

A REPORT BY
THE 2014-2015 CONTRA COSTA COUNTY GRAND JURY
725 Court Street
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Report 1504

**AVERTING BAY AREA RAPID
TRANSIT DISTRICT STRIKES**

Putting the Riders First

APPROVED BY THE GRAND JURY:

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Contra Costa County Grand Jury Report 1504

Averting Bay Area Rapid Transit District (BART) Strikes

Putting the Riders First



Justin Sullivan/Getty Images

**TO: Bay Area Rapid Transit District (BART) Board of Directors
Contra Costa County Board of Supervisors**

SUMMARY

As far back as 1951, a multi-county rapid transit district serving the needs of the San Francisco Bay Area was seen as a necessity to address the growing traffic congestion. After completion, the system became an integral piece of a multi-provider, multi-county transportation system. According to BART's own vision statement, "BART is a high-quality transit service that supports a sustainable region". When an interruption of service occurs it affects everyone who has a connection to BART, including commuters, students, surrounding businesses, travelers, people attending sporting events and people who do not have automobiles. The additional traffic congestion created by an

interruption of BART service results in slower response times for emergency vehicles as well as vastly increased commute times for those driving to work.

Over its years of service, BART has experienced interruptions in service due to strikes and lockouts, which have led to these hardships. Most recently, strikes interrupted BART service twice during 2013. The negotiations during this period took months and the parties refused to negotiate at points. With advanced planning, it may be possible to avert a strike to such a vital transit provider. A different negotiation method that excludes the risk of a strike should be implemented for the protection of the public.

METHODOLOGY

The Grand Jury reviewed;

- The 221 page report issued September 2014, to BART by Agreement Dynamics
- The current Memorandum of Understanding (MOU) between BART and Service Employees International Union (SEIU), Local 1021
- The current MOU between BART and Amalgamated Transit Union (AMT), Local 1555
- The current MOU between American Federation of State, County and Municipal Employees (AFSCME), Local Union 3933
- The Governor's Board of Investigation Report regarding the 2013 labor dispute between BART and AMT, SEIU, AFSCME unions.
- California State law regarding BART
- California State law regarding local public employee organizations
- News coverage of BART strikes
- Published information on BART
- Published information on BART strikes
- Published information on different types of negotiation methods
- The BART website
- BART Board on-line meetings

- The Ralph Dills Act
- Proposed legislation regarding transit strikes

The Grand Jury interviewed;

- Bay Area Elected Officials
- BART Board of Directors members
- Scholars
- Contra Costa County Board of Supervisors members
- Representatives from BART's labor unions
- Members of area transportation boards
- Labor negotiation experts



BART train arrives at station

Ben Margot/AP Photo

BACKGROUND

History of BART

The concept and development of a transit system to assist with the growing population of the San Francisco Bay Area was first addressed in 1951 when California's legislature

created the San Francisco Bay Area Rapid Transit Commission to study the Bay Area's long term needs in the area of transit transportation. A result of the study was that a high speed transit rail system would be the solution for the area's future traffic congestion. In 1957 the San Francisco Bay Area Rapid Transit District (BART) was formed, consisting of the counties of Alameda, Contra Costa, Marin, San Francisco, and San Mateo. San Mateo left the group based on high costs and a similar service provided by Southern Pacific commuter trains. Marin also left the district. San Mateo and Santa Clara counties joined BART afterwards. The transit system became a reality when it was approved by county voters in November of 1962.

BART began construction in 1964. Train service started on September 11, 1972, with more than 100,000 passengers in the first five days. Continued construction became a common event for the system and BART is currently the fifth largest rail transit system in the nation. Today BART rail lines extend 104 miles with 44 stations. BART's service area is 2,073 square miles serving a population of 1 million people. 72% of its operating revenue FY 2012-13 is generated from fare box revenues, 27% from county sales tax, with the remainder from other sources of revenue. On a daily basis BART serves over 400,000 riders surpassing even that on special event occurrences such as sporting events like the Super Bowl, the World Series, the Fourth of July and New Year's Eve celebrations. During a San Francisco Giant's World Series Parade ridership set a one day record of 568,561.

BART Labor Unions

The labor force of BART, with the exception of BART police employees, is represented by three unions;

- Service Employees International Union, Local 1021 (SEIU), representing 1430 mechanics, custodians and clerical workers,
- Amalgamated Transit Union, Local 1555 (ATU), representing 945 station agents, train operators and foreworkers,
- American Federation of State, County and Local Municipal Employees Union, Local 3993, (AFSCME) representing 210 middle managers.

