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AB-2850 Public transit employer-employee relations: San Francisco Bay Area Rapid Transit District.
(2019-2020)

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Assembly Bill No. 2850

CHAPTER 293

An act to amend Sections 28850 and 28851 of, and to add Sections 28848, 28849, 28856, 28857, 28858, 28859, 28860, 28861, 28862, and 28863 to, the Public Utilities Code, relating to public transit.

[Approved by Governor September 29, 2020. Filed with Secretary of State September 29, 2020.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2850, Low. Public transit employer-employee relations: San Francisco Bay Area Rapid Transit District.

Existing law creates the San Francisco Bay Area Rapid Transit District with various powers and duties and establishes a board of directors as the legislative body of the district. Existing law requires the board, upon a majority of district employees in a unit appropriate for collective bargaining indicating a desire to be represented by a labor organization, to bargain with the accredited representative of those employees. Existing law requires the board and employees to bargain in good faith and make all reasonable efforts to reach agreement on the terms of a written contract governing wages, salaries, hours, working conditions, and grievance procedures.

This bill would specify that the Public Employment Relations Board, and the powers and duties of the Public Employment Relations Board, has jurisdiction, as appropriate, to enforce these statutory provisions governing employer-employee relations within the district. The bill, among other things, would require the district to give reasonable written notice to an exclusive representative of its intent to make any change to matters within the scope of representation of the employees represented by the exclusive representative, as provided. The bill, among other things, would deem certain acts of the district and employee organizations to be unlawful, would require employers and employees of the district to adjudicate complaints of specified labor violations before the Public Employment Relations Board as an unfair practice, and would authorize specified parties aggrieved by the Public Employment Relations Board's decision or order to petition for relief from that decision or order, as provided.

This bill would make legislative findings and declarations as to the necessity of a special statute for the San Francisco Bay Area Rapid Transit District.

To the extent that this bill would increase the duties of the district, the bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 28848 is added to the Public Utilities Code, immediately preceding Section 28849, to read:

28848. As used in this chapter, the following definitions apply:

(a) "District" means the San Francisco Bay Area Rapid Transit District, including all operations and extensions of its transportation system, regardless of modality or vehicle type, and excluding all temporary bus lines.

(b) "Employee organization" means an organization that includes employees of the district that has as one of its primary purposes representing those employees in their relations with the district. "Employee organization" shall also include any person of the organization authorized to act on its behalf.

(c) "Exclusive representative" means an accredited employee organization recognized or certified as the exclusive negotiating representative of employees in an appropriate unit within the district.

SEC. 2. Section 28849 is added to the Public Utilities Code, immediately preceding Section 28850, to read:

28849. (a) It is a primary purpose of this chapter to promote the improvement of personnel management and employer-employee relations within the district by providing a uniform basis for recognizing the right of employees to join employee organizations of their own choice, to be represented, to select one employee organization as the exclusive representative of the employees in an appropriate unit, and to afford employees a voice at work.

(b) The Public Employment Relations Board established pursuant to Section 3541 of the Government Code, and the powers and duties of that board, as described in Section 3541.3 of the Government Code, shall have jurisdiction, as appropriate, to enforce this chapter.

SEC. 3. Section 28850 of the Public Utilities Code is amended to read:

28850. (a) If a majority of the employees employed by the district in a unit appropriate for collective bargaining indicate a desire to be represented by an employee organization, the board, after determining pursuant to Section 28851 that the employee organization represents the employees in the appropriate unit, shall bargain with the exclusive representative of those employees. Both parties shall bargain in good faith and make all reasonable efforts to reach agreement on the terms of a written contract governing wages, salaries, hours, working conditions, and grievance procedures.

(1) If a dispute arises over the terms of a written contract governing wages, salaries, hours, or working conditions that is not resolved by negotiations conducted in good faith between the board and the exclusive representative, then upon the agreement of both parties, the board and the exclusive representative may submit the dispute to an arbitration board. The decision of a majority of the arbitration board shall be final.

