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**Exempt from filing fee per
Gov. Code, § 6103**

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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF ALAMEDA

12
13 **PEOPLE EX REL. EDMUND G. BROWN
JR., Governor of the State of California,**

Petitioner,

14
15 v.

16
17 **AMALGAMATED TRANSIT UNION,
18 LOCAL 192, AFL-CIO; ALAMEDA-
CONTRA COSTA TRANSIT DISTRICT;
19 and DOES 1 through 5000,**

20 Respondents.

Case No.

**COMPLAINT FOR TEMPORARY
RESTRAINING ORDER AND ORDER
TO SHOW CAUSE RE INJUNCTION TO
ENJOIN PUBLIC TRANSIT WORKERS'
STRIKE AND/OR LOCKOUT**

21 The People of the State of California allege:

- 22 1. Petitioner Edmund G. Brown Jr. is the Governor of the State of California and
23 brings this action in his official capacity.
- 24 2. Respondent Alameda-Contra Costa Transit District ("District") is organized and
25 exists pursuant to section 24561 of the Public Utilities Code. The District is based in Oakland,
26 California and is subject to the labor dispute provisions of Government Code section 3610 et seq.
27 The District operates the AC Transit bus system.

1 3. Respondent Amalgamated Transit Union, Local 192, AFL-CIO (“ATU” or the
2 “Union”) is a union subject to the labor dispute provisions of Government Code section 3610 et
3 seq. ATU represents approximately 1,689 District employees, including bus operators,
4 dispatchers, mechanics, janitors, service employees and clerical employees.

5 4. The true identities and capacities of Does 1 through 5,000 are unknown to
6 petitioner who therefore sues them by fictitious names. Petitioner will seek leave to amend the
7 petition to state their true names and capacities when discovered. Petitioner is informed and
8 believes and on those grounds alleges that respondents Does 1 through 5,000 are the agents,
9 members, or employees of respondent Union or respondent District and are responsible for the
10 actions complained of in this petition.

11 5. The collective bargaining agreements between the District and the Union expired
12 on June 30, 2013. Negotiations for a successor agreement between ATU and the District began
13 on March 29, 2013. The parties have held numerous bargaining sessions as well as sessions with
14 a mediator appointed by the California State Mediation and Conciliation Service.

15 6. On or about June 15, 2013, the Union members authorized Union leaders to call a
16 strike at any time. On August 6, 2013, the District and Union representatives reached a tentative
17 agreement, but the agreement was rejected by Union members on August 17, 2013. The District
18 and ATU representatives reached another tentative agreement on September 25, 2013, but on
19 October 1, 2013, the Union membership rejected that agreement as well.

20 7. On October 14, 2013, ATU gave the District 72-hour notice of their intent to strike
21 commencing at 12:01 a.m. on August 17, 2013.

22 8. On October 16, 2013, Governor Edmund G. Brown Jr., upon request by the
23 District, appointed a Board of Investigation pursuant to Government Code section 3612,
24 subdivision (a). The effect of the Governor’s action was to prohibit any strike or lockout for a
25 period of seven days during the Board’s investigation.

26 9. On October 21, 2013, the Board of Investigation held a hearing. Prior to the
27 hearing, both the District and the ATU presented statements of position. The District’s statement
28

1 contained detailed information about the impacts of a transit strike. ATU's statement did not
2 dispute that a work stoppage will significantly disrupt transportation services and endanger the
3 public's health, safety or welfare.

4 10. On October 21, 2013, the Board of Investigation made its written report to the
5 Governor in accordance with Government Code section 3612. The Board concluded that a work
6 stoppage would in fact significantly disrupt transportation services and endanger the public's
7 health, safety and welfare.

8 11. After receiving and considering the report of the Board of Investigation, and in
9 light of the significant disruption to public transportation services in Alameda and Contra Costa
10 counties and the San Francisco Bay Area should the Unions proceed with a strike, the Governor
11 requested, pursuant to Government Code section 3614, that the Attorney General petition this
12 Court to enjoin a strike by the Unions or any lockout by the District for a period of 60 days.

13 12. The economic costs of a strike or lockout would be great. The District serves a
14 population of 1.5 million people, providing 107 bus lines with about 5,500 bus stops, including
15 commuter express buses to San Francisco, San Mateo and Santa Clara counties. The District
16 provides approximately 181,000 rides daily.

17 13. A strike or lockout will endanger the public's health, safety or welfare. The
18 District serves populations that may not have access to other forms of transportation, including
19 person who cannot drive, school children and the disabled. Loss of AC Transit bus service will
20 put children, the disabled and persons in need of medical care at risk.

21 14. The People of the State of California will be irreparably injured if the threatened
22 strike or lockout is not enjoined, because any such occurrence will significantly disrupt public
23 transportation services in the greater San Francisco Bay Area and endanger the public health,
24 safety, and welfare.

25 WHEREFORE, petitioner prays that:

26 1. The Court issue ex parte a temporary restraining order enjoining a strike or lockout
27 pending a hearing on this petition;
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2. The Court issue an order to show cause against respondents Alameda-Contra Costa Transit District and Amalgamated Transit Union, Local 192, AFL-CIO ordering them to appear and show cause why an injunction against a strike or lockout should not be granted;

3. The Court issue an injunction enjoining respondents Alameda-Contra Costa Transit District and Amalgamated Transit Union, Local 192, AFL-CIO, and each of them, and their agents, servants, and employees, and all persons acting under or in concert with or for them, from commencing a strike or lockout for a period of 60 days;

4. Petitioner recover costs of suit; and,

5. The Court order such other relief as it deems just.

Dated: October 22, 2013

Respectfully Submitted,

KAMALA D. HARRIS
Attorney General of California
TAMAR PACHTER
Supervising Deputy Attorney General



SHARON L. O'GRADY
Deputy Attorney General
Attorneys for Petitioner
People Ex Rel. Edmund G. Brown Jr.,
Governor of the State of California

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11 COUNTY OF ALAMEDA
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13 **PEOPLE EX REL. EDMUND G. BROWN**
14 **JR., Governor of the State of California,**

15 Petitioner,

16 v.

17 **AMALGAMATED TRANSIT UNION,**
18 **LOCAL 192, AFL-CIO; ALAMEDA-**
19 **CONTRA COSTA TRANSIT DISTRICT**
20 **and DOES 1 through 5000,**

21 Respondents.

Case No.

PETITIONER'S EX PARTE
APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND ORDER
TO SHOW CAUSE RE INJUNCTION

Date: October 23, 2013
Time: 9:00 a.m.
Dept: 31
Judge: Evilio Grillo
Trial Date: N/A
Action Filed: October 22, 2013

22 Petitioner Edmund G. Brown Jr., Governor of the State of California, respectfully applies
23 pursuant to section 3614 of the Government Code for a temporary restraining order preventing
24 respondents Amalgamated Transit Union, Local 192, AFL-CIO ("ATU") and the Alameda-
25 Contra Costa Transit District (the "District"), and their agents, servants, and employees, from
26 threatening or engaging in any strike or lockout for a period of 60 days, through and including
27 December 22, 2013.
28

1 Petitioner further applies for an Order to Show Cause why an injunction should not be
2 issued enjoining respondents from committing the above-described acts for a period of 60 days.

3 Pursuant to California Rules of Court, Rule 3.1202, to the best of counsel's knowledge, the
4 names, addresses, and telephone numbers of counsel for respondents are as follows:

5 For ATU:

6 Margot Rosenberg
7 Leonard Carder, LLP.
8 1330 Broadway
9 Oakland, CA 94109
10 TEL: (510) 272-0169
11 FAX: (510) 272-0174
12 mrosenberg@leonardcarder.com

13 For the District:

14 David Wolf
15 General Counsel
16 Alameda-Contra Costa Transit District
17 1600 Franklin Street, Oakland, CA 94612
18 TEL: (510) 891-7178
19 FAX: (510) 891-4724
20 dwolf@actransit.org

21 This application is made on the grounds that the People of the State of California will be
22 irreparably injured if the threatened strike or lockout is not enjoined. Any such occurrence will
23 significantly disrupt public transportation services in Alameda and Contra Costa counties, as well
24 as other counties in the San Francisco Bay Area, and endanger the public health, safety, and
25 welfare. This application is made on the further ground that great injury will result to the People
26 of the State of California before the matter can be heard on notice. This application is based on

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1 the petition on file in this case, the accompanying memorandum of points and authorities, and the
2 declaration of Sharon L. O'Grady and exhibits thereto.

3 Dated: October 22, 2013

Respectfully Submitted,

4 KAMALA D. HARRIS
5 Attorney General of California
6 TAMAR PACHTER
7 Supervising Deputy Attorney General

8 
9 SHARON L. O'GRADY
10 Deputy Attorney General
11 *Attorneys for Petitioner*
12 *People Ex Rel. Edmund G. Brown Jr.,*
13 *Governor of the State of California*

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA
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13 **PEOPLE EX REL. EDMUND G. BROWN**
14 **JR., Governor of the State of California,**
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16 **v.**
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18 **AMALGAMATED TRANSIT UNION,**
LOCAL 192, AFL-CIO; ALAMEDA-
19 **CONTRA COSTA TRANSIT DISTRICT;**
and DOES 1 through 5000,
20
21 Respondents.

Case No.
**PETITIONER'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF EX PARTE
APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND ORDER
TO SHOW CAUSE RE INJUNCTION**
Date: October 23, 2013
Time: 9:00 a.m.
Dept: 31
Judge: Evilio Grillo
Trial Date: N/A
Action Filed: October 22, 2013

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 Governor Edmund G. Brown Jr. respectfully petitions this Court for a temporary
4 restraining order and order to show cause why an injunction should not issue precluding a strike
5 by Amalgamated Transit Union, Local 192, AFL-CIO (“ATU” or the “Union”), as well as a
6 lockout by the Alameda-Contra Costa Transit District (the “District” or “AC Transit”).

7 **STATEMENT OF FACTS**

8 ATU represents approximately 1,689 District employees, including bus operators,
9 dispatchers, mechanics, janitors, service employees and clerical employees. Declaration of
10 Sharon O’Grady in Support of Ex Parte Application for Temporary Restraining Order and
11 Injunction (“O’Grady Declaration”), ¶ 3 & Exhibit E at p. 1. ATU represents more than
12 84 percent of District employees. (O’Grady Declaration, ¶ 3 & Exhibit C at p. 1.)

13 The District has been negotiating with ATU since March 29, 2013; the parties have had
14 numerous meetings, including mediation sessions. (*Id.*, Exhibit D at pp. 5-7 & Exhibit E at p. 3)
15 The existing collective bargain agreement expired on June 30, 2013. (*Id.*, Exhibit E at p. 3.) On
16 June 15, 2013, ATU members voted overwhelmingly to authorize a strike. (*Ibid.*)

17 On August 6, 2013, the District and the Union representatives reached a tentative
18 agreement, but it was rejected by Union members by a vote of 576 to 257 on August 17, 2013.
19 (*Ibid.*) Approximately 50 percent of the bargaining unit did not vote on the tentative agreement.
20 (*Ibid.*) The District and ATU representatives reached another tentative agreement on September
21 25, 2013, but on October 1, 2013, the Union membership rejected that agreement as well. (*Ibid.*)
22 Again, about half of the membership did not vote. (*Ibid.*)

23 On October 14, 2013, ATU gave the District 72-hour notice of their intent to strike
24 commencing at 12:01 a.m. on August 17, 2013. (*Id.*, Exhibit E at p. 4.) On October 16, the
25 Governor, at the request of the District, appointed a Board of Investigation pursuant to
26 Government Code section 3612.¹ (*Id.*, Exhibits A & B, Exhibit E at p. 4.) The effect of the

27 ¹ Former Labor Code sections 1137 through 1137.6 were repealed and reenacted in June
28 2012 as sections 3610 through 3616 of the Government Code without substantive change.

(continued...)

1 Governor's action was to prohibit any strike or lockout during the period of the Board's
2 investigation. (Gov. Code, § 3612, subd. (b).) The Board made its report to the Governor on
3 October 21, 2013. (O'Grady Declaration, Exhibit E.

4 On October 21, 2013, the Governor requested that the Attorney General bring this action to
5 enjoin the strike by or lockout of District workers and to impose a 60-day "cooling-off" period
6 pursuant to Government Code section 3614. (O'Grady Declaration, ¶ 4.)

7 The District provides a critical service to the public, offering bus service in 13 cities and
8 several unincorporated areas. (O'Grady Declaration, Exhibit E at p. 6.) It serves a population of
9 1.5 million, providing 107 bus lines with about 5,500 bus stops, including commuter express bus
10 service to San Francisco, San Mateo and Santa Clara counties. (*Ibid.*) The District provides
11 approximately 181,000 trips each day. (*Id.*, Exhibit E at p. 6.)

12 The District serves populations that may not have access to other forms of transportation.

- 13 • Fifty-one percent of its ridership do not have a driver's license and 40 percent live
14 in households without an automobile. (O'Grady Declaration, Exhibit E at p. 6.)
- 15 • Sixty-three percent of District riders are low-income (compared to only 29 percent
16 of the general population in its service area). (*Ibid.*)
- 17 • AC Transit's daily ridership includes 11,000 children and teenagers under the age
18 of 18; 17,000 students ride AC Transit buses to school daily. (*Ibid.*)
- 19 • Approximately 10,000 persons with disabilities ride AC Transit buses every day.
20 (*Id.*, Exhibit E at 7.)

