



**STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD
UNFAIR PRACTICE CHARGE**

DO NOT WRITE IN THIS SPACE: Case No: _____ Date Filed: _____

INSTRUCTIONS: File the original and one copy of this charge form in the appropriate PERB regional office (see PERB Regulation 32075), with proof of service attached to each copy. Proper filing includes concurrent service and proof of service of the charge as required by PERB Regulation 32615(c). All forms are available from the regional offices or PERB's website at www.perb.ca.gov. If more space is needed for any item on this form, attach additional sheets and number items.

IS THIS AN AMENDED CHARGE? NO YES If yes, Case No. _____

1. CHARGING PARTY: EMPLOYEE EMPLOYEE ORGANIZATION EMPLOYER PUBLIC¹

a. Full name: San Francisco Municipal Transportation Agency (SFMTA)
 b. Mailing address: c/o Elizabeth Salveson, City Attorney's Office, 1390 Market St., 5th Flr, San Francisco, CA 94102
 c. Telephone number: (415) 554-3809
 d. Name, title and telephone number of person filing charge: Elizabeth Salveson, Chief Labor Attorney, (415) 554-3809
 e. Bargaining unit(s) involved: Transport Worker's Union, Local 250-A; Transit Operators

2. CHARGE FILED AGAINST: (mark one only) EMPLOYEE ORGANIZATION EMPLOYER

a. Full name: Transport Worker's Union, Local 250-A; Staff and Transit Operators
 b. Mailing address: 1508 Fillmore St, Suite 211, San Francisco, California 94115
 c. Telephone number: (415) 992-9416
 d. Name, title and telephone number of agent to contact: Kenneth Absalom, Attorney, (415) 392-5040

3. NAME OF EMPLOYER (Complete this section only if the charge is filed against an employee organization.)

a. Full name: San Francisco Municipal Transportation Agency (SFMTA)
 b. Mailing address: c/o Ed Reiskin, 1 South Van Ness Avenue, 8th Floor, San Francisco, California 94103

4. APPOINTING POWER: (Complete this section only if the employer is the State of California. See Government Code section 18524.)

a. Full name:
 b. Mailing address:
 c. Agent:

¹ An affected member of the public may only file a charge relating to an alleged public notice violation, pursuant to Government Code section 3523, 3547, 3547.5, or 3595, or Public Utilities Code section 99569.

5. GRIEVANCE PROCEDURE

Are the parties covered by an agreement containing a grievance procedure which ends in binding arbitration?

Yes No

6. STATEMENT OF CHARGE

a. The charging party hereby alleges that the above-named respondent is under the jurisdiction of: (check one)

- Educational Employment Relations Act (EERA) (Gov. Code sec. 3540 et seq.)
- Ralph C. Dills Act (Gov. Code sec. 3512 et seq.)
- Higher Education Employer-Employee Relations Act (HEERA) (Gov. Code sec. 3560 et seq.)
- Meyers-Milias-Brown Act (MMBA) (Gov. Code sec. 3500 et seq.)
- Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act (TEERA) (Pub. Utilities Code sec. 99560 et seq.)
- Trial Court Employment Protection and Governance Act (Trial Court Act) (Article 3; Gov. Code sec. 71630 – 71639.5)
- Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act) (Gov. Code sec. 71800 et seq.)

b. The specific Government or Public Utilities Code section(s), or PERB regulation section(s) alleged to have been violated is/are: California Government Code sections 3505, 3507, PERB Regulation 32604(c),(d),(e)

c. For MMBA, Trial Court Act and Court Interpreter Act cases, if applicable, the specific local rule(s) alleged to have been violated is/are (*a copy of the applicable local rule(s) MUST be attached to the charge*): San Francisco Charter sections A8.404, A8.409, and 8A.104

d. Provide a clear and concise statement of the conduct alleged to constitute an unfair practice including, where known, the time and place of each instance of respondent's conduct, and the name and capacity of each person involved. This must be a statement of the facts that support your claim and *not conclusions of law*. A statement of the remedy sought must also be provided. (*Use and attach additional sheets of paper if necessary.*)
(See attached)

DECLARATION

I declare under penalty of perjury that I have read the above charge and that the statements herein are true and complete to the best of my knowledge and belief and that this declaration was executed on June 4, 2014
(Date)

at San Francisco, California
(City and State)

Elizabeth Salvesson
(Type or Print Name)


(Signature)

Title, if any: Chief Labor Attorney

Mailing address: 1390 Market Street, 5th Floor, San Francisco, CA 94102

Telephone Number: (415) 554-3809

STATEMENT OF THE CHARGE (Section 6.d.)