(2) (A) The arbitration board shall be composed of two representatives of the district, two representatives of the exclusive representative, and a fifth member to be agreed upon by the representatives of the district and the exclusive representative.

(B) If the representatives of the district and the exclusive representative are unable to agree on the fifth member, then the names of five persons experienced in labor arbitration shall be obtained from the California State Mediation and Conciliation Service. The exclusive representative and the district shall, alternately, strike a name from the list supplied by the California State Mediation and Conciliation Service. The exclusive representative and the district shall determine by lot who shall first strike a name from the list. After the exclusive representative and the district have stricken four names, the name remaining shall be designated as the arbitrator.

(C) The district and the exclusive representative shall each pay one-half of the cost of the impartial arbitrator.

(b) A contract or agreement shall not be made with any exclusive representative, employee organization, association, group, or individual that denies membership on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code. However, the organization may preclude from membership any individual who advocates the overthrow of the government by force or violence.

(c) The district shall not discriminate with regard to employment against any person on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as otherwise provided in Section 12940 of the Government Code.

SEC. 4. Section 28851 of the Public Utilities Code is amended to read:

28851. If there is a question whether an employee organization represents a majority of employees or whether the proposed unit is or is not appropriate, such matters shall be submitted to the California State Mediation and Conciliation Service for disposition. The California State Mediation and Conciliation Service shall promptly hold a public hearing and may, by decision, establish the boundaries of any collective bargaining unit and provide for an election to determine the question of representation. Provided, however, any certification of an employee organization to represent or act for the employees in any collective bargaining unit shall not be subject to challenge on the grounds that a new substantial question of representation within such collective bargaining unit exists until the lapse of one year from the date of certification or the expiration of any collective bargaining agreement, whichever is later.

SEC. 5. Section 28856 is added to the Public Utilities Code, to read:

28856. (a) Exclusive representatives shall have the right to represent their bargaining unit members in employer-employee relations with the district, and employees shall have the right to be represented by their exclusive representative.

(b) This chapter is not intended to adversely affect any rights afforded to exclusive representatives or district employees under existing law, as it may be amended from time to time.

SEC. 6. Section 28857 is added to the Public Utilities Code, to read:

28857. The district shall give reasonable written notice to an exclusive representative of its intent to make any change to matters within the scope of representation of the employees represented by the exclusive representative for purposes of providing the exclusive representative a reasonable amount of time to negotiate with the district regarding the proposed changes.

SEC. 7. Section 28858 is added to the Public Utilities Code, to read:

28858. It is unlawful for the district to do any of the following:

(a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed to them by this chapter. As used in this subdivision, "employee" includes an applicant for employment or reemployment with the district.

(b) Deny employee organizations rights guaranteed to them by this chapter.

(c) Refuse or fail to meet and negotiate in good faith with an exclusive representative. Knowingly providing an exclusive representative with inaccurate information, whether or not it is in response to a request for information, constitutes a refusal or failure of the district to meet and negotiate in good faith with the exclusive representative.

(d) Dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any employee organization in preference to another.

(e) Refuse to participate in good faith in mutually agreed upon impasse procedures.

SEC. 8. Section 28859 is added to the Public Utilities Code, to read:

28859. It is unlawful for an employee organization to do any of the following:

(a) Impose or threaten to impose reprisals on employees, discriminate or threaten to discriminate against employees, or otherwise interfere with, restrain, or coerce employees because of their exercise of rights guaranteed to them by this chapter.

(b) Refuse or fail to meet and negotiate in good faith with the district concerning any of the employees of which it is the exclusive representative.

(c) Refuse to participate in good faith in mutually agreed upon impasse procedures.

SEC. 9. Section 28860 is added to the Public Utilities Code, to read:

28860. (a) This chapter shall not displace, or supplant, the requirements of Chapter 3 (commencing with Section 3610) of Division 4.5 of Title 1 of the Government Code, and the impasse resolution and injunctive relief procedures provided for pursuant to Sections 3612 to 3614, inclusive, of the Government Code shall remain exclusive.