21 More than 40 percent of District riders depend on its bus lines to commute to work,
22 including 14,000 daily trips on AC Transit's trans-bay lines. (O'Grady Declaration, Exhibit E at
23 p. 6.) During the BART strike in July 2013, ridership on the trans-bay lines doubled, with similar
24 numbers expected to be reported for the October 2013 BART strike. (*Ibid.*)

25
26 _____
27 (...continued)
28 (Stats. 2012, ch. 46, § 91 [repealing Labor Code provisions]; Stats. 2012, ch. 46, § 11 [enacting
Gov. Code, §§ 3610-3616].)

1 Riders use AC Transit to travel to medical facilities within the District's service area that
2 are not accessible by BART, including Highland Hospital, Alta Bates (in Oakland and Berkeley)
3 Doctor's Medical Center and Kaiser facilities. (O'Grady Declaration, Exhibit C at p. 12 &
4 Exhibit E at p. 6.)

5 Unless enjoined, the threatened strike will significantly disrupt public transportation
6 services in Alameda and Contra Costa counties, as well as other parts of the San Francisco Bay
7 Area, and will endanger the health, safety, and welfare of people dependent upon District services
8 to meet their transportation needs, as well as the many others who live and work in the San
9 Francisco Bay Area. (O'Grady Declaration, Exhibits C & E.)

10 ARGUMENT

11 I. The Strike Should Be Enjoined For 60 Days

12 A strike by or lockout of Union members will significantly disrupt public transportation
13 services and endanger the public's health, safety or welfare. Accordingly, this Court should
14 enjoin such a strike or lockout for 60 days, pursuant to Government Code section 3614.

15 Government Code sections 3610 et seq., are patterned after the emergency procedures of
16 the National Labor Relations Act, 29 United States Code sections 176 through 178. There are no
17 reported decisions interpreting the California statute,² but the federal courts have outlined the
18

19 ² The Governor invoked this statute to obtain a 60-day cooling off period in the current
20 labor dispute between BART and its unions. (*People ex rel. Edmund G. Brown v. Amalgamated
Transit Union, Local 1555, et al.* San Francisco Superior Court No. CPF-13-5513159). The
cooling off period in that case expired on October 10, 2013.

21 To the best of counsel's knowledge and belief, the statute also has been invoked on the
22 following occasions. In 1982, Governor Brown petitioned to prevent a strike against the Southern
23 California Rapid Transit District (*People ex rel. Edmund G. Brown v. United Transportation
Union*, Los Angeles Superior Court No. C418040). In 1985, Governor Deukmejian petitioned to
24 prevent a strike against the same entity (*People ex rel. George Deukmejian v. United
Transportation Union*, Los Angeles Superior Court No. C535164). In 1988, Governor
25 Deukmejian petitioned to prevent a Bay Area Rapid Transit District strike (*People ex rel. George
Deukmejian v. Amalgamated Transit Union et al.*, San Francisco Superior Court No. 894528). In
26 1991, 1994, and 1997, Governor Wilson petitioned to prevent Bay Area Rapid Transit District
27 strikes (*People ex rel. Pete Wilson v. Amalgamated Transit Union et al.*, Contra Costa Superior
28 Court No C91-03113, *People ex rel. Pete Wilson v. Amalgamated Transit Union, et al.*, Contra
Costa Superior Court No. C94-03159, and *People ex rel. Pete Wilson v. Service Employees
International Union, et al.*, Contra Costa Superior Court No. C97-02764). In 1997, Governor
Wilson also petitioned the court to prevent a Metropolitan Transit District strike (*People ex rel.*

(continued...)

1 courts' powers and duties under the corresponding federal law. The dual purpose of these statutes
2 is to alleviate a threat to the public health and safety and to promote settlement of the underlying
3 dispute. (*Seafarers Int'l Union. v. United States* (9th Cir. 1962) 304 F.2d 437, 442.) In meeting
4 these objectives, the courts have "a relatively minor role."

5
6 First, the only purpose for which an injunction may be entered . . . is to enjoin a strike
7 or lock-out, or the continuing thereof which, if permitted to occur or to continue,
8 would imperil the [public] health or safety. Second, the only function which such an
9 injunction may serve is to maintain the status quo as it existed before the actual or
10 threatened strike or lock-out. Third, in considering whether to grant or deny such an
11 injunction, the courts may not enter into general inquiries of a character which would
12 be entirely appropriate under other circumstances. Fourth, if an injunction is issued it
13 must be industry-wide, and may not be fashioned to permit selective relief on some
14 basis deemed adequate to meet the needs of the [public] health and safety. Fifth, the
15 injunction must be discharged [within the statutory time frame].

16 Subject only to these limitations as to purpose, function, scope and duration, however,
17 the courts have full power to fashion an injunction which will meet the situation.

18 (*Id.* at pp. 442-443, citations and footnotes omitted.)

19 In determining whether an injunction should issue, the courts' evidentiary inquiry is also
20 limited.

21 All that is left for the courts in deciding whether to issue an injunction, is a
22 determination as to whether a strike or lock-out, threatened or actual, affects an
23 industry of the kind described in the statute in such a manner that, if permitted to
24 occur or continue, will imperil the [public] health or safety. If findings of this kind
25 are made, the court has no alternative but to issue the injunction.

26 (*Id.* at pp. 442-443, fn. 8, citation omitted. Accord *United Steelworkers v. United States* (1959)

27 (...continued)

28 *Pete Wilson v. International Brotherhood of Teamsters, Local 186, et al.*, Santa Barbara Superior Court No. 221054). In 2000, Governor Davis petitioned to prevent a Metropolitan Transit Authority strike (*People ex rel. Gray Davis v. United Transportation Union, et al.*, Los Angeles Superior Court No. BS064171). In 2001, Governor Davis also petitioned to prevent a Bay Area Rapid Transit District strike (*People ex rel. Gray Davis v. Service Employees International Union, et al.*, San Francisco Superior Court No. 322675 and *People ex rel. Gray Davis v. American Federation of State, County and Municipal Employees*, San Francisco Superior Court No. 323545), and to prevent a North County Transit District strike in San Diego (*People ex rel. Gray Davis v. Teamsters et al.*, San Diego Superior Court No. GIC777724). In 2003, Governor Davis petitioned to prevent strikes against the Los Angeles Metropolitan Transit District (*People ex rel. Gray Davis v. United Transportation Union*, Los Angeles Superior Court No. BC299296 and *People ex rel. Gray Davis v. Amalgamated Transit Union-Local 1277*, Los Angeles Superior Court No. BC300663). In 2007, Governor Schwarzenegger petitioned to prevent a strike against the Orange County Transportation Authority (*People ex rel. Arnold Schwarzenegger v. Teamsters, Local 952, et al.*, Orange County Superior Court No. 07CC05635).

1 361 U.S. 39, 40-41; *United States v. Pacific Maritime Ass'n* (N.D. Cal. 2001) 229 F.Supp.2d
2 1008, 1015 [the district court's inquiry ends when the statutory findings are made].)

3 In reaching its decision, the Court should give deference to the determinations of the
4 requesting executive. (*United Steelworkers of America v. United States, supra*, 361 U.S. at p. 48
5 [concurring opinion of Justices Frankfurter and Harlan].) In a situation where the public welfare
6 is at stake and time is limited, the government should not be put to an unreasonable evidentiary
7 burden. (*Id.* at p. 52.) Review of the wisdom of the petitioning executive's approach is not a
8 matter within the court's concern. (*Id.* at p. 58.)

9 The California statute is essentially the same as the federal law except that it is narrower in
10 its scope of application. In California, the emergency injunctive procedure applies only to public
11 transit strikes and/or lockouts. (Gov. § 3610 et seq.) However, the courts' role and their powers
12 and duties under the statute are identical.³

13 Upon finding that a strike or lockout will "significantly disrupt transportation services and
14 endanger the public's health, safety, or welfare" a court "shall issue an order enjoining such strike
15 or lockout" for 60 days. (Gov. Code, § 3614.)

16 The public's health, safety and welfare includes more than simply physical well-being, but
17 also includes "the essential well-being of the economy." (*United States v. Pacific Maritime*
18 *Ass'n, supra*, 229 F.Supp.2d at p. 1011 [quoting *United States v. Int'l Longshoremen's Ass'n* (7th
19 Cir. Nov. 5, 1971) 1971 WL 2992, at p. *3]; see *United Steelworkers v. United States, supra*, 361
20 U.S. 39.) The economy of the Bay Area plainly will suffer if an AC Transit strike or lockout
21 occurs. But even if the public's health, safety and welfare were construed narrowly to mean the
22

23 ³ In the recent BART case, the San Francisco Superior Court issued the injunction based
24 only on the Governor's determination, the Board of Investigation's reports and the parties'
25 statements of position submitted to the Board. In the 1982, 1985 and 2003 cases, the Los
26 Angeles Superior Court entered its 60-day injunction on no evidentiary showing other than the
27 Governor's determination and the reports of the appointed Boards of Investigation. In 1988, the
28 San Francisco Superior Court issued a temporary restraining order and order to show cause on the
same basis. Similarly, in 1991, 1994, and 1997, the Contra Costa Superior Court issued a
temporary restraining order and order to show cause based solely on the Governor's
determination and the report of the Board of Investigation. Petitioners received orders likewise in
the 1997 Santa Barbara, 2000 Los Angeles, and 2001 San Francisco and San Diego cases.

1 physical health, safety and welfare of its citizenry, the requirements for a 60 day cooling off
2 period would be met.

3 Here, the Board of Investigation determined that “a present strike will cause a significant
4 disruption in public transportation services and significant harm to the public’s health, safety, and
5 welfare.” (O’Grady Declaration, Exhibit E at p. 9.) The un rebutted evidence presented at the
6 hearing amply supports that conclusion. Approximately 181,000 passengers ride AC Transit
7 every day. As discussed in the Statement of Facts above, many of these are low income residents,
8 children and the disabled, who have no other means of transportation.

9 In some school districts, as many as 95 percent of the students get to school by AC Transit.
10 (O’Grady Declaration, Exhibit E at p. 8.) A strike would severely, negatively impact children,
11 who would have to walk to school in unsafe neighborhoods at the time of year when the daylight
12 hours are getting shorter. (*Id.*, Exhibit E at p. 7.) Reduced school attendance would not only
13 have an obvious impact on individual students, but could result in the loss of important state
14 funding. (*Ibid.*) Many children rely on AC Transit to get to after-school programs, which are not
15 remotely within walking distance. (*Id.*, Exhibit E at p. 8.)

16 Social services facilities are deliberately located along AC Transit bus lines to provide
17 access for persons who use those services. (O’Grady Declaration, Exhibit E at p. 8.) Evidence
18 adduced at the Board’s hearing indicates that AC Transit provides the only transportation option
19 for many persons with disabilities. (*Ibid.*) Loss of that means of transportation could be a matter
20 of life and death for those needing access to important medical appointments, such as dialysis.
21 (*Ibid.*)

22 ATU does not dispute that a work stoppage will significantly disrupt public transportation
23 services and endanger the public’s health, safety or welfare. (O’Grady Declaration, Ex. D at p.
24 12.) ATU also concedes that the “ultimate question of whether or not a cooling off period should
25 be established rests with the Governor.” (*Id.* at p. 14.)

26 In the Governor’s opinion, for the reasons articulated above, a strike by the Unions or a
27 lockout by the District would result in significant disruption of public transportation and danger
28

1 to the health, safety, and welfare of the public transportation-dependent communities in Alameda
2 and Contra Costa counties, as well as the greater San Francisco Bay Area.

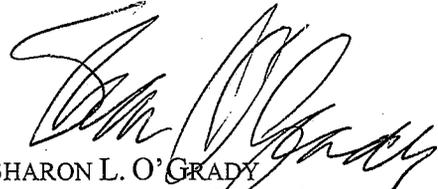
3 **CONCLUSION**

4 For these reasons, the Governor respectfully requests that the Court issue a temporary
5 restraining order and order to show cause to prevent a strike by the Union or a lockout by the
6 District, pending a hearing on petitioner's request for an injunction. At the hearing on the
7 injunction, petitioner will request that this Court issue an order enjoining a strike or lockout for a
8 period of 60 days.

9
10 Dated: October 22, 2013

Respectfully Submitted,

11 KAMALA D. HARRIS
12 Attorney General of California
13 TAMAR PACTER
14 Supervising Deputy Attorney General

15 
16 SHARON L. O'GRADY
17 Deputy Attorney General
18 *Attorneys for Petitioner*
19 *People Ex Rel. Edmund G. Brown Jr.,*
20 *Governor of the State of California*

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8 *Governor of the State of California*

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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF ALAMEDA

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13 **PEOPLE EX REL. EDMUND G. BROWN**
JR., Governor of the State of California

14 Petitioner,

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17 **AMALGAMATED TRANSIT UNION,**
LOCAL 192. AFL-CIO; ALAMEDA-
18 **CONTRA COSTA TRANSIT DISTRICT;**
and DOES 1 through 5000,

19 Respondents.
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Case No.

DECLARATION OF SHARON L.
O'GRADY IN SUPPORT OF EX PARTE
APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND ORDER
TO SHOW CAUSE RE INJUNCTION

Date: October 23, 2013
Time: 9:00 a.m.
Dept: 31
Judge: Evilio Grillo
Trial Date: N/A
Action Filed: October 22, 2013

21 I, Sharon L. O'Grady, hereby declare:

22 1. I am an attorney admitted to practice before the courts of the State of California. I
23 am a Deputy Attorney General for the State of California and the attorney of record in this case
24 for Petitioner Edmund G. Brown Jr., Governor of the State of California. The matters set forth in
25 this Declaration are true of my own knowledge, and if called as a witness I could and would
26 testify competently thereto.