Labor unions at BART, representing 2585 members, are responsible for the negotiation of their contracts with BART. Contracts for all three unions expire at the same time. Since certain provisions in the contracts are similar in nature to one another, it makes those sections of the contracts easier to negotiate at one time. Once those sections are negotiated, the parties address the sections of each union's contract that are unique. At times this leads to adversarial positions being taken by BART management and labor unions, sometimes pitting the unions against each other.



BART workers on strike during 2013

Reuters Photo

History of BART Strikes

Strikes at BART are far from rare. The first strike occurred in 1976, four years after BART opened, and lasted 14 days. Three years later in 1979, another strike occurred and lasted 90 days. In 1994 then Vice President Al Gore took action to avert a pending strike. In 1997 there was an eight day strike. In 2013 there were two strikes, one on July 1 which lasted four days, and another on October 18 which again lasted four days.

The Problem

When BART service is interrupted by either a lockout or a strike, the riders and surrounding communities are affected. People who rely on it have no power to keep BART operating. The only tool the public has is public outcry which does not have noticeable effect until after the strike has been occurring for a length of time. Affected riders are forced to look for other means of transportation. As a result, other transit systems become overloaded, reducing their ability to provide quality service. The reality is that efforts of surrounding transportation services to fill the transit service void are futile. There is no way to fully compensate for the absence of BART service.

At the time of the latest BART strike in 2013, the Contra Costa Board of Supervisors lacked a plan to handle the impact to the county's residents. Some members of the Board of Supervisors did not appear to understand the full impact of a strike. BART

service is more than a means of transportation that just takes people to work in San Francisco. The Metropolitan Transit Commission (MTC) formed a group of surrounding transit providers which formulated a plan for the mitigation of the effects of the BART strike. The plan was implemented, but fell short of filling the need of the riders.

As the San Francisco Bay Area population continues to grow, the need for a reliable transit service becomes greater. BART expects ridership to grow to 500,000 by the year 2018. As BART expands toward San Jose and Livermore more people will come to depend on the service. Future housing plans include a land use policy that concentrates new housing near BART stations. Plans for future educational institutions and retailers will be near BART stations. According to the recently released U.S. Census Bureau report, the Bay Area accounts for five of the state's seven fastest growing counties. The largest growth is in the East Bay where Alameda County was the fastest growing county in the state. Contra Costa County ranked fifth statewide. While traffic congestion is up, it is worst in the East Bay, which in 2013 accounted for seven of the region's ten worst gridlock hot spots according to the MTC.

BART is an aging transit system. Many Bay Area residents rely on it for daily use. The need by management to address its infrastructure as well as its plans for expansion will require that they spend wisely. BART management says there is a need in the future for 1000 new cars. BART management also states that BART needs an Advanced Train Control System and a new yard in Hayward which will both assist in handling a larger system. On the other side, labor questions the number of cars and the Advanced Train Control System and would like to see those monies go towards salaries and benefits.

The riders contribute to BART through fares and Bay Area residents support BART through various taxes. When an interruption of service occurs, riders are unable to get the transportation which they have come to rely on. These interruptions are not a concern until they occur, which means that most of the time the problems associated with such interruptions are out of mind.



Traffic Congestion at Bay Bridge Toll Plaza during last BART strike Justin Sullivan/Getty Images

Effects of BART Strikes

The effects of BART strikes are far reaching. To many riders BART is not a luxury, but a necessity, having no other means of transportation available to them. People going to and from work, students attending school, people attending social activities, and going to necessary appointments all rely on BART. The effects of a BART strike impacts almost everyone in the San Francisco Bay Area in one form or another.

During the last strike commuters were warned to expect “heavy delays.” Traffic was backed up more than a mile leading to the Bay Bridge toll plaza. The traffic congestion generated almost 16 million pounds of carbon, and wasted almost 800,000 gallons of gas every day at a cost of almost \$3.3 million. The 16 million pounds of additional carbon generated is equal to the weight of 257 BART cars or almost 7.9 tons. Even though other transit operators attempted to make up for the absence of BART transit service, they could not.

Costs to the region in lost worker productivity were estimated at \$73 million per day, which was very conservative and does not include direct economic activity that could add tens of millions of dollars to the cost. Some residents were unable to get to work, some lost their jobs.

Costs to BART came in the forms of loss of revenue and the loss of public confidence.

Costs to the BART unions came in the forms of lost wages and the loss of public confidence.

