in good faith, these Unions will be at the bargaining table and will not need to resort to a strike to protest the District's unfair bargaining tactics.

The purpose of the "cooling off" period is just that - to allow the parties to keep talking - usually with the assistance of a State mediator - once the process breaks down without the threat of either side using their "economic weapons" during that period. The cooling off period can be an effective tool. Indeed, in 2001, the last time that a cooling off period was imposed, the parties reached agreement during that period and there was no disruption of service. In 2005, the last round of negotiations, the parties were able to settle their contracts without any State intervention; the Unions hope that the same result can be achieved this bargaining cycle, yet BART's actions may make such a peaceable resolution unlikely.

While BART pits its ridership against its employees, the transit district clearly has only its own agenda in mind. What we mean by this is that from Day 1 of negotiations, BART has taken the position that it will implement at least certain aspects of its proposal on July 1, no matter where we are in the bargaining process. Even while BART takes this unfair position, it has yet to provide the Unions with contract proposals on many major issues. In light of its actions, it certainly appears that BART is trying to provoke a strike. While backing the Unions into striking to preserve the bargaining process, the District evinces little regard for either statutorily-mandated collective bargaining or for its ridership when it preemptively asks you not to seek a cooling off period. Unlike the District, we feel confident that if the issue is joined, you will weigh the facts, including those adduced by the factfinding panel that you appoint pursuant to the Labor Code, and will undertake the determination entrusted to you by law, *i.e.*, whether it would be in the best interest of the public to seek a period in which the parties can bargain free from the coercive tactics that hinder agreement and force service disruption.

In an unprecedented move, the BART Directors have asked you to deny any request for a cooling off period for reasons that have *nothing* to do with the negotiation process or forestalling (and possibly adverting) a disruption in service, and in doing so, seek to deprive you of a powerful tool for possible resolution of the brewing labor crisis. They express a concern about the cost of bargaining during a 60 day cooling off period, and the fact that the 60 day period would end around the Labor Day weekend when the Bay Bridge will be closed. These concerns ignore two simple realities: first, how much the Board spends on their many high-priced outside consultants to negotiate a contract is a matter entirely within their control; and second, a 60 day cooling off period need not be necessarily implemented on July 1, and need not necessarily last 60 days, if a

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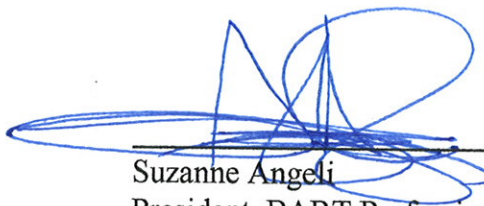
contract is achieved in the interim. More important, however, is that neither of these points bears any relationship to the statutorily mandated inquiry: whether an actual or threatened strike or lockout would have a significant impact on public transportation in the Bay Area. That is an investigation that can only be made in the context of an actual or threatened strike or lockout, not in advance without any such trigger.

The key reason behind the Board's improper request that you make an advance decision on this matter is clear: to maximize their ability to pressure the Unions to agree to "labor cost savings and efficiencies." But like the Board's other reasons, this objective falls entirely outside the purview of the statute. To use the Labor Code's 'cooling off' provisions and the Governor's office to gain leverage in bargaining is improper, and betrays the Board's lack of good faith in contract negotiations. As we stated above, the Board has already told the Unions, in fact, that it will unilaterally implement changes in its labor agreements effective July 1, 2009, and appears to be doing everything within its power to drive our negotiations into the very kind of crisis that would necessitate a cooling off period.

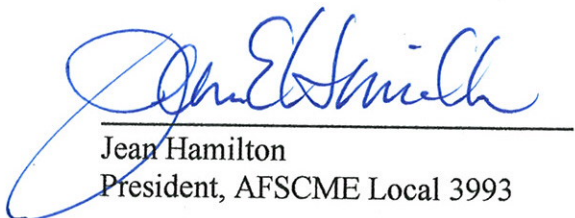
To be sure, the Unions fully understand the economic challenges facing the state and local agencies today, and agree with the Board that "a quick resolution to these contracts" is in the best interests of all. But the kind of one-sided pressure the Board seeks to exert does not facilitate successful labor negotiations, and places the public's well-being squarely at risk. It is precisely to maximize the chance of successful negotiations and so to avoid a disruption in service to the public that the Labor Code provides for a cooling off period. Your determination of whether or not such a period of time is needed should be made solely with respect to the statutory objective in light of actual circumstances, not in advance for the one-sided and self-serving reasons set forth in the Board's letter.



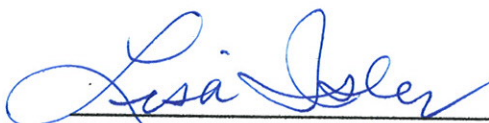
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Suzanne Angeli
President, BART Professional Chapter



Jean Hamilton
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Lisa Isler
President, BART Chapter

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cc:

BART Board of Directors (via email & hand delivery)
M. Carol Stevens (via hand delivery)
Paul Roose (SCMS)
John Duncan (DIR)
Doug Hoffner
Sen. Barbara Boxer
Sen. Dianne Feinstein
U.S. Rep. Barbara Lee
Lt. Gov. John Garamendi
Assemblymember Tom Ammiano (13th AD)
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