27 2. On October 16, 2013, at the request of the Alameda-Contra Costa Transit District
28

1 (the "District"), Governor Brown appointed a Board of Investigation (the "Board") pursuant to
2 Government Code section 3612 to investigate and report on the labor dispute between the District
3 and District employees represented by Amalgamated Transit Union, Local 192, AFL-CIO
4 ("ATU"). A true and correct copy of the District's letter request is attached hereto as Exhibit A; a
5 true and correct copy of the Governor's letter appointing the Board is attached hereto as
6 Exhibit B.

7 3. The Board held a hearing on October 21, 2013. The District and ATU provided
8 written statements to the Board in advance of the hearing. A true and correct copy of the
9 District's statement (without attachments) is attached hereto as Exhibit C; a true and correct copy
10 of ATU's statement (without attachments) is attached hereto as Exhibit D. Following the hearing,
11 the Board issued its report, a true and correct copy of which (without exhibits) is attached hereto
12 as Exhibit E.

13 4. On October 21, 2013, the Governor requested that Attorney General Kamala D.
14 Harris petition this Court for an injunction under Government Code section 3614.

15 5. On October 22, 2013, at approximately 9:15 a.m., I left voice-mail messages for
16 Margot Rosenberg, counsel for ATU and David Wolf, counsel for the District, informing them
17 that I would appear before this Court at 9:00 a.m. Wednesday, October 23, 2013, to present this
18 Court with an ex parte request for a temporary restraining order and order to show cause
19 regarding an injunction establishing the 60-day cooling-off period pursuant to Government Code
20 section 3614. I confirmed the notice by e-mail at 9:28 a.m. on October 22, 2013, and both
21 counsel acknowledged receiving the notice. A true and correct copy of our e-mail exchange is
22 attached hereto as Exhibit F. Counsel for the ATU advised me that the Union does not oppose the
23 cooling-off period and that our proposed order is acceptable. David Wolf advised me that the
24 District does not oppose the cooling-off period and that our proposed order is acceptable to the
25 District. Both counsel have advised me that they intend to appear at the hearing in the matter.

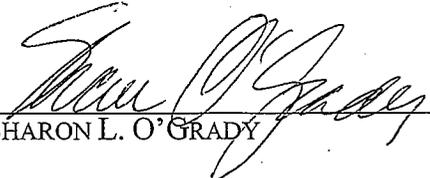
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this is executed this 22nd day of October, 2013.


SHARON L. O'GRADY

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Exhibit A

EXHIBIT A



Alameda-Contra Costa Transit District

Board of Directors

October 8, 2013

Greg Harper, President
Ward II

Joe Wallace, Vice President
Ward I

Elsa Ortiz
Ward III

Mark A. Williams
Ward IV

Jeff Davis
Ward V

H. E. Christian-Peebles
Director at Large

Joel B. Young
Director at Large

Board Officers

David J. Armijo
General Manager

David A. Wolf
General Counsel

Linda A. Nemeroff
District Secretary

VIA HAND DELIVERY

The Honorable Edmund G. Brown, Jr.
Governor of California
State Capitol, Suite 1173
Sacramento, CA 95814

Re: Request for Cooling Off Period Involving a Labor Dispute Between the Alameda-Contra Costa Transit District and Amalgamated Transit Union, Local 192, AFL-CIO

Dear Governor Brown:

The Alameda-Contra Costa Transit District ("AC Transit" or "District") respectfully requests a sixty-day cooling off period and the appointment of a Board of Investigation pursuant to Government Code section 3612. The District fears a strike by the largest of our three labor unions. Coupled with a likely BART strike, this will cause a significant disruption of transit service in Alameda, Contra Costa, and San Mateo Counties as well as the City and County of San Francisco, adversely affecting the economy of the entire region.

The Parties' 2013 Negotiations to Date

The District commenced negotiations with the Amalgamated Transit Union, Local 192, AFL-CIO ("Local 192") on or about March 29, 2013. The ATU bargaining unit includes 1,621 employees, most of whom are bus operators. The parties' collective bargaining agreement expired by its terms on June 30, 2013. The parties have held approximately 14 bargaining sessions and 17 sessions of mediation with a mediator appointed by the California State Mediation and Conciliation Service. As a result of their good faith efforts, the bargaining parties twice reached tentative agreements on all open issues; unfortunately, the Local 192 membership twice voted to reject them. The most recent rejection was reported to the District and the public by Local 192 on October 1, 2013.

As of today, no request has been made to resume negotiations or mediation. Nor has a request been made to extend the collective bargaining agreement to afford the parties additional time to work through any remaining differences or to enable Local 192 to develop support for ratification. It was reported to the District that ATU took a strike vote on or about June 15, 2013 and that the ATU bargaining committee had been authorized as of that date to call the ATU bargaining unit out on strike. According to our reading of the ATU International Constitution and General Laws, it appears unnecessary for Local 192 to conduct another strike vote.

VIA HAND DELIVERY

The Honorable Edmund Brown, Jr.
Re: Request for Cooling Off Period
October 8, 2013
Page 2

The Public's Health, Safety, and Welfare

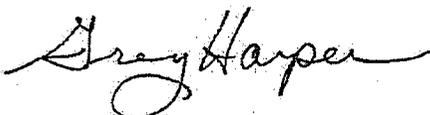
Meanwhile, the Bay Area Rapid Transit District's ("BART") "cooling off period" which began on or about August 11, 2013, will expire at midnight on Thursday October 10, 2013, leaving the entire San Francisco Bay Area at risk of another debilitating public transportation work stoppage, possibly exacerbated by a potential strike by AC Transit's workers. The BART strike of July 1 to 5, 2013, arguably provides more than sufficient evidence of the type of disruption that another Bay Area transit worker strike would entail. The District currently serves an estimated 182,000 transit riders per weekday. BART in turn serves over 400,000 transit riders per weekday. A strike of either or both agencies' employees will significantly disrupt the public transportation services our riders rely upon each day; moreover, such a strike or strikes would significantly endanger the public's health, safety, and welfare.

Conclusion

For the reasons set forth above, the District requests that the Governor convene a Board of Investigation as soon as possible and issue an order prohibiting any strike or lockout during the period of investigation in accordance with Government Code section 3612, subdivisions (a) and (b) and take other lawful steps necessary to protect the health, safety, and welfare of the public, including imposition of a sixty-day "cooling off period" in accordance with Government Code section 3614.

Thank you for your prompt and thoughtful consideration of this request.

Sincerely,



Greg Harper, President
AC Transit Board of Directors

cc: AC Transit Board of Directors
AC Transit General Manager
AC Transit General Counsel
AC Transit District Secretary
ATU, Local 192
AFSCME, Local 3916
IBEW, Local 1245
BART General Manager
BART General Counsel
Muni General Manager
Muni General Counsel

Exhibit B

EXHIBIT B



OFFICE OF THE GOVERNOR

October 16, 2013

Greg Harper
President, Board of Directors
Alameda-Contra Costa Transit District
1600 Franklin Street
Oakland, California 94612
gharper@actransit.org

Yvonne Williams
President/Business Agent
ATU Local 192
8460 Enterprise Way
Oakland, CA 94621
ywilliams@atu192.org

Margot Rosenberg
LEONARD CARDER, LLP
1330 Broadway, Ste. 1450
Oakland, CA 94612
mrosenberg@leonardcarder.com

Tony Withington
ATU International
5817 Blank Road
Sebastopol, CA 95472
awithington@atu.org

Ladies and Gentlemen:

At the request of the Alameda-Contra Costa Transit District, I am appointing a board to investigate the strike noticed by ATU Local 192 that threatens to disrupt public transportation services in the Bay Area. This board is appointed under the authority of Government Code section 3612, subdivision (a), because a strike will, if permitted to occur, significantly disrupt public transportation services and endanger the public's health, safety, or welfare.

The three individuals appointed to the board of investigation are:

1. Peter Southworth, Chairperson
2. Josie Camacho
3. Micki Callahan

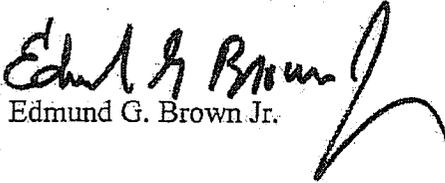
The Government Code prohibits any strike or lockout while the board completes its investigation. (Gov. Code, § 3612, subd. (b).)

October 16, 2013

Page 2

The board is directed to provide me with a written report within seven days. For the sake of the people of the Bay Area, I urge both sides to take this matter seriously and to continue working to find a fair solution.

Sincerely,

A handwritten signature in black ink, appearing to read "Edmund G. Brown Jr.", with a large, sweeping flourish at the end.

Edmund G. Brown Jr.

cc: Peter Southworth, Deputy Secretary & General Counsel, Transportation Agency
Josie Camacho, Executive Secretary-Treasurer, Alameda County Central Labor Council
Micki Callahan, Director, Human Resources for the City & County of San Francisco
Marty Morgenstern, Secretary, Labor & Workforce Development Agency

Exhibit C

EXHIBIT C

ALAMEDA-CONTRA COSTA TRANSIT DISTRICT

**REQUEST FOR COOLING OFF PERIOD
2013 BOARD OF INQUIRY**

OCTOBER 21, 2013

I. BACKGROUND FACTS

Alameda-Contra Costa Transit District (the "District") is a special district organized under the California Public Utilities Code.¹ It has a directly elected Board of Directors, one of only three such Districts in the nation. The District is the largest bus-only system in the nation serving 13 cities and nine adjacent unincorporated areas in Alameda and Contra Costa counties. The District operates two main types of service – East Bay Local Service and Transbay Service; the latter is provided in partnership with BART.

The District employs 2,000 employees, a significant majority of whom (84.5%) are represented by the Amalgamated Transit Union, Local 192 ("ATU"). In addition to the 1,689 ATU represented employees who work in transportation, maintenance, clerical, and purchasing/materials positions, the District employs 24 employees who are represented by the International Brotherhood of Electrical Workers, Local 1245 ("IBEW"), 211 employees who are represented by the American Federation of State, County & Municipal Employees, Local 3916 ("AFSCME"), and 76 employees who are unrepresented.

II. TERM OF COLLECTIVE BARGAINING AGREEMENTS

The 2010-2013 collective bargaining agreement ("CBA") between the District and ATU expired on June 30, 2013. That CBA was the result of an interest arbitration decision dated November 5, 2010.²

In addition to the CBA between the District and ATU, the District has a CBA with AFSCME that expired on September 30, 2013, and a CBA with IBEW that expires on December 31, 2013. The District and AFSCME have a tentative agreement to extend their CBA by six months. This tentative agreement is currently awaiting a ratification vote by the AFSCME membership. IBEW recently made a demand to commence negotiations and these are likely to begin in November 2013.

¹ Public Utilities Code § 24501 et seq.

² 2010 – 2013 CBA included as Attachment 1

III. HISTORY OF ATU NEGOTIATIONS - 2013

The District and ATU began negotiations for renewal of the 2010-2013 CBA on March 29, 2013, approximately three months in advance of the June 30, 2013, expiration date.

Three face-to-face bargaining sessions were held during the month of April 2013 (12, 19, 25); five face-to-face sessions were held during the month of May 2013 (15, 17, 23, 24, 29); and one face-to-face session was held during the month of June 2013 (17).

ATU conducted a strike vote on June 15, 2013,³ and it was reported that more than 97% of those attending the meeting voted to authorize a strike. As far as the District is aware no subsequent strike vote has been taken.

On May 23, 2013, the District applied for the assistance of a state mediator.⁴ On May 28, 2013, Kenneth Glenn contacted the District to advise that he had been appointed as the mediator. Mr. Glenn subsequently suggested June 14, 17, and 24 as available dates for mediation. ATU was unable to meet on June 14th and the mediator became unavailable on June 17th (the parties met face-to-face on that date). On June 19, 2013, the District and ATU were advised that Loretta van der Pol and Yu-Yee Wu would be replacing Mr. Glenn as mediators at the mediation session scheduled for June 24, 2013.⁵

The parties entered mediation - initially with both mediators and subsequently with Ms Wu – and participated in 17 mediation sessions (June 24, 25, 27, 28, 29, 30; July 1, 2, 3, 5, 10, 12, 26; August 1, 2, 5, 6). On August 5, 2013, ATU issued a notice of its intention to strike as of 12:01 a.m. on August 7, 2013.⁶ The first tentative agreement was concluded during the late evening of August 6, 2013, and a strike was averted.⁷

³ See Attachment 2

⁴ See Attachment 3

⁵ See Attachment 4

⁶ See Attachment 5

⁷ See Attachment 6

On August 17, 2013, ATU conducted a ratification vote and it was reported that the ATU membership rejected the tentative agreement with 257 voting Yes and 576 voting No (886 members did not vote).

Following the rejection of the tentative agreement the parties met face-to-face five times (August 21; September 3, 5, 18, 25) to continue negotiations without the assistance of the mediator. A second tentative agreement was finalized on September 25, 2013.⁸

On October 1, 2013, ATU conducted a ratification vote on the new tentative agreement and again the ATU membership rejected the tentative agreement, this time with a reported tally of 369 Yes votes and 561 No votes (759 members did not vote).

Following the rejection of the second tentative agreement the parties met informally on October 8, 9, and 15 to discuss the next steps in the process. With the strike deadline looming, the parties agreed to resume formal negotiations starting at 5:00 p.m. on October 16, 2013.