A Governor's Board of Investigation Report dated August 8, 2013, concluded that "a strike will cause significant harm to the public's health, safety and welfare". The report also stated that ATU agreed that a strike would harm the Bay Area. SEIU did not take a position on the question and AFSCME disagreed that a strike would cause a danger to the public's health, safety or welfare.



Oakland to San Francisco Ferry service line during last BART strike

Jim Wilson/New York Times

Agreement Dynamics Inc. Report

After the last strike by BART unions, BART Directors commissioned a report on the problems that existed at BART from Seattle-based Agreement Dynamics Inc. The report, Bay Area Rapid Transit Collective Bargaining Report and Recommendations, was submitted to BART on September 5, 2014. The report is 221 pages in length identifying numerous problems within BART and problems between BART management and the BART labor unions.

Agreement Dynamics proposed 63 recommendations on how to fix the identified problems at BART. While the majority of the recommendations referred to the atmosphere, working conditions, and relationships between management and labor at BART, some were directed toward the negotiation process itself. The recommendations

included advising that another form of negotiation should be used. The Costa Mesa “Civic Openness in Negotiations” (COIN) Ordinance that was used by the Costa Mesa City Council in 2012 to successfully negotiate with public employee associations, was discussed. Binding Interest Arbitration for BART, Interest Arbitration and Negotiation Facilitation was discussed. Though all of these different types of negotiation could be looked into, the Agreement Dynamics report concluded that there was no single action that would substantially improve the relations between BART management and labor unions. Many changes are required before relations between BART and their labor unions will improve. The report recommends a change in certain management personnel. In addressing that recommendation, BART has created the position of Principal Labor Relations Representative and hired a new employee who keeps in close touch with labor unions and their members, acting as liaison to the General Manager. Additionally meetings between the Principal Labor Relations Representative with the unions are more frequent, providing for more exchanges between management and unions.

It is questionable whether there is enough time for change to take place before the next contract negotiations occur in 2017. While some interviewees say there is enough time, others believe that the next negotiations, much like the last, will be a “perfect storm”.

The Negotiation Process

The current negotiation process between BART and its unions use is a typical collective bargaining model. Each side brings their proposals to the negotiation table attempting to reach agreement on what, if anything will be implemented. These proposals can be modified by either side during the process. The longer the list of proposals, the longer negotiations can take, which leads to many hours of negotiation. In order for this type of negotiation to work there has to be a level of mutual trust that has not existed at BART for many years. There is currently more of an adversarial relationship rather than one of cooperation and mutual trust between BART management and the labor unions. The situation must change before any future negotiation process can be productive. However, there is no assurance a reasonably cooperative relationship will develop in advance of the next scheduled negotiations in 2017.

Other types of negotiation processes have been researched or suggested. Some elected officials believe a no-strike clause, which would bar unions from striking, is the answer. During the last failed negotiations many officials suggested implementing a no-strike clause.

In 2013, Southern California Senator Robert Huff sponsored legislation that would have banned strikes by BART employees. The legislation was defeated in committee by a party-line vote that killed the bill. Assembly Member Catherine Baker is currently sponsoring a bill (AB528) that states if an existing contract includes a no-strike clause, which BART’s contracts with its unions currently have, and if management continues to

honor the financial terms after the contract's expiration, labor should be required to honor the no-strike section.

Some labor experts believe that third party facilitation is the answer. This is problematic because both BART management and their labor unions believe that outside facilitators would not completely understand each side's proposals. BART management or their labor unions would be reluctant to relinquish their negotiating ability to a third party.

Elected officials have suggested using a process similar to the Ralph Dills Act. Enacted in 1977 and signed by then Governor Jerry Brown, the Act outlines the prohibition of strikes by California state employees. The Act, which includes section 3517.8(a) of the California Government Code states that if an MOU has expired and the Governor and recognized employee organization have not agreed to a *new* MOU, that the parties to the past agreement shall continue to give effect to the provisions of the expired MOU including, but not limited to any no strike provisions. This is similar to the pending bill introduced by Assembly Member Catherine Baker.

