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CALIFORNIA PUBLIC EMPLOYMENT RELATIONS BOARD

TRANSPORT WORKERS UNION OF AMERICA LOCAL 250 A, Plaintiff, vs. CITY AND COUNTY OF SAN FRANCISCO Defendant	Unfair Labor Practice No.: SF-CE-761-M TRANSPORT WORKERS UNION OF AMERICA LOCAL 250A'S ARGUMENT IN SUPPORT OF PRELIMINARY INJUNCTION

The San Francisco Municipal Transportation Agency through a series of unilateral actions has committed an unfair labor practice that will result in irreparable harm to the Transport Workers Union of America Local 250A membership. Therefore, the Union seeks injunctive relief in order to maintain the status quo in the face of this immediate harm. The California Court of Appeal in *Pubic Employment Relations Board v. Modesto City School District* (1982) 136 Cal.App.3d 881 896, sets forth the two prong test used by courts and PERB to determine whether injunctive relief is appropriate:

(1) "reasonable cause" must exist to believe an unfair practice charge has been committed; and

(2) The relief sought must be "just and proper."

Transport Workers Union of America Local 250A Provided More Than 24 Hours Notice in Advance of this Filing. Declaration of James J. Achermann ¶ 2.

STATEMENT OF FACTS

Transport Workers Union of America Local 250A ("Local 250A") and the San Francisco Municipal Transportation Agency ("MTA") are parties to a Memorandum of Understanding ("MOU") under which Local 250A is the exclusive employee representative of 9163 Transit Operators. The MOU which was set to expire on June 30, 2008 was extended through mutual agreement of MTA and Local 250A for three years and is currently set to expire on June 30, 2011. *Declaration of Rafael Cabrera ("Cabrera Decl.")* ¶ 2.

I. MTA PROPOSES SERVICE CUTS RESULTING IN GENERAL SIGN UP

In late March of 2010, Local 250A first became aware that effective May 1, 2010, the MTA intended to implement service cuts resulting in a new General Sign Up of the Transit Operators and a reduction of 136 positions from the then current force levels. MTA's cuts and service changes were proposed without first engaging Local 250A in a good faith meet and confer effort. *Cabrera Decl.* ¶ 4. In response to MTA's actions Local 250A through Counsel Kenneth C. Absalom of the Law Offices of Nevin & Absalom, drafted a grievance in letter format to Deputy City Attorney Julia M.C. Friedlander on March 22, 2010. In the grievance Mr. Absalom stated that the May 1, 2010 proposed was in breach of the terms of the MOU specifically Article 13 paragraph 132 – 134 relating to Force Totals. *Cabrera Decl.* ¶ 5.

Rafael Cabrera acting Executive Vice President also filed a grievance on behalf of Local 250 A on April 12, 2010. The Grievance set forth numerous issues including:

a. The MTA was aware that Local 250A was planning a membership meeting to obtain authorization from its members to continue to meet and confer with MTA to reach an

agreement on financial relief. Despite this knowledge MTA went ahead and announced the service cuts and General Sign Up.

b. The proposed Sign Up violated Article 15 – Sign Ups; Article 14 – Scheduling and Assignments; and Article 13 – Force Totals of the MOU. Specifically the grievance stated "With the reduction in operator numbers we believe there are serious issues involving the health and safety of the operators...." *Cabrera Decl.* ¶ *1, 6.*

On April 21, 2010 and agreement was signed resolving Local 250A's April 12, 2010 grievance. The resolution states that the parties agreed to a short delay in the General Sign Up imposed by the service cuts by MTA, as well as a return to work of Transit Operators who had been laid off due to the cuts. The resolution also stated that "[t]hat any impending issues resulting from the General Sign Up would be addressed by the parties within 60 to 90 days of the conclusion of the General Sign Up." *Cabrera Decl.* ¶ 8. After signing the April 21, 2010 one issue that remained outstanding and to be addressed by the parties, was the effects of the General Sign Up and service cuts on the health and safety of the transit operators. *Cabrera Decl.* ¶ 9.

Based on the lack of response by MTA On May 20, 2010 Local 250A filed another grievance regarding MTA's changes in service schedules and assignments resulting from the May 8, 2010 General Sign Up again highlighting Operator health and safety.

Local 250A attempted to meet and confer on the issue of Health and Safety engaging in a series of meetings with Mike Helms of MTA beginning on or about May 20, 2010 after filing their grievance. Local 250A attempted to discuss issues regarding the service cuts effect upon the health and safety of transit operators including; run times; turn around times; schedules; and rest room facilities. At the conclusion of this set of meetings Mike Helms stated that MTA would provide Local 250 with a formal decisions as to the outstanding health and safety issues that had been addressed during our meetings. However, to date Local 250A has never received any formal response to any health and safety issues from MTA. *Cabrera Decl.* ¶ 10, 11, 12.

II. MTA PROPOSES A SECOND SERVICE CHANGE RESULTING IN DIVISION SIGNUP

Before Local 250A's grievance was answered or any meet and confer could take place, Local 250A received a letter from MTA on June 30, 2010 from Rumi Ueno stating that MTA was proposing a restoration of some of the service cuts and was going to bring a set of proposed changes to the SFMTA board of Directors on July 6, 2010. These service changes included "schedule changes, and the elimination of the runs assigned to Union Chairpersons as well as the operational/practical implications of these changes. *Cabrera Decl.* ¶ 13. In her June 30, 2010 letter, Ms. Ueno stated that she would like to commence meet and confer efforts as to the proposed schedules, however when Local 250A contacted her office in order to engage in such efforts they were informed she was out of town the week following the letter. During that same week Local 250A learned only through the local newspaper that MTA had already