A few days after the rejection of the second tentative agreement the District received a petition directly from a group of 299 members of ATU. This petition included a list of 25 bargaining demands, many of which are significantly in excess of what the District and ATU had agreed to in the two tentative agreements.⁹

One signatory to this petition subsequently contacted a Board member to claim that she had been misled as to the purpose of the petition and that the list of 25 demands had not been attached to the petition she signed.¹⁰ It is unclear whether hers is an isolated case or reflects a broader misunderstanding as to the purpose of the petition.

On October 14, 2013, ATU issued notice of its intention to strike as of 12:01 a.m. on October 17, 2013.¹¹ On the same date, the District submitted for consideration its request for a cooling off period to the Governor's office.¹² On October 16, 2013, at approximately 4:30 p.m.,

⁸ See Attachment 7

⁹ See Attachment 8

¹⁰ See Attachment 9

¹¹ See Attachment 10

¹² See Attachment 11 - the request is dated October 8, 2013, but it was not officially submitted until a few days later.

the District was advised that the Governor had appointed this panel to inquire into the labor dispute and report back to the Governor pursuant to Government Code § 3612 et seq.

As the parties were scheduled to resume negotiations at 5:00 p.m. on October 16th, that meeting was held and a path going forward was discussed in the event that the cooling off period was granted. No additional meetings are scheduled at this time as both parties agreed that they needed time in the next few days to prepare their submissions for the panel.

The District remains optimistic that an agreement is obtainable. However, from the District's perspective, it appears that some time is needed for the ATU bargaining team to take the pulse of its membership to determine the bargaining priorities for the majority of the unit and to present those to the District for consideration.

At this time, it does not appear that an agreement can be ratified in the short term given the significant differences between the tentative agreements already negotiated, the margin by which the two ratification votes failed, and the magnitude demands of the minority group recently submitted directly to the District. A cooling off period would allow the necessary time for this process to work itself out and the interests of all parties to be fully discussed without the threat of a strike hanging over the heads of the District and the ATU leadership.

IV. OUTSTANDING ISSUES

The District and ATU have twice reached tentative agreements to resolve the current bargaining dispute. The difficulty has been ratification by the membership. There is a core group comprising about one-third of the bargaining unit that has voted against both tentative agreements. Unfortunately, at both ratification votes a significant portion of the bargaining unit did not vote; 52% the first time and 45% the second time.

It is unclear whether the non-voters are in favor or opposed to the tentative agreements as the NO vote held relatively stable (576 the first time and 561 the second time). In other words, almost all of the additional 7% of the bargaining unit who voted during the second ratification vote went YES rather than NO. This indicates that the current tentative agreement may actually

be acceptable to the majority of the bargaining unit but we will never know because such a large portion of the unit chose not to vote.

With that uncertainty in mind, it appears that the employee contribution toward health and welfare benefits remains a significant concern.

In the first tentative agreement an across the board contribution was negotiated. The first year contribution was \$70 per month, which increased to \$140 per month in the second year and to \$180 per month in the third year. This arrangement meant that all employees in the bargaining unit would pay the same amount, regardless of plan choice or benefit coverage.

In the second tentative agreement the parties took a different approach. Rather than one rate for all members, employees paid a monthly contribution based on the plan they were participating in and their coverage options. There are two plans with three coverage options each (single, double, family) for a total of six different monthly contribution amounts. As a result, contributions in the first year ranged from a low of \$30 per month for Kaiser single coverage to \$113 per month for Health Net family coverage.

In addition, the District agreed to cap the monthly contributions of those employees who were in Kaiser family coverage at levels similar to the first tentative agreement (\$70 per month in year 1, \$140 per month in year 2, and \$170 per month in year 3), even though that meant those electing Kaiser family coverage paid a smaller percentage of their benefit costs than members in the five other plan choices. However, these alterations were not enough to result in a YES vote on the second tentative agreement.

It is apparent from anecdotal evidence that some employees remain confused about the employee contribution for benefit coverage. In part this is because the 2010-2013 CBA required employees to contribute a percentage of their pay towards the cost of benefits. Some employees believe that the new tentative agreements will require them to contribute 10% of their income towards the cost of their benefits and with only a 9.5% wage increase they calculate that they are actually losing money over the term of the agreement.

The 10% figure they have latched onto is the contribution made by other District employees towards the cost of their benefit. However these employees pay 10% of the cost of the monthly premium for their benefits not 10% of their wages. To put this in perspective, 10% of the average monthly benefits premium for ATU bargaining unit members is slightly more than 3% of average wages. On that basis, the average wage increase, even when the employee contribution is taken into account, is 6.7% over the three year term. (Due to compounding the 3%, 3%, 3.5% increases result in a 9.8% overall increase to base wages).

On the other hand, the splinter employee group who submitted an alternative bargaining proposal indicated that they are only willing to pay \$40 towards their monthly benefit premiums in the first year no matter what plan the employee is in, with this contribution to increase by \$10 per month each year of the contract (i.e. \$50 per month in year 2 and \$60 per month in year 3). The initial contribution of \$40 per month is approximately 2.2% of the benefit cost. The final contribution of \$60 per month is approximately 3% of the monthly premium for the benefits.

So there are at least two camps when it comes to benefit choices: those who may be confused as to the extent of the contribution and those who want to make a much smaller contribution. There is probably a third camp that is willing to make a contribution that is greater than that proposed by the splinter group but not as big as that outlined in the tentative agreements.

One of the key District initiatives during this bargaining cycle has been to have ATU members begin to contribute regularly towards the cost of their health and welfare benefits. At this point all other District employees and Board members, with the exception of ATU represented employees, contribute 10% of the cost of the monthly premium for their health and welfare plans.

The District's initial proposal was to have ATU members contribute the same as other employees. During the course of bargaining the District agreed first to move to a phased in approach for employee contributions and second to go with fixed dollar equivalents to the percentages being proposed by the District, based on current year pricing.

It appears that this issue will require more discussion between the parties to find the right formula that a majority of the bargaining unit will be able to accept.

At this point it does not appear that the parties have a significant difference related to wage issues. The first tentative agreement provided a 9.5% wage increase over the three year term (2.75%, 3.25%, 3.5%). The second tentative agreement retained the same 9.5% wage increase but moved some of the money forward from the second year into the first (3.0%, 3.0%, 3.5%).

Placed in historical context the 9.5% gross increase (9.8% when compounded) is the largest that ATU has negotiated since the 2000-2003 CBA and the net increase of 6.7%, after the contributions for benefits are taken into account, is still the highest in that timeframe.¹³

The 9.5% increase is also higher than the published settlements in the transit industry in California as well as recent public sector settlements in the Bay Area by a significant margin.¹⁴

That said the demands of the splinter employee group include eight items related to wages. The two most significant are a 25% general wage increase over the three year term of the CBA (9%, 8%, 8%) and the restoration of the cost-of-living adjustments (up to 8.5% COLA per year); potentially an aggregate increase of 50.5% over the three year term.

If ATU needs to deliver this level of pay raises to ratify an agreement then the parties are significantly apart. To date there has been no indication that is the case but clearly there is a group of employees whose expectations are out of line with current settlements and who believe that they “deserve” increases of this magnitude.

This demonstrates that time will be required to manage the expectations of employees within the unit, which also speaks to the wisdom of a cooling off period.

In terms of total dollars, the first tentative agreement had an additional cost to the District over the term of the agreement of \$8.9 million. The second tentative agreement had a cost to the District of \$9.7 million. Most of the cost difference between the two tentative agreements is

¹³ See Attachment 12

¹⁴ See Attachment 13

attributed to the moving forward of money from the second year to the first. The remainder is as a result of the cap on the Kaiser family rate coverage.

V. IMPACTS OF A STRIKE

Overview of the District's Service

The District is the primary public transit service provider in the Inner East Bay region of the San Francisco Bay Area. The District has a service area of 364 square miles in Alameda and Contra Costa counties. This includes 13 cities and several unincorporated areas with a population of 1.5 million, including the City of Oakland with a population over 400,000. The District has 107 bus lines with roughly 5,500 bus stops located in its service area and its service includes commuter express bus service to San Francisco and other job centers in San Mateo and Santa Clara counties.

The District provides 181,000 daily trips or 52.6 million annual trips out of its three operating divisions located in Emeryville, East Oakland, and Hayward. District employees deliver approximately 5,600 hours of service every day and 18.6 million miles of service annually through a fleet of 569 buses.

The District's Riders

The District serves riders from all demographic backgrounds. Many different people rely on the District to meet their transportation needs, whether for commute trips to work and school, important appointments, or recreation. The District's riders are 59% female and 41% male. By age, the majority of the District's riders are adult. However, the District carries a significant amount of youths under the age of 18 (over 11,000 daily) and seniors over the age of 64 (over 15,000 daily). In addition, the District carries a large disabled population; according to the Metropolitan Transportation Commission (MTC) 2012 rider profile survey data,¹⁵ 12.5% of fares collected were from disabled passengers.

¹⁵ See Attachment 14

The District's riders are 76% minority compared to 71% of the population as a whole within the District's service area (as defined by Title VI federal regulations). If the District were to completely eliminate service as a result of a labor strike, it would disproportionately affect minority riders.

Transit-Dependent Riders

A significant portion of the District's ridership depends on the District as its only form of transportation. Based on the 2012 survey data provided by MTC, 51% of the District's riders do not have a driver's license and 40% of riders live in households without a car. In addition, the District's ridership is heavily low income. Sixty-three percent of the District's ridership is considered low-income (as defined by the United States Census Bureau), compared to only 29% of the general population in the District's service area.

Within the District's service area, there are seven routes in Alameda County and four routes in Contra Costa County that receive Lifeline Transportation grant funds from the State Transit Assistance Program (STA) and the Federal Transit Administration (FTA). This program is designed to fill gaps in the public transportation system in low income areas to connect these "Communities of Concern" (as identified by MTC) with workplaces, retail establishments, social service agencies, and health care facilities. These lines are crucial to providing mobility to low-income riders who would be severely affected by a District labor strike.

Student Riders

Students are a major component of the District's ridership. Based on estimations, the District transports nearly 17,000 students every day throughout its service area, which equates to 34,000 daily trips. That is nearly 18% of the District's total ridership. There are 197 schools in the District that are served through its local route network and by 50 supplementary school routes that prevent overcrowding on our regular service during peak commute times. The table below details the District's student ridership by school.

School Name	Estimated riders	Estimated Trips
Colleges and Universities		
University of California	8750	17500
Cal State East Bay	658	1316
Chabot College	657	1315
Laney College	596	1192
Contra Costa College	398	796
College of Alameda	330	660
Berkeley City College	323	646
Merritt College	300	600
Stanford University	159	317
Mills College	78	156
Holy Names University	67	133

Middle Schools and High Schools

Supplementary Service to Oakland, Alameda, West Contra Costa, Newark, Hayward, Fremont and Private Schools	2768	5535
Local Service to Berkeley Schools	1074	2148
Local Service to Oakland Schools	600	1200
Local Service to New Haven Schools	200	400

Total		
Total Affected Students	16957	33913

The following table lists the number of middle schools, high schools, colleges and universities within the District's service area.

School Name	Total
Private (6-12)	67
Oakland Unified	32
Oakland Charter Schools (6-12)	23
West Contra Costa Unified	13
Fremont Unified	12
Colleges and Universities	11
Hayward Unified	9
Alameda Unified	8
San Lorenzo Unified	5
New Haven Unified	4
Castro Valley Unified	4

Newark Unified	3
San Leandro Unified	3
Piedmont Unified	2
Emery Unified	1
Total	197

Work Commuters

Based on the 2012 survey, 41% of the District’s riders use the service to commute to work. This includes 14,000 trips on the District’s Transbay service. Combined with the students, nearly 60% of the District’s ridership relies on the service to commute to work and school; that equates to over 108,000 daily trips.

While many of the Transbay commuters may be able to find other transportation options, students and workers in lower paying jobs are less likely to find transportation alternatives to school or work during a strike by District employees. Based on the demographics of District riders, this group represents a high proportion of those individuals using the system.

Health, Safety and Welfare Impacts

A recent health impact assessment by the Alameda County Public Health Department states:¹⁶

Buses are particularly important for many of the Bay Area’s most vulnerable riders. In the Bay Area, low income residents and people of color rely heavily on buses,¹⁷ populations who also face disproportionate health burdens and are more likely to live in neighborhoods where health-promoting resources are few and far between.¹⁸ Many bus riders are also people with disabilities, seniors, and youth who rely on the bus every day to get to places essential for their health. For transit-dependent residents living in neighborhoods farther from urban centers, buses are also crucial connectors to rail transit that carries people to important destinations throughout the region.

This excerpt relates to potential reductions of the District service. All of these concerns would be in play if the service was completely eliminated as the result of a strike.

¹⁶ See Attachment 15 - Alameda County Public Health Department. *Getting on Board for Health: A Health Impact Assessment of Bus Funding and Access Executive Summary*. (May 2013)

¹⁷ See Attachment 16 - MTC 2006 Transit Passenger Demographic Survey

¹⁸ See Attachment 17 - Alameda County Public Health Department, August 2008. “Life and Death from Unnatural Causes: Health and Social Equity in Alameda County.”