(b) The initial determination as to whether the charge of unfair practice is justified and, if so, the appropriate remedy necessary to effectuate the purposes of this chapter, is a matter within the exclusive jurisdiction of the Public Employment Relations Board, except that in an action to recover damages due to an unlawful strike, the Public Employment Relations Board shall have no

authority to award strike-preparation expenses as damages, and shall have no authority to award damages for costs, expenses, or revenue losses incurred during, or as a consequence of, an unlawful strike.

SEC. 10. Section 28861 is added to the Public Utilities Code, to read:

28861. (a) Any charging party, respondent, or intervenor aggrieved by a final decision or order of the Public Employment Relations Board in an unfair practice case, except a decision of that board not to issue a complaint in such a case, may petition for a writ of extraordinary relief from that decision or order.

(b) A petition for a writ of extraordinary relief shall be filed in the district court of appeal having jurisdiction over any county in which the district operates. The petition shall be filed within 30 days from the date of the issuance of the Public Employment Relations Board's final decision or order, or order denying reconsideration, as applicable. Upon the filing of the petition, the court shall cause notice to be served upon the Public Employment Relations Board and thereafter shall have jurisdiction of the proceeding. The Public Employment Relations Board shall file in the court the record of the proceeding, certified by that board, within 10 days after the clerk's notice unless that time is extended by the court for good cause shown. The court shall have jurisdiction to grant any temporary relief or restraining order it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as modified, or setting aside in whole or in part the decision or order of the Public Employment Relations Board. The findings of the Public Employment Relations Board with respect to questions of fact, including ultimate facts, if supported by substantial evidence on the record considered as a whole, shall be conclusive. Title 1 (commencing with Section 1067) of Part 3 of the Code of Civil Procedure relating to writs shall, except where specifically superseded by this section, apply to proceedings pursuant to this section.

(c) If the time to petition for extraordinary relief from a Public Employment Relations Board decision or order has expired, the Public Employment Relations Board may seek enforcement of any final decision or order in a district court of appeal or superior court having jurisdiction over the county where the events giving rise to the decision or order occurred. The Public Employment Relations Board shall respond within 10 days to any inquiry from a party to the action as to why the Public Employment Relations Board has not sought court enforcement of the final decision or order. If the response does not indicate that there has been compliance with the Public Employment Relations Board's final decision or order, the Public Employment Relations Board shall seek enforcement of the final decision or order upon the request of the party. The Public Employment Relations Board shall file in the court the record of the proceeding, certified by that board, and appropriate evidence disclosing the failure to comply with the decision or order. If, after hearing, the court determines that the order was issued pursuant to the procedures established by the Public Employment Relations Board and that the person or entity refuses to comply with the order, the court shall enforce the order by writ of mandamus or other proper process. The court may not review the merits of the order.

SEC. 11. Section 28862 is added to the Public Utilities Code, to read:

28862. This chapter, as amended by the act adding this section, shall not be interpreted as if it were in conflict with any collective bargaining agreement and shall not be implemented to abrogate an agreement entered into before January 1, 2021, between the district and an employee organization. This chapter shall be interpreted in a manner consistent with the Public Employment Relations Board's interpretation of parallel provisions in other statutes it enforces.

SEC. 12. Section 28863 is added to the Public Utilities Code, to read:

28863. Chapter 11.5 (commencing with Section 3555) of Division 4 of Title 1 of the Government Code applies to the district and its employees. Notwithstanding subparagraph (B) of paragraph (1) of subdivision (i) of Section 3558.8 of the Government Code, the district is a public employer for purposes of Chapter 11.5 (commencing with Section 3555) of Division 4 of Title 1 of the Government Code.

SEC. 13. The Legislature finds and declares that a special statute is necessary and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique need of the San Francisco Bay Area Rapid Transit District to efficiently and cost-effectively adjudicate unfair labor practice complaints.

SEC. 14. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.