After reviewing the alternatives available for avoiding future BART strikes by law, the Grand Jury believes a more balanced approach is preferable. The balancing element is the introduction of an independent arbitrator, who can decide any major financial and work rule issues that the two sides are not able to resolve at the bargaining table. To assure a professional and effective arbitration process, a modified form of "baseball" arbitration offers the best chance of success. Also known as "last best offer" arbitration, it would be put into place for BART as a replacement for the right to strike. This type of arbitration system is known as "baseball" arbitration because it has been used by Major League Baseball to resolve player-management salary disputes since 1973. The following is an outline of how this system would work:

1. BART management and its labor groups would engage in collective bargaining subject to all of the existing rights and remedies that govern that process, including the duty to bargain in good faith.
2. Should the two sides still be apart after expiration of the contract and any "cooling off" periods imposed by California's governor under existing law, instead of a strike, the parties would move to the following mediation and arbitration steps.
3. The two sides would call in a Federal mediator. The mediator would work with both sides for a period no longer than 90 days to resolve the issues dividing the two sides.
4. In the event the two sides are unable to resolve the dispute with the aid of the federal mediator within 90 days, the two sides would be required to submit the open financial issues and the major "work rules" issues to a separate arbitrator chosen from a roster maintained by the Federal Mediation and Conciliation Service. The number of these issues should be no more than 3 to 5 unless a

higher number is mutually agreed upon beforehand. These issues should be of larger concern to both parties. The arbitrator would devote the time necessary to fully understand and address those issues.

5. Pursuant to rules established by the Federal arbitrator, each side would submit in writing its "best offer" on these issues to the arbitrator. The offers of each side would then be disclosed to the other, and the arbitrator would accept arguments from each side in writing and at a hearing to determine which is the more justified offer. In addition to arguments based on comparable pay and benefit scales, the arbitrator would be obligated to accept arguments and base his or her decision on public investment needs for BART (i.e. new equipment, systems, and track replacement). The labor side would also be permitted to offer arguments on cost savings that might be made by changes in management practices or work rules.
6. The arbitrator would have only two choices in making his or her decision. The arbitrator's decision must accept either the management offer or the labor offer. The purpose of this rule is to encourage both sides to make responsible offers, rather than to make extremely one-sided offers. Such extreme offers should be easily rejected by the arbitrator. There could be one last chance, however, after the arbitrator has chosen one or the other offers, to allow the parties to argue for some modifications to the offer chosen in the event it clearly posed some unworkable or impractical difficulties. The arbitrator would be the one to make any final decision on that point.
7. The final decision of the arbitrator would be binding on both sides and any remaining issues still open would be subject to further collective bargaining. There would be no right to strike on the remaining issues, nor further arbitration unless separately agreed by both sides.

This alternative to a BART strike would be in the public interest.

Regardless of which type of negotiation is used, the current negotiation process has not worked to the benefit of the BART riders, BART management, or their labor unions. While employee/management rights to negotiate are not in question, the public service obligations to the people of the San Francisco Bay Area are likewise not in question.

CONFLICT OF INTEREST DISCLAIMER

One or more Grand Jurors recused themselves due to a possible conflict and did not participate in the preparation or approval of this report.

FINDINGS

- F1. BART is an essential part of the San Francisco Bay Area transportation system.
- F2. A strike by BART employees or a lockout causes a significant disruption to the riders, citizens, and counties of Alameda, Contra Costa , San Francisco , San Mateo, and Santa Clara .
- F3. An interruption of BART service directly disrupts riders and impacts BART income, and indirectly affects the environment, the roads, employment, businesses surrounding BART station sites, and other means of transportation.
- F4. The Contra Costa County Board of Supervisors has not adopted a plan to minimize the effects of a BART strike on residents of the county.
- F5. A multi-jurisdictional transit service plan developed and initiated by the MTC Commission during the last BART strike was insufficient to mitigate the impact of the strike.
- F6. In previous years BART management and its labor unions have had an adversarial and distrustful relationship.
- 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
- 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.
- F9. BART's labor unions have not agreed to refrain from a strike when there is no contract in place.
- 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.
- 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.
- F12. There is currently nothing in place which ensures that if a contract expires that BART service will continue.
- F13. The overall impact of a strike is too damaging to the San Francisco Bay Area to allow a strike to occur.

RECOMMENDATIONS

- R1. BART Board of Directors should adopt a negotiation method that is built on trust, communication and transparency.
- R2. BART Board of Directors should immediately re-open negotiations with their labor unions to agree on the process for future negotiations.
- 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.
- 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.
- R5. Contra Costa County Board of Supervisors should adopt a plan to mitigate the effects of any future BART strikes on county residents.

REQUIRED RESPONSES

	<u>Findings</u>	<u>Recommendations</u>
BART Board of Directors	1-3, 5-13	1-4
Contra Costa County Board of Supervisors	4	5