Furthermore, there are a number of key medical facilities within the District service area that are not accessible by BART including: Highland Hospital and Alta Bates in Oakland, Doctor's Medical Center in San Pablo, Alta Bates in Berkeley, numerous Kaiser facilities and many other medical facilities including the concentration of offices in North Oakland known as "Pill Hill." Based on the 2012 survey, 7% of all the District trips are dedicated to traveling to medical appointments. This equates to 12,670 daily trips that could not be completed in the event of a strike.

In summary, a strike by District employee would mean for District riders:

- longer commutes, associated with frequent stress
- fewer hours worked, job loss, and job relocation
- more missed school days
- less social activity and increased social isolation
- longer travel times to health care appointments, more missed appointments and fewer trips to health care

Paratransit Services

The District partners with BART to provide 716,000 annual Paratransit trips under the East Bay Paratransit Consortium. The service is provided through a third-party contracted service provider. In the event of a District and/or BART labor strike, Paratransit service will continue. However, the elimination of either transit service, particularly the District's, will inundate the system with trip requests beyond its existing capabilities as disabled passengers who typically use the bus service would turn to Paratransit for their transportation needs. This would result in significant trip delays due to both system limitations and increased vehicular traffic on the roadways within the district. Depending on conditions, the Consortium may have to limit its service to only providing trips for life-sustaining appointments if the impacts of a strike were severe. Other trips on Paratransit services for seniors and disabled may not be fulfilled.

Environmental Impacts

While public transit operations make a direct contribution to transportation sector emissions, they generally contribute to a net reduction in emissions by getting people out of their personal automobiles (mode shift), relieving road congestion (improved overall fuel efficiency),

and enabling more compact land uses that are conducive to automobile alternatives such as walking and biking.

Recent studies provide evidence that overall, public transportation significantly reduces total CO² emissions. In 2005, public transportation reduced CO² emissions in the U.S. by 6.9 million metric tons.¹⁹ This estimate took into account several factors including: direct CO² emissions from public transit; CO² emissions from personal vehicles if no transit service was available; and, CO² emissions saved from transit reduced congestion.

In 2005, the District became the first transit agency in the nation to join the California Climate Action Registry (California Registry) and commit to annual public reporting of its CO² emissions. While the District already dramatically reduces regional CO² emissions by providing public transit (as described in the Introduction), the District has decided to take this one step further by voluntarily electing to develop internal CO² emission reduction targets based on Climate Registry guidance and state-wide emission reduction goals mandated by the California Global Warming Solutions Act of 2006 (Assembly Bill 32). The District has adopted a 15% reduction target for entity-wide Scope 1 and 2 emissions as measured by the TCR intensity metrics: emissions per total vehicles miles, revenue vehicle hours and PMT. By selecting these intensity targets rather than absolute targets, the District will be seeking to reduce the carbon intensity of their operations.

Over the past several years, the District has undertaken a number of CO² emission reduction measures and sustainability initiatives that help to reduce GHG emissions from sources under their operational control and regionally. These include:

- (current): Fuel Cell Buses, a Solar Power system at CMF, Facility Lighting retrofits, a Vehicle Use Policy, Waste Minimization, and Regional Climate Action Planning.
- (next): bus replacement with Diesel-Electric Hybrid Buses, energy Efficiency Audits, State of Good Repair program, and Stationary Fuel Cells.
- (future): Non-revenue fleet replacement, biodiesel usage, carbon offsets

¹⁹ See Attachment 18

In the event of labor strike, the District would need to halt these initiatives that help reduce GHG emissions. More importantly, the 60% of District ridership that has access to a private automobile may need to press those vehicles into service to meet their transportation needs, creating up to 108,600 additional trips by car each day.

BART and the District Strikes

If BART employees continue to strike, the combined effect of a BART strike and a simultaneous strike by District employees could be catastrophic in the East Bay; leaving riders of both systems with few, if any, viable alternatives. Recall that the District offered significant assistance during the BART strike earlier this year and continues to do so during the current strike by transporting hundreds of additional riders into San Francisco.

Even if BART employees do not continue to strike, this would likely add little relief to District riders if District employees exercise their right to strike. District riders already choose to take the bus rather than BART both for economic reasons and logistical reasons. BART is not a viable substitute for the District's riders because BART cannot serve many of the local areas that the District covers.

For example, BART cannot transport many of the 17,000 students to their destination every day. Furthermore, BART and the District's functions as transit providers are different. BART's primary purpose is to carry passengers regionally throughout the Bay Area, while the District primarily provides local trips in the East Bay. The average trip length for a District passenger is 3.5 miles, whereas the average trip length for a BART rider is 13.5 miles.

VI. WHY A COOLING OFF?

The District recognizes that ATU has a right to strike to enforce its bargaining demands and that a cooling off period temporarily suspends that right. As such, there is a high standard to meet before a cooling off period will be granted. As the moving party, the District must demonstrate

that “if permitted to occur ... [a strike] will significantly disrupt public transportation services and endanger the public's health, safety, or welfare.”²⁰

As outlined above, the District provides 181,000 rides every weekday in its service area. For these riders there are no other alternatives for bus transportation in the District's service area, meaning that, in the event of a strike by District employees, the public transportation options for a significant majority of these riders will be disrupted. With BART currently on strike, an alternative that may have been available to some of these riders is also not available; leaving them with no public transportation options in the event of a strike by District employees.

More important than the number of rides provided by the District each day is the types of rides provided. More than half of the District's riders do not have a driver's license and 40% live in a home without a car. This means that a significant portion of the District's ridership is transit dependent. These riders need the bus to carry them to school and to work and to that end the District provides 108,000 trips each weekday for commutes to school or work.

In addition to its service to the 11 local universities and colleges, the District provides rides for students to 186 middle and high schools. The significant majority of these 17,000 students transported each day would be required to find non-public transportation alternatives in the event of a strike by District employees as few of the schools serviced are near a BART station.

In short, a strike by District employees would “significantly disrupt public transportation services”; even more so if the strike occurs in conjunction with the current BART strike.

The District recognizes that any strike by its employees will be disruptive and that disruption alone may be insufficient to grant a cooling off period. There must also be evidence that such a strike would “endanger the public's health, safety, or welfare.”

The District has provided information that demonstrates its ridership skews towards the lower income and minority communities. Whereas 29% of the population in the District's service

²⁰ Government Code § 3614

area is considered "low-income", 63% of District riders fall into that category and 76% of District's riders are minorities.

As outlined above, many of these riders are transit dependent for not only school and work, but for medical and other basic needs. BART does not provide convenient service to most of the major medical centers in the District's service area. Reiterating what the Alameda Public Health Department recently stated, "Buses are particularly important for many of the Bay Area's most vulnerable riders... Many bus riders are also people ... who rely on the bus every day to get to places essential for their health." As noted earlier, the District provides almost 13,000 trips each weekday for medical appointments.

In summary, a strike by District employees would require 17,000 students to find alternative ways to school, putting many of them on the roads as they walk to school because they can no longer ride on the bus. This additional foot traffic creates a potential safety concern. Similarly, 6,500 people would have to find another way to attend to their medical appointments and 37,000 people would have to find another way to work.

Employees who cannot make their commute to work risk losing their employment. Students who miss school because they cannot ride the bus miss out on the educational opportunity but also their school's funding stream could be affected by the lowered attendance. Individuals who cannot attend their medical appointments may have an increased risk of medical complications. All of these demonstrate that a strike would endanger the health, safety, and welfare of the riding public.

In addition, a cooling off period makes sense from a bargaining standpoint. The parties have twice concluded a tentative agreement, which suggests that an agreement is close and attainable if the parties have some more time to work out the final details. In addition, separating the District's negotiations, which have been lively but overall cordial, from the situation at BART will give the parties time to conclude a mutually agreeable CBA - as they have already done twice in the past couple months - that can be ratified by the ATU membership.

VII. FINANCIAL INFORMATION

To assist the panel the District is providing copies of its financial information including a financial trend analysis for 2004 through 2020,²¹ an explanation of the District's Operating and Capital Budgets for FY 2013-2014,²² and the District's Comprehensive Annual Financial Report for the FY ending June 30, 2012 (the most recent version of this report).²³

The District continues to face significant challenges achieving financial sustainability. The District's revenues are heavily dependent on the economic condition of the operating service area. With fare box collections generating approximately 18% of the revenues needed to fund the District's operations annually, the balance of the revenues received depend on the state of the local economy in the form of property tax and sales tax revenues.

The District has just entered a new era of not relying on one-time revenue sources - such as exchanges of federal funds intended for capital acquisitions and investments in facilities maintenance and upgrades - for operating costs. Over the past five years the District has faced operating deficits as high as \$47 million and was forced to defer capital investments to cover the cost of the operations.

With total labor costs (which includes salary, health care, and pension contribution) representing approximately 70% of the District's total operating budget, strategies to become more efficient with the allocation and utilization of operating resources have been developed and are gradually being implemented.

The District continues to be solely responsible for employee pension expenses. Pension expenses represent approximately 12.4% of the District's annual operating budget, or approximately \$41 million annually. It is critical that the District achieve a sustainable benefit structure that keeps the workforce healthy and productive at a shared cost that is affordable for all.

²¹ See Attachment 19

²² See Attachment 20

²³ See Attachment 21

Due to the improvement in the local economy and the recent implementation of new operating strategies, the District has begun to see improvements in its overall financial condition. It is imperative that new technology and improvements in efficiency continue to be incorporated in the District's day-to-day operations. Additionally, a shared arrangement in employee's health and welfare are critical elements in the District's ability to improve the service that is provided to the riding public.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Exhibit D

EXHIBIT D

LEONARD | CARDER

REPRESENTING UNIONS, WORKERS, AND BENEFIT PLANS

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File No. 88-87

October 20, 2013

Mr. Peter Southworth, Chair
Ms. Josie Camacho
Ms. Micki Callahan

Re: Board of Investigation, AC Transit and ATU Local 192 Labor Dispute

Dear Mr. Southworth, Ms. Camacho, and Ms. Callahan:

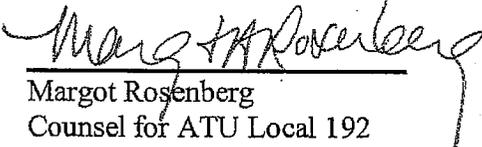
Enclosed please find Amalgamated Transit Union Local 192's Statement of Position and supporting documents for your consideration in the matter of the Board of Investigation hearing scheduled to be heard on October 21, 2013, called by Governor Brown pursuant to the California Government Code Sections 3612 and 3613.

Thank you for your service in this matter.

Very truly yours,

LEONARD CARDER, LLP

By:


Margot Rosenberg
Counsel for ATU Local 192

cc: Tom Prescott, AC Transit District

enclosures

opeiu-3-afl-cio(268)

BEFORE THE BOARD OF INQUIRY ESTABLISHED PURSUANT TO
GOVERNMENT CODE SECTIONS 3612 and 3613

IN THE MATTER OF A LABOR DISPUTE BETWEEN:

ALAMEDA-CONTRA COSTA TRANSIT DISTRICT ("AC Transit"), Employer

and

AMALGAMATED TRANSIT UNION LOCAL 192, AFO-CIO ("Local 192"), Union.



Chartered 1901
AFL-CIO/CLC

Union Bargaining Committee:

Yvonne Williams, President/Business Agent

Ed Nash, Vice-President

Joyce Willis, Financial Secretary-Treasurer

Danny Marshall, Assistant Business Agent, Transportation

Ron Williams, Assistant Business Agent, Maintenance, Clerical & Materials

William Lopez, Bus Operator

Tony Withington, ATU International Representative

ATU Local 192's Statement of Position with Respect to AC Transit District Labor Dispute

I. Introduction

The members of ATU Local 192 have spoken loud and clear: after years of concessions and in recognition of the extremely difficult work that they do and the uncomfortable, and yes, dangerous and at times inhuman, conditions under which they work, Local 192 members demand a contract that provides fair compensation and provides for their safety and basic well-being.

Here are the facts. The right of these members to strike was established through judicial decision 40 years ago (Exhibit 1); the last strike at AC Transit was in 1977. In this round of negotiations, though, the members have overwhelmingly turned down two tentative agreements, reached after months of hard bargaining. After more than 35 years of peaceful resolutions to contract negotiations, the 1600+ ATU Local 192 members at AC Transit have said this is the time to take a stand, this is the time to make our voices heard, this is the time to regain fairness and dignity for workers at AC Transit.

What happened? Why this year? What are the issues? And can a cooling off period help to heal the rift?

The last contract cycle (2010-2013) ultimately was resolved through interest arbitration, and not through a negotiated agreement. ATU employees at AC Transit took a huge hit. While many California public employees suffered financially because of the 2008 recession and its aftermath, ATU employees at AC Transit were particularly hard hit, giving up about \$35 million over the three year contract period, to help keep the service running during the economic downturn. Indeed, these employees took real wage cuts of 6%, 5%, and 3%, respectively, in each of the three years of the contract, and, with other concessions, gave up about 8.5% of their take home pay each year for three years. Not only were the cuts deep, but the District's tactics of

prematurely imposing new terms and conditions and refusing the Union's request for interest arbitration were heavy handed and adjudged to be unfair and illegal as well.

That was then and this is now, you might say, but these employees, many of whom are long-term, are still suffering the real effects of the last deeply concessionary contract. Members want to go forwards – not backwards – in this contract, and the reality is that despite offers of modest wage increases, when taken in tandem with the imposition of significant health care premiums, members do not see this contract as moving them forward. What the members tell us is that these first-time health care premiums are just too high to absorb in one contract cycle, in light of the modest wage increases.