1. The Charging Party, the San Francisco Municipal Transportation Agency (SFMTA), is and at all relevant times herein has been recognized by the Transport Workers Union, Local 250-A, as a public agency within the meaning of Government Code § 3501(c). The SFMTA is the employer of the Transit Operators (Classification 9163), for which the Transport Workers Union, Local 250-A is the recognized employee organization.
2. Transport Workers Union, Local 250-A (Union) is a recognized employee organization within the meaning of Government Code § 3501(b) and has been recognized by SFMTA as an employee organization that represents the Transit Operators (Classification 9163), as well as other employees in various bargaining units.
3. The Union and SFMTA are party to a Memorandum of Understanding, covering the period July 1, 2011 through June 30, 2014 (2011 MOU), which sets forth the wages, hours, and terms and conditions of employment of the Transit Operators. The MOU expires on June 30, 2014. A true and correct copy of the 2011 MOU is attached as Exhibit A.
4. In February 2014, the Union and SFMTA began the process for negotiating a successor MOU.
5. Negotiation of MOUs between the Union and the SFMTA are governed by a process described in Sections 8A.104, A8.404 and A8.409 of the Charter of the City and County of San Francisco. Copies of these Sections are attached as Exhibits B, C and D, respectively.
6. Pursuant to Section A8.409-4, the Union and the SFMTA agreed upon a neutral chairperson for the Mediation/Arbitration Board, charged with resolving any impasses reached in connection with the negotiation of the successor MOU. A copy of the letter appointing John B. LaRocco as the neutral chairperson is attached hereto as Exhibit E.
7. The SFMTA and the Union engaged in negotiations for the successor MOU during the period from February 18, 2014 to May 7, 2014, engaging in 19 separate negotiations sessions over the course of 12 weeks. On March 4, SFMTA and the Union signed ground rules for the negotiations, which included an agreement that they would submit to the impasse resolution process in the Charter if they were unable to reach an agreement on a total package:

If the parties are unable to reach an agreement on a total package they shall proceed to the impasse resolution process set forth in the Charter. Prior to the arbitration proceedings, the parties will hold a preliminary meeting to identify all issues that will be submitted in arbitration and will make best efforts to agree upon an efficient, economical and fair arbitration process, including advance identification of the issues in dispute.
8. During the negotiation sessions, the parties exchanged proposals, negotiated, and reached tentative agreements on some issues. Impasse was reached as to the remaining issues prior to the first meeting with the Mediation/Arbitration Board on May 8, 2014.
9. During the meeting on May 8, 2014, the Board conducted a mediation and the neutral chairperson recommended a resolution of issues. Both the Union and the SFMTA agreed to accept this resolution as a tentative agreement. The terms of the tentative agreement were put on the record of the proceedings. The Union also agreed on the record to conduct a ratification vote on the tentative agreement on or around May 19, 2014. Through its counsel, TWU agreed

to schedule the vote to occur within sufficient time to conform to the Charter requirements for Agency approval of a successor MOU or arbitration award. A true and correct copy of the transcript of that record is attached hereto as Exhibit F.

10. In the event of a “no” vote, the Parties agreed to resume the mediation/arbitration proceeding under the Charter process. The Parties and the Arbitrator set May 20 as the date for further mediation/arbitration proceedings if needed. A few days later, at the request of the Union’s counsel, the parties moved the date for further proceedings to May 22.

11. In violation of its obligation to negotiate in good faith, and to participate in impasse proceedings in good faith, the Union failed to support the tentative agreement. Instead, the Union delayed the vote on its ratification and set out to undermine and defeat the agreement, sending out communications such as those attached in Exhibits G (Memo dated May 23, 2014 re “Contract Negotiations Update”) and H (“President’s Corner”, posted on the Union website as of May 29, 2014). In these documents the union labeled as “disproportionate proposals” and “the unfair mediated agreement” the very tentative agreement it had made.

12. In addition, in the May 23 memo (Exhibit G.) the Union urged its members not to “give in” to the management that “hates us so much,” and to stand “united” and “unbreakable” in demanding that management change its course. TWU leadership claimed that “SFMTA says they have nothing to give our membership.” In the May 29 posting on the Union website (Exhibit H), President Eric Williams urged the membership to “take a stand” against the City’s “lopsided and unfair” negotiation and impasse process, with this message:

A YES vote will guarantee that this unfair contract [*i.e.*, the tentative agreement] will go into effect on July 1, 2014.

A NO vote will send us into an unfair arbitration process (A8-409).

13. Not surprisingly, TWU leadership succeeded in persuading its members to reject the Tentative Agreement.

14. The ratification vote was not held until May 30, 2014. Prior to that date, when it became apparent that the vote of the membership would not be held on May 19, Labor Relations Manager Mike Helms repeatedly attempted to contact Union President Eric Williams to find out when the vote would be held. Mr. Williams refused to inform Mr. Helms of the date, on at least one occasion uttering the expletive “F--- you” before hanging up on Helms.