Moreover, it did not help the ratification process when there were four shootings and an armed robbery on AC Transit buses in a 10-day period surrounding the ratification vote. (We were later informed that the third “shooting” was actually a rock through the rear window, which nevertheless shattered the glass and sent the passengers into pure panic, diving onto the bus floor for safety.) Under these conditions, is it any wonder that the drivers feel they deserve “combat” pay?

This panel is tasked with reporting on the impediments to successfully concluding successor contract negotiations, as well as whether and how a strike or lockout would significantly disrupt public transportation services and endanger the public's health, safety, or welfare. It is the District's burden, we submit, to demonstrate disruption to transportation services by a labor dispute. We further submit, however, that the working conditions themselves on AC Transit buses may endanger the health, safety, or welfare of both AC Transit employees and passengers alike, and are a root cause of the instant labor dispute.

II. History of Recent Negotiations and Labor Disputes

The primary purpose of these public hearings is to ascertain the facts with respect to the causes and circumstances of the labor dispute. (Govt. Code § 3613.) To understand why the members have turned down two tentative agreements (TAs) in August and then again earlier this month, it is important to understand both the history of recent labor relations at AC Transit as well as the elements of the TAs reached in this current round of bargaining.

ATU Local 192 represents approximately 1,620 bus operators, dispatchers, mechanics, service employees, and allied clerical workers, including maintenance clerks, division clerks, and timekeepers. This is the Union's 112th year on the property; ATU represented the employees when service was provided by the private Key Route system, and continued to do so when the AC Transit District was established as a public agency in 1960. ATU Local 192 and its members have deep roots in the community.

Employees who gain a foothold at AC Transit generally stay for a long time; you will meet many ATU employees who work their entire career and retire from AC Transit.

The 1990s through mid-2000s marked a particularly peaceful period in labor relations at the District. The collective bargaining agreement provisions negotiated during that period reflected the parties' interest in working collaboratively to address passenger concerns and to improve the service, to incorporate bus driver feedback into their working conditions, and to provide wage and benefit increases affording employees with the stability they needed to do their jobs, to come to work, to live near work, to take care of their families. Moreover, the bargaining parties looked to the future. For instance, in 1997, through contract negotiations the parties established a retiree health trust to help defray the cost of retiree health care; employees gave up a general wage increase to establish the retiree health trust.

More recently, two contracts ago - the 2007-2010 contract - the members received a total 4.5% wage adjustment and cost of living increase over the three years of the contract. These gains were very modest, but there were other improvements in the contract, and the members ratified the agreement reached between the District and the Union. Even so, it became harder and harder to make ends meet, and many employees, among other things, were forced to move farther and farther from the Alameda-Contra Costa County service area.

The 2010-2013 negotiation cycle marked the end of harmonious labor relations between the District and the Union, and clearly the relationship has yet to be repaired. In the District's race to impose deeply concessionary terms, the District prematurely declared impasse, and months of costly and divisive litigation ensued, with the District losing at every turn. The status quo was restored pending interest arbitration, but not before engendering service disruptions caused by the District's unilaterally changing the bus run structure and bitter feelings caused by the District's end-run around the bargaining process. (Exhibit 2, Amalgamated Transit Union, Local 192 v. Alameda-Contra Costa Transit District, Alameda County Superior Court No. RG10522627, Orders dated July 16, 2010 and August 2, 2010.)

The 2010-2013 contract ultimately was resolved in court-ordered interest arbitration. (Exhibit 3, Interest Arbitration Award, dated November 5, 2010.)¹ In that contract cycle, the Union gave about \$35 million in concessions, costing each employee 8% or more of his or her take home pay each year for three years. Among other concessions, Union members' base wage

¹ At the time that the Alameda County Superior Court granted ATU Local 192's petition to compel interest arbitration, there were two sources of the right to interest arbitration: (1) a 50-year old AC Transit Board of Directors resolution, incorporated into the collective bargaining agreement, which set forth the District's agreement to resolve contract disputes through binding interest arbitration upon the Union's request; and (2) the parties' 13c Agreements, which are required for the Department of Labor to certify federal grant funds for release to the District. The District's Board of Directors rescinded the long-standing Board policy on June 30, 2010 (after the Union requested interest arbitration), but the parties' 13c agreements continue to provide for interest arbitration at either party's request, to resolve contract disputes.

rates were cut by 6% the first year, 5% the second year, and 3% the third year; it was only on July 1, 2013 that the wage rates returned to where they were in 2009. There were other cuts that served to slash employee compensation, such as the loss of a holiday (Veterans Day) and changes in overtime pay. And, at the same time, incentives for coming to work – like the “Perfect Attendance Bonus” – were cut out, while disincentives to coming to work – like instituting a rule where employees are not allowed to use paid sick leave for a one-day illness but instead are required to be off sick for two or more days before they may use their accrued sick leave – were instituted.

To say that the resulting employee morale is low is an understatement. Indeed, the depths to which morale has sunk became all too evident when in these successor negotiations the members of ATU Local 192 rejected two successive tentative agreements reached between the bargaining parties. We now turn to the specifics of these negotiations and of the contract issues in dispute.

III. The Current Bargaining Cycle and the Tentative Agreements

Pursuant to Government Code section 3611, the parties exchanged bargaining proposals on March 29, 2013; the contract expired by its terms on June 30, 2013. The contract was not extended, and employees have been working without a contract since June 30.

The parties met at least a dozen times in face-to-face negotiations between March 29, 2013 and June 17, 2013. During this time period, the District’s 115+ page proposal sought take-aways in virtually every article, sought immediate and hefty health care premium contributions, and did not provide for any wage increase. Indeed, the District had no wage proposal, but rather a proposal for an utterly unattainable “performance bonus” based on meeting several criteria simultaneously, each of which was outside of employees’ control. To say that this “performance bonus” was illusory is an understatement.

In this context, it is not surprising that on June 15, 2013, the Union's membership voted overwhelmingly – 97.8% - to authorize the ATU Local 192 bargaining team to call a strike if necessary.

On June 24, 2013, the parties entered intensive mediation facilitated by Loretta Van Der Pol and Yu-Yee Wu of the California State Mediation and Conciliation Service (SMCS). The parties held approximately two dozen mediation sessions, many lasting through the night and into the early hours of the morning. In addition, a number of subcommittee meetings were held during this period, to address more technical and operational issues.

Importantly, on June 30, 2013, the ATU Local 192 leadership remained at the table despite the contract expiration. Indeed, when sister ATU Local 1555 struck BART starting on July 1, the Local 192 team continued to bargain, as progress was being made at the table.

The parties bargained and bargained, and on August 6, 2013 reached a tentative agreement. (Exhibit 4 [first TA].) As described in more detail below, the first TA included a wage increase of 9.5% over 3 years (2.75%, 3.25%, and 3.5%), first-time contributions toward medical care, modification of the quarterly sign up (the bidding procedure for bus drivers), and a tightening of the attendance policy. Although recommended by the Union's bargaining team, the members soundly rejected the TA (257 [yes] – 576 [no]) on August 17, 2013. Members voiced their concerns: the wage increase did not keep pace with the cost of living; the medical insurance premiums consumed the wage increases; the blended health care premium did not take into consideration the number of individuals covered (Single, Double or Family) or the type of health plan (Kaiser or Health Net); the lowest paid employees (janitors) were required to pay the same medical premiums as the most highly paid employees; the traditional sign up procedure (by which bus operators bid on their routes) was revamped in a way that some members felt

threatened their seniority; the change in attendance policy perversely penalized those employees with good attendance.

The bargaining teams returned to the table in a good faith effort to address the members' concerns and reach an agreement that would be ratified by the membership. It was with high hopes that the parties reached a second tentative agreement on September 25, 2013 (Exhibit 5 [second TA]). This second TA addressed some of the members' criticisms of the first TA: the wage increase remained at 9.5% over 3 years but it was slightly front loaded; the lowest-paid employees, janitors, received an equity bonus; the employee contribution to health care premiums was apportioned by plan (Kaiser or Health Net) and by number of individuals covered (single, double, or family); the sign up procedure was restored but with improvements, the attendance policy was restored to status quo in important respects, and so on. Despite these improvements and Union efforts to get the facts out, on October 1, 2013, the membership overwhelmingly rejected the second tentative agreement, 369 [yes] – 561 [no].

In rejecting the TA the second time, the members remain focused on wages and the medical premium contributions, and on their health and safety on the buses.

IV. The Members Turn Down Both TAs; the Issues in Dispute

Based on District figures, its FYE14 operating budget is \$328.8 million and FYE14 capital budget is \$92.4 million. The current annualized labor costs for all District employees are \$220 million, and the current annualized labor costs for ATU-represented employees, who represent approximately 86% of the District's workforce, is at least \$186 million. The farebox revenue is up about 3%, and sales and property tax revenues are also up.

A. Wages

ATU employees' average base pay is \$4,451.20 per month, or just over \$53,000 per year. With respect to base wage rate, AC Transit employees are behind other ATU-represented regional transit providers, such as Santa Clara Valley Transportation Authority (VTA) (\$30.20/bus operator; \$41.60/mechanic), San Mateo (SamTrans) (\$29.05/bus operator; \$35.99/mechanic); and BART (\$30.22/train operator).

The last time Union members received a wage increase, it was a 1.5% COLA in the second half of 2009. In the 2010 negotiations, when confronted with the District's claims of revenue loss due to the recession, employees rebated 6% (2010-2011), 5% (2011-2012), and 3% (2012-2013) of their wages.

As of July 1, 2013, employees' hourly wage rates finally returned to 2009 levels, and yet Bay Area inflation increases in every one of those years were higher than the national averages. We estimate that with the take-aways in the 2010-2013 contract, employees took home 8%-9% less each year of that contract, and although wage rates have returned to the 2009 level, the other take-aways did not sunset, and employees are far worse off now than they were in 2009.

During the 2010-2013 contract term, the cost of living in the Bay Area increased by 7.7%, according to the Federal Bureau of Labor Statistics. (See Consumer Price Index Urban Wage Earners and Clerical, Bureau of Labor Statistics publication, Exhibit 6.) Current projections published for Bay Area urban wage earners show an additional 2.0%-2.1% increase in cost of living in each year between 2013 and 2016, totaling 6.2% over a 3-year contract. (See CPI Calendar Year Averages, Forecast, California Dept. of Finance, Exhibit 7.) Thus, by the conclusion of a 3-year contract in June 2016, AC Transit employees will see their real wages erode by an additional 6.2%, in addition to the 7.7% inflation in the 2010-2013 years, or 13.9% behind, in light of the fact that their last base wage increase was in 2009.

The September 25 TA provided for 9.5% base wage increase as follows: 3% as of 10/6/13; 3% as of 10/5/14 and 3.5% as of 10/4/15.

The current top Bus Operators rate of pay is \$25.68. Pursuant to the September 25 TA, the top bus driver rate of pay would increase to \$26.45 (year 1); \$27.24 (year 2); and \$28.20 (year 3).

The current top Dispatchers rate of pay is \$28.87. Pursuant to the September 25 TA, the top dispatcher rate of pay would increase to \$29.74 (year 1); \$30.63 (year 2); and \$31.70 (year 3).

The current top Mechanics rate of pay is \$30.61. Pursuant to the September 25 TA, the top mechanic rate of pay would increase to \$31.53 (10/6/13); \$32.48 (10/5/14); and \$33.62 (10/4/15).

The current top rate for Senior Maintenance Clerks, Division Clerks, and Timekeepers is \$25.05. Pursuant to the September 25 TA, the top rate of pay for these clerical positions would increase to \$25.80 (year 1); \$26.58 (year 2); and \$27.51 (year 3).

The current top rate for Service Employees is \$22.52. Pursuant to the September 25 TA, the top Service Employee rate of pay would increase to \$23.20 (year 1); \$23.90 (year 2); and \$24.74 (year 3).

The current top rate for Janitors is \$16.94. Pursuant to the September 25 TA, Janitors would receive an equity adjustment to \$17.34, and would receive pay increases on the new base. Accordingly, the top Janitor rate of pay would increase to \$17.86 (year 1); \$18.40 (year 2); and \$19.04 (year 3).

While these wage increases cannot be trivialized, the Union seeks a wage increase which takes into account the past sacrifices of its members, and the current state of the economy

including the ever-escalating cost of living. Moreover and importantly, the Union must achieve a contract in which health care premiums do not erode gains in base wage rates; employees must be left with a meaningful net increase.

B. Health Care Premium Contributions

The issue of employee contributions toward health care – medical, dental, and vision benefits -- is arguably the thorniest issue in these negotiations. Historically, AC Transit paid the employee health care premiums, with employees taking less in wages and other benefits.²

It is fair to say that securing employee health care premium contributions on a permanent, ongoing basis is a primary District goal in this round of bargaining. Significantly, the Union negotiating team understood that to achieve a fair base wage rate increase, employee medical premium contributions would have to be phased in, and the talks turned to designing the contribution.

The parties took two different approaches to health care premiums in the two TAs, trying to be responsive to member concerns. In the first TA, the parties agreed that all members enrolled in health insurance would pay \$70/mo. the first year, \$140/mo. in the second year, and \$180/mo. in the third year. The contributions, taken together, constituted 4%, 8%, and 10% of the District's medical care costs for ATU employees over the 3 years of the contract. The District was insistent on reaching a 10% employee contribution in the third year of the contract. The Union's primary concerns were phasing in the contributions, so that employees would see net increases in the contract's early years, and arriving at a flat dollar amount (rather than a percentage), so that the members would know exactly what they were required to pay over the

² During the term of the 2010-2013 contract, pursuant to the Interest Arbitration Award, the 6%, 5%, and 3% of members' wages that were deducted technically were attributed to health and welfare premium payments. This provision sunset on June 30, 2013. (See Exhibit 3, Section 19.01, which sunset on June 30, 2013.) Thus, since July 1, 2013, members do not contribute toward their medical premiums.

course of the contract and not be surprised by increases during the term of the contract. The flat rate approach was designed to help those employees covering families, 51% of the workforce. (Of participating ATU employees, 23.6% receive single coverage, 25.5% receive double coverage, and 50.9% receive family coverage.)

In the second TA, the parties approached the health care contributions in a more traditional way. Rather than a unitary rate, employee premium contributions were pegged to the type of plan in which the employee enrolled, i.e., Kaiser or Health Net; Single, Double, or Family coverage. The contributions were phased in; in the first year 4% of the premium cost, in the second year 8% of the premium cost, and in the third year 10% of the premium cost (again, to meet the District's demand of 10% employee contribution by the third year).

The problem remained Family coverage and the Health Net coverage. We needed an affordable option for families, and the parties were able to agree to hold the Kaiser Family coverage at \$70/mo. in the first year, \$140/mo. in the second year, and \$170/mo. in the third year, agreeing to amounts less than 4%, 8% and 10% of Kaiser Family premiums (which would have been \$87/mo., \$175/mo., and \$218/mo., if not adjusted).

Under the second TA, over the life of the contract an employee selecting Kaiser Family coverage would pay \$4,560 in premiums or \$7,464 for Health Net Family coverage. (The TA provided for an immediate open enrollment period to allow employees to switch coverage.) A top rate bus driver selecting Kaiser Family coverage would still net \$5,529 in additional income (plus any overtime), but would only net \$2,625 in additional income (plus any overtime) if he or she selected Health Net Family coverage. (A top rate bus driver would realize the gross amount of \$10,089 over 3 years as a result of the 9.5% base wage adjustment.) A top rate Service Employee would realize an \$8,715.20 gross wage increase over the three year contract period,

but once Family medical coverage is factored in, that Service Employee would receive a \$4,155.20 net increase (with Kaiser Family coverage) or a \$1,251.20 net increase with Health Net Family coverage over the three year period. While most employees would come out ahead, the lowest paid employees and new employees in wage progressions who need Family medical coverage would struggle to stay even or come out barely ahead.

Contribution toward health premiums is a sea-change for ATU employees at AC Transit. It is evident that employee health care contributions are a trend and now may be a reality at AC Transit. The issue, however, is how to phase in the contributions so that they do not erode the wage increases. If it is the principle of having employees contribute to their health care, the District can achieve that in this contract. What the bargaining parties have to tackle, though, is how to phase in these payments in a way that does not eat up the gains in base wages, and that allows employees to catch up after years of sacrifice. This is the kind of issue that can be tackled through good faith bargaining, and the Union calls on the District to reevaluate its position and join the Union in taking a fresh look at how to approach the phase in and design of health care contributions.

V. Disruption to Public Transportation Services and Endangerment of the Public's Health, Safety, or Welfare

This Board is called upon to consider whether a work stoppage will significantly disrupt public transportation services and endanger the public's health, safety, or welfare. (Govt. Code § 3614.) We don't doubt that the District, the moving party here, can make this showing. As AC Transit states in its materials, it is the third largest transit agency in the Bay Area, and carries about 100,000 people each day, for 200,000 rides.

The number of people carried each day and the rides provided do not tell the full story of AC Transit or the communities it serves.

Bus drivers are frontline in the community, and in many instances, it is not the cessation of service, but rather coming to work, which presents the threat to the health, safety and welfare. Drivers' health and safety is a paramount issue which must be addressed in order to ratify this contract. Shootings and other violence on the buses are occurring with alarming frequency. And, with respect to the issue at hand, it did not help the ratification process that there were five shootings or armed robberies on the buses within a 10-day period surrounding the second ratification vote. These were incidents captured on security video. The first shooting was on September 28, 2013, at 4:13pm, on the 45 Line, when bullets flew through the bus window, and a passenger was injured by shattered glass. The bus driver, who had been on the job for 5 months, was traumatized. That was three days before the October 1 ratification vote. Then on September 30, 2013, the day before the ratification vote, a man opened fire on the 1R Line on International Blvd. in East Oakland, and two passengers, including a man in his 80s, were taken to the hospital to attend to their injuries. The bus was full, and police think that there were shots both into and from the bus. These incidents weigh heavily on the drivers, as does the incident on October 2, 2013, at 8:13am, again on the 1R on International Blvd., when the back window of the bus was shattered (there is some question as to whether it was a bullet or another projectile that shattered the back window, but the passengers were screaming that it was a bullet, glass was flying, and the passengers were ducking for cover). On October 3, 2013, at 8:56am, on the 40 Line, again in East Oakland, a bold armed robbery was committed on the bus; the driver had to take stress leave. And on October 8, 2013, at 1:29pm, on the 46 Line in East Oakland, a passenger was shot in the leg at point blank range, while the other passengers scrambled for safety. That driver likewise had to take stress leave. (See representative news reports, attached as Exhibit 8; incidents occurred 9/28/13, 4:13pm (Line 45); 9/30/13, 2:16pm (Line 1R); 10/2/13,

8:13am (Line 1R); 10/3/13, 8:56am (Line 40); 10/8/13, 1:29pm (Line 46).) In light of these events, is it any wonder that bus drivers feel unprotected, unappreciated, and under-compensated?

Bus drivers suffer other health and safety concerns on a daily basis. These concerns are less sensational than shootings and armed robberies, but effect bus drivers on a daily basis. Have the Board members ever stopped to think how bus drivers are able to use the restroom during their runs? Or how they have the time to eat a meal, or even get up out of their seats and stretch their legs during their shifts?

As reflected in the tentative agreements, the parties negotiated language regarding sanitary facilities which provides that the District is responsible for securing access to sanitary restrooms for bus driver use, and is responsible for monitoring the cleanliness and accessibility of those designated restrooms. The TA language also reflects, for the first time, that bus operators will not be disciplined for taking unscheduled time to use the restroom, if they follow certain procedures. (See 9/25/13 TA, Exhibit 5, Sections 49.01-49.05.)

At the same time, however, the parties were unable to reach agreement on language regarding meal breaks. The current contract does contain meal break language for bus operators, but does not contain an effective mechanism to enforce compliance with the meal break guarantee. Accordingly, drivers report, because the schedules are cut too tight and do not provide realistic time for meal or even restroom breaks or, at times, because of traffic, construction, or passenger demands, drivers may go 8 hours without leaving their seats, they may eat a sandwich while racing to the restroom, or worse, from both a health and safety standpoint for the drivers and the passengers, they may forego using the restroom or eating at all for hours or for their entire shifts. As one experienced driver testified at a recent arbitration on the issue of

missed meal break, the scheduled running time was insufficient for his transbay run to the point where he was often in his seat for seven hours without a break. (Sept. 13, 2012 arbitration hearing, pp. 19-20.)

And I can't get my meal break, just like what I said. I would be able to just eat when I go to the restroom. Just walking towards the restroom, I would just grab my sandwich and take a bite, and back to the wheel again." (Sept. 13, 2012 arbitration hearing, pp. 20:4-8.)

The Union seeks a modification of the contract which will allow for meal break violations to be remediated, and which will give the District an incentive to provide runs with adequately scheduled meal and rest breaks. (Union proposal on Meal & Rest Break compliance, attached hereto as Exhibit 9.) The District, on the other hand, is content with essentially the status quo, language which is so cumbersome and unworkable that no meal and rest break violation – of which there have been many -- has ever been penalized. (District proposal on Meal & Rest Breaks, attached hereto as Exhibit 10.)

These pressing health and safety issues must be addressed for a contract to be reached.

VI. The Likely Effect of a "Cooling Off Period" Upon the Successful Conclusion of these Negotiations

The ultimate question of whether or not a cooling off period should be established rests with the Governor. Through very hard fought bargaining, the parties reached two tentative agreements during this long round of bargaining, which formally began on March 29, 2013. The fact that the parties reached two tentative agreements should not by any means be construed to mean that the bargaining was easy or was not contentious. There was plenty of screaming and table pounding and working round the clock, with each party staking its position and ultimately reaching agreement at a place outside of both parties' comfort zone. These were difficult, challenging and hard fought negotiations. Despite the best, good faith efforts of both bargaining parties, the fact is that we still do not have a contract, and we must achieve one.

The Union is committed to doing what it takes in the next 60 days to reach another tentative agreement, one that the members can ratify. The District has stated that it is willing to go back to the table. The AC Transit Board of Directors to this point has been engaged and clearly committed to reaching a mutually acceptable agreement. Reaching a tentative agreement which ultimately will be ratified only will be possible if the District and its Board commit to taking a fresh look at the issues and concerns identified by the members. If this is not the case, and the District is dug in, then we will be standing on the precipice of another work stoppage at the end of this cooling off period, a position that no one wants to be in. If the District and its Board of Directors continue to be engaged in the process and are willing to be flexible, the parties can constructively use this time to achieve the desired result – a tentative agreement which will be approved by the members.

Respectfully submitted,

LEONARD CARDER, LLP

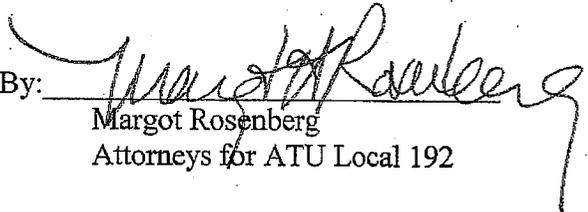
By: 
Margot Rosenberg
Attorneys for ATU Local 192

Exhibit E

EXHIBIT E

REPORT
to
THE HONORABLE EDMUND G. BROWN JR.
GOVERNOR OF THE STATE OF CALIFORNIA
by
THE GOVERNOR'S BOARD OF INVESTIGATION
in compliance with
SECTIONS 3612 AND 3613 of THE CALIFORNIA GOVERNMENT CODE
regarding
A LABOR DISPUTE
between
ALAMEDA-CONTRA COSTA TRANSIT DISTRICT
and
AMALGAMATED TRANSIT UNION LOCAL 192, AFL-CIO-CLC

Dated: October 21, 2013

I. INTRODUCTION

This report is submitted to the Honorable Edmund G. Brown Jr., Governor of the State of California, in compliance with Government Code section 3612, subdivision (a), by a Board of Investigation (the Board) appointed by Governor Brown pursuant to that subdivision to investigate the issues involved in a labor dispute between the Alameda-Contra Costa Transit District (AC Transit) and the Amalgamated Transit Union Local 192, AFL-CIO-CLC (ATU).

The members of the Board are Peter Southworth (Chair), Deputy Secretary and General Counsel, California State Transportation Agency; Micki Callahan, Human Resources Director, City and County of San Francisco; and Josie Camacho, Executive Secretary-Treasurer, Alameda Labor Council, AFL-CIO. All members of the Board participated in the drafting of this Report and approved its submission to the Governor.

As authorized by the second paragraph of section 3613 of the Government Code, the Board held a public hearing on October 21, 2013, at the Elihu M. Harris State Office Building at 1515 Clay Street, Main Auditorium, Oakland, California. The hearing began at approximately 9:00 a.m., and it ended at approximately 11:50 a.m.

Representatives of AC Transit and ATU appeared before the Board and made presentations, written and oral. Members of the public provided oral comment.

Accompanying this report are the following documents submitted by the parties:

- 1 Position Statement of ATU with exhibits and supporting documentation
(Exhibit A).
- 2 Position Statement of AC Transit with exhibits and supporting documentation
(Exhibit B).

In accordance with Government Code sections 3612 and 3613, this Report contains a statement of the facts with respect to the dispute, the issues involved in the dispute, and the respective positions of the parties regarding the issues. This report contains findings regarding whether a strike would result in a significant disruption of public transportation services and endanger the public health, safety, or welfare.

II. STATEMENT OF FACTS WITH RESPECT TO THE DISPUTE

The following is a brief statement of the facts leading up to the current labor dispute between the parties.

The term of the labor agreement between AC Transit and ATU ran from July 1, 2010, through June 30, 2013. ATU represents approximately 1,689 workers in a variety of classifications, including: bus operator, dispatcher, mechanic, janitor, service employee, and clerical.

ATU and AC Transit commenced negotiations for a new labor agreement on March 29, 2013. On June 15, 2013, the union membership voted overwhelmingly to authorize a strike. The parties engaged in extensive mediation under the auspices of the California State Mediation and Conciliation Service, beginning on June 24, 2013. On August 5, 2013, ATU issued a 72-hour notice of its intent to strike beginning August 7, 2013; however, the parties reached a tentative agreement on August 6, 2013. The membership rejected this tentative agreement by a vote of 576 [no] to 257 [yes]. Approximately 50% of the bargaining unit did not vote on the first tentative agreement.

The parties returned to the bargaining table and reached a second tentative agreement on September 25, 2013. The membership rejected the second tentative agreement by a vote of 561 [no] to 369 [yes]. Again, approximately 50% of the membership did not participate in the vote.

On October 8, 2013, in anticipation of the inability of the parties to reach an agreement, AC Transit requested the Governor to appoint a Board of Investigation pursuant to Government Code section 3612. The parties again returned to the bargaining table. On October 14, 2013, ATU issued a 72-hour notice of its intent to strike beginning October 17, 2013. On October 16, 2013, Governor Brown informed the parties that he was invoking section 3612 of the Government Code and had appointed this Board to investigate and to submit a report on the current labor dispute within seven days. The Governor's appointment of this Board has the effect of prohibiting any strike or lockout for a period of seven days, beginning October 17, 2013.