15. Finally, on May 22, 2014, in response to an inquiry by Helms, Union Vice President Andrew Simmons told Helms that the Union intended to hold the vote on Friday, May 30. Following the vote, the Union did not contact Helms to inform him of the results of the ratification vote, nor were the results posted on the Union’s website over the weekend, so Helms was unable to discover the voting results until late morning on June 2, 2014.

16. Further, the SFMTA is informed and believes, that as part of its unfair effort to undermine the tentative agreement it had made and to coerce the SFMTA to agree to new and different terms, the Union fomented and supported a work stoppage of the SFMTA transit operators, in the form of a “sick out”.

17. For example, the SFMTA is informed and believes that on Wednesday, May 28, a meeting was held between TWU 250-A leaders and its Transit Operator membership during which both the tentative agreement and a potential sickout were subjects of discussion. During the discussion of the sickout, TWU leaders failed to discourage membership from going forward

with a sick out, to advise them that such action would be illegal and in violation of the MOU between the parties, or to inform them that operators engaging in an unauthorized work stoppage could be subject to discipline, up to and including termination.

18. On Monday, June 2, over 60% of the transit operators scheduled to work that day called in "sick," and failed to report to work. As a result, transit service to the public in San Francisco was severely delayed and in many cases ceased altogether. Numerous transit lines had to be shut down. Many lines that continued to operate, operated with significant delays—up to over an hour.

19. As a result of the sick out/work stoppage/strike, the public was severely, and detrimentally denied effective public transportation. On information and belief, as a result members of the public were late or unable to travel at all to their places of work, and were late or unable to travel at all to important appointments, meetings, commitments, such as medical appointments, school, training or classes, or appointments to conduct financial, legal, or family business. The sick out/work stoppage/strike has caused and continues to cause serious irreparable injury to the public.

20. On Monday, June 2, the Director of Transportation for the SFMTA (hereafter, "Director of SFMTA") sent a letter to the Union demanding that the Union call a halt to the sick out/work stoppage/strike described above. A true and correct copy of that letter is attached hereto as Exhibit I. The Union's response, claiming that it did not support the sick out/work stoppage/strike is attached hereto as Exhibit J. That letter recites that the Union would communicate that it did not support the sick out/work stoppage/strike to the SFMTA transit operators.

21. The purpose of the sick out/work stoppage/strike was and is to interfere with the impasse resolution proceedings applicable to the negotiations for the successor MOU between the parties and to gain an unfair advantage in the negotiations, and proceedings to reach a successor MOU.

22. On Tuesday, June 3, SFMTA's counsel received a copy of a letter from Kenneth Absalom, the Union's counsel, to the neutral chairperson for the Mediation/Arbitration Board. In it, the Union stated that it refused to participate in the arbitration hearing scheduled for Saturday, June 7, 2014. A copy of that letter is attached hereto as Exhibit K.

23. As grounds for its refusal to participate in the arbitration, the letter asserted that SFMTA engaged in bad faith bargaining by making misrepresentations about the economic impact of its retirement pickup/swap proposal. The Union's claim is completely without merit, but in all events should not derail the impasse resolution procedure and arbitration hearing before the Board which is chaired by neutral Chairperson John LaRocco. The Union can pursue its misguided separate and independent claim with PERB.

24. The June 3 letter further asserted that the Union's pending unfair labor practice charge before PERB regarding Proposition G is somehow relevant to this proceeding. This position directly contradicts the statement made by Union's counsel on the record on May 9 that the resolution of that PERB charge was not relevant to the impasse resolution proceeding. See Transcript at 6:10-25, attached hereto as Exhibit L.

25. SFMTA does not believe that the provisions of Proposition G that were determined to be invalid by an Administrative Law Judge at PERB (and are now on appeal) are germane to the issues to be determined by the impasse resolution proceeding. But to the extent those provisions of Proposition G which have been invalidated (subject to appeal) would

otherwise come into play here, the City does not seek to enforce them in the impasse resolution proceeding.

WHEREFORE, SFMTA requests that a complaint issue against the Union alleging that it has refused or failed to meet and confer in good faith as required by Government Code section 3505 and San Francisco Charter sections A8.404, A8.409-3 and 8A.104(k); that it has failed to exercise good faith while participating in the impasse procedures required by Charter sections A8.404, A8.409-4, and 8A.104(n); and that it has engaged in a sick out/work stoppage/strike in violation of the 2011 MOU and the Meyers-Milias Brown Act. SFMTA requests that PERB seek injunctive relief against such adverse action on the grounds that it is just and proper to prevent the ongoing commission of the unfair practices detailed in this charge. Further, SFMTA requests that the PERB complaint seek appropriate and additional other relief including, but not limited to, an order directing the Union to attend and participate in the arbitration hearing scheduled for Saturday, June 7, 2014. The Union should also be ordered to cease actions intended to foment and support a sick out/work stoppage/strike.