Despite the expiration of the contract, and after rejection of the second tentative agreement, the parties continued discussions and they have jointly identified the principal issues to be addressed.

III. PRINCIPAL ISSUES INVOLVED IN THE DISPUTE

The Board identified these issues based on the written submissions and oral presentations from the parties at the public hearing. The principal unresolved issues are:

- 1) the structure and amount of employee contributions to health premiums; and
- 2) certain working conditions, specifically provisions for meal and rest breaks.

IV. POSITIONS OF THE PARTIES AS TO THE PRINCIPAL ISSUES

Employee Contributions to Health Premiums: The parties' first tentative agreement on health premium contributions provided a flat rate for all employees at all coverage levels (Employee Only, Employee Plus One, Employee Plus Family) in all health plans (Kaiser or Health Net). The second tentative agreement on health

premium contributions was a graduated rate structure depending on coverage level and health plan.

ATU has identified the disproportionate impact of higher premiums on its lowest paid members as an issue to resolve. A large number of ATU members perceived the proposed healthcare contributions as eroding the proposed wage increases, which are not themselves in dispute. AC Transit noted the resistance of ATU members to paying contributions to healthcare generally, as this union's members have never before paid healthcare contributions. The parties are in agreement that they need to jointly explore new ways of addressing this issue during any cooling-off period.

Bus Operator Meal and Rest Breaks: Certain working conditions had been in dispute, notably bus operator meal and rest breaks, and restroom access and breaks. The latter issue has been resolved, but the parties must continue to discuss provisions associated with meal and rest breaks.

Employee Safety and Morale: While not specifically in dispute in these contract discussions, it appears employee safety and its impact on morale may have been partially responsible for the rejection of the tentative agreements. AC Transit is attempting to address the issue of employee safety by reinstating the Labor-Management Safety Committee. ATU welcomes the reintroduction of the safety committee, after it had been discontinued several years ago.

Status of Discussions: Both parties acknowledge that the other has been working intensively and in good faith on all issues, including the ones still in dispute. The parties agree that should the Governor obtain a 60-day cooling-off period, the parties would continue to work vigorously to reach a new agreement. Both parties recognize the limited time period available and appear to sincerely want to utilize any 60-day cooling-off period to continue working towards resolution. Given a 60-day cooling-off period,

both parties also acknowledge the importance of further reaching out to educate the ATU membership and increase participation in the voting process on any future tentative agreement.

V. IMPACT OF A STRIKE ON THE ALAMEDA-CONTRA COSTA DISTRICT REGION

Both parties agree that AC Transit provides a critical service to the public. AC Transit provides bus service to 13 cities and several unincorporated areas, serving a population of 1.5 million. It has 107 bus lines with roughly 5,500 bus stops, including commuter express bus service to San Francisco and other job centers in San Mateo and Santa Clara counties. AC Transit provides 181,000 daily trips or 52.6 million annual trips to riders from all demographic backgrounds. AC Transit's ridership includes 11,000 youth under the age of 18 and 15,000 senior citizens. A disruption to AC Transit service would result in 17,000 students (youth and higher education) needing to find an alternative way to school. Additional discussion of the impact on educational services and students is included in the following Public Comment section.

Fifty-one percent of AC Transit's ridership does not have a driver's license and 40% live in a household with no car. Sixty-three percent of AC Transit's riders are considered low-income, as compared to only 29% of the population in the service area.

Forty-one percent of AC Transit's riders, roughly 37,000 people, use the bus service to get to work, including 14,000 daily trips on the trans-bay service. During the previous BART strike, ridership on the trans-bay routes doubled. Similar numbers are expected during the current BART strike. Therefore, a strike would have a significant adverse impact on the income of these workers and on the regional economy.

A strike would impair access to medical care and appointments for 6,500 AC Transit riders daily. Key medical facilities accessible by AC Transit bus lines are not accessible by BART. Though Paratransit service is provided by a third party,

elimination of AC Transit service would likely force many senior citizens and people with disabilities to resort to Paratransit service, which has limited capacity. A significant number of AC Transit riders are people with disabilities. AC Transit estimates nearly 10,000 persons with disabilities use their services daily. Further discussion on the impact of people with disabilities and those needing medical services is discussed in the following Public Comment section.

A strike would have impacts on the environment and traffic congestion. Public transportation results in a net reduction in emissions from personal automobiles. AC Transit estimated that a strike could create up to 108,000 additional trips by car each day.

VI. PUBLIC COMMENTS

Eight members of the public made comments at the end of the hearing.

Public testimony from officials at the West Contra Costa Unified School District, Oakland Unified School District, Alameda County Office of Education, and Peralta Community College District confirmed the significant impact that a strike would have on students' safety and ability to attend class. Multiple education representatives identified impacts to children who would otherwise have to walk to school in unsafe urban conditions and noted shortened daylight hours. Further impact on school districts from reduced student attendance could result in a loss of critical state funding.

A representative from Peralta Community College District commented that 10,000 of their 50,000 students are EZ Pass recipients who utilize AC Transit to get to class. A representative of the Alameda County Office of Education indicated that the County has intentionally located alternative schools along AC Transit lines to better serve their students, a majority of whom use AC Transit as their primary source of

transportation. In the West Contra Costa Unified School District, 30-35% of the students rely on AC Transit to get to class. In the Oakland Unified School District, as high as 60% to 95% of the students at some schools rely on AC Transit to get to class.

All education representatives stated that the impact of a strike would be particularly severe on at-risk and low-income students, particularly those receiving meals, counseling, health care, and special services at school, in addition to educational opportunities. A representative from the East Oakland Youth Development Center noted the importance of AC Transit for the after-school programs provided by her agency and noted that many students travel many miles across town by bus, both to utilize those programs and to attend school. Education representatives stressed the partnership they have with AC Transit in providing vital services to students.

A representative from Alameda County Social Services Agency noted that the Agency serves 700 to 1000 clients daily, 60% of whom rely on public transportation. The Agency also stressed the importance of its relationship with AC Transit, indicating that its offices are by design located along AC Transit bus lines. The Agency said that recipients of important social services often physically have to come into its offices to resolve issues related to public assistance and services.

A member of an accessibility advisory committee and a director at the Lions Center for the Blind testified that AC Transit is the only option for transportation for many people with disabilities. Lack of transportation can be a matter of life or death for riders needing to access appointments, such as dialysis.

Finally, an AC Transit bus operator and ATU member spoke compellingly of the importance of AC Transit operators in the communities they serve, their dedication to those who have no other means of transportation, and their sense of personal connection to the riders. She noted that this dedication is manifested in the fact that ATU Local 192 has not had a strike in 35 years.

VII. FINDINGS

Based on the evidence presented by the parties and the public comment, this Board concludes that a present strike will cause a significant disruption in public transportation services and significant harm to the public's health, safety, and welfare.

Witnesses Appearing

AC Transit:

David Armijo, General Manager
Tom Prescott, Chief Performance Officer
David Wolf, General Counsel
Robert Del Rosario, Director of Service Development
Lewis Clinton, Chief Financial Officer

ATU:

Margot Rosenberg, Counsel for ATU Local 192
Yvonne Williams, President of Local 192
Tony Withington, International ATU Representative

Public:

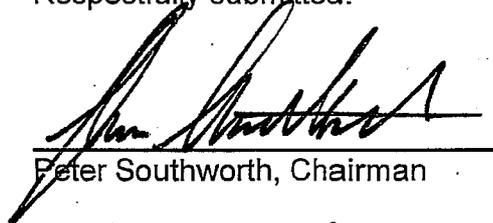
Regina Jackson, East Oakland Youth Development Center
Sylvia Soublet, Alameda County Social Services Agency
Adam Taylor, West Contra Costa Unified School District
Susan Piper, Oakland Unified School District
Karen Monroe, Alameda County Office of Education
Matthew Jones, Peralta Community College District
Scott Blanks, Accessibility Advisory Committee; Director, Lions Center for the Blind
Joyce Willis, ATU Local 192

VII. CONCLUSION

The undersigned members of the Board of Investigation respectfully submit that this Report fulfills the statutory obligations pursuant to Labor Code Section 3612.

Date: Oct. 21, 2013

Respectfully submitted:


Peter Southworth, Chairman


Micki Callahan, Member


Josie Camacho, Member

Exhibit F

EXHIBIT F

Sharon OGrady

From: David Wolf <dwolf@actransit.org>
Sent: Tuesday, October 22, 2013 9:48 AM
To: Sharon OGrady
Cc: Margot Rosenberg; Tamar Pachter
Subject: Re: People ex rel Brown v. ATU Local 182

Thank you. We received the notice and appreciate all the efforts being made. David Wolf

Sent from the District iPad

On Oct 22, 2013, at 9:46 AM, "Sharon OGrady" <Sharon.OGrady@doj.ca.gov> wrote:

> I just spoke to the clerk and he says tomorrow at 9:00 will be OK, though he cannot give us a reservation number until we have filed our complaint. I will send the proposed injunction shortly. It is substantively identical to the one entered in the BART case.

>

> -----Original Message-----

> From: Margot Rosenberg [<mailto:mrosenberg@leonardcarder.com>]

> Sent: Tuesday, October 22, 2013 9:44 AM

> To: Sharon OGrady

> Cc: dwolf@actransit.org; Tamar Pachter

> Subject: Re: People ex rel Brown v. ATU Local 182

>

> Thank you. I have received your message and the 24-hour notice. I am out of the office with another client this morning, but I will respond to further communications this afternoon. I hope to be back in the office by about 1pm today. Thank you for your courtesies in this matter. - Margot

>

> Sent from my iPhone

>

> On Oct 22, 2013, at 9:28 AM, "Sharon OGrady" <Sharon.OGrady@doj.ca.gov<<mailto:Sharon.OGrady@doj.ca.gov>>> wrote:

>

> Dear Ms. Rosenberg and Mr. Wolf:

>

> This confirms the voice-mail messages I left for each of you this morning. At the direction of Governor Brown, we intend to file an action seeking a 60-day cooling off period under Gov. Code section 3614, and plan to go in ex parte tomorrow at 9:00 a.m. in Department 31 of the Alameda County Superior Court seeking an injunction. This is the Court's regular time for hearing ex parte applications. I am still awaiting confirmation from the Court that we can have the matter heard then, but wanted to give you notice as early as possible, so you can plan accordingly.

>

> Please let me know if you have any questions.

>

> Very truly yours,

>

> Sharon

>

> Sharon L. O'Grady

> Deputy Attorney General

> Government Law Section
> California Department of Justice
> 455 Golden Gate Avenue
> San Francisco, CA 94102
> (415) 703-5899

>
>
>

> CONFIDENTIALITY NOTICE: This communication with its contents may contain confidential and/or legally privileged information. It is solely for the use of the intended recipient(s). Unauthorized interception, review, use or disclosure is prohibited and may violate applicable laws including the Electronic Communications Privacy Act. If you are not the intended recipient, please contact the sender and destroy all copies of the communication.

>

> CONFIDENTIALITY NOTICE: This communication with its contents may contain confidential and/or legally privileged information. It is solely for the use of the intended recipient(s). Unauthorized interception, review, use or disclosure is prohibited and may violate applicable laws including the Electronic Communications Privacy Act. If you are not the intended recipient, please contact the sender and destroy all copies of the communication.

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2 TAMAR PACHTER
Supervising Deputy Attorney General
3 SHARON L. O'GRADY
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4 State Bar No. 102356
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102
Telephone: (415) 703-5899
6 Fax: (415) 703-1234
E-mail: Sharon.OGrady@doj.ca.gov
7 *Attorneys for Petitioner*
People Ex Rel. Edmund G. Brown Jr.,
8 *Governor of the State of California*

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF ALAMEDA

12
13 **PEOPLE EX REL. EDMUND G. BROWN**
14 **JR., Governor of the State of California**

15 Petitioner,

16 v.

17 **AMALGAMATED TRANSIT UNION,**
18 **LOCAL 192, AFL-CIO; ALAMEDA-**
19 **CONTRA COSTA TRANSIT DISTRICT;**
20 **DOES 1 through 5000**

21 Respondents.

Case No.

[PROPOSED] INJUNCTION

Date: October 23, 2013
Time: 9:00 a.m.
Dept: 31
Judge: Evilio Grillo
Trial Date: N/A
Action Filed: October 22, 2013

22 Upon the complaint of petitioner on file, the memorandum of points and authorities,
23 exhibits, and record in this action, this matter was heard Ex-Parte on October 23, 2013 at ___ a.m.
24 in Department 31 before the Hon. Evilio Grillo.

25 The Court hereby finds that a threatened or actual strike or lockout, if permitted to occur or
26 continue, will significantly disrupt public transportation services and endanger the public's health,
27 safety or welfare, and it appearing to the satisfaction of the Court that this is a proper case for
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granting an injunction pursuant to Government Code section 3614,

THE COURT HEREBY ORDERS THAT respondents Amalgamated Transit Union, Local 192, AFL-CIO; Alameda-Contra Costa Transit District; and their officers, agents, servants, employees, representatives, and members and all persons in active concert or participation with them are hereby restrained and enjoined from threatening or engaging in any strike or lockout for a period of 60 days, through and including midnight on December 22, 2013.

IT IS SO ORDERED.

Dated: October 23, 2013

JUDGE OF THE SUPERIOR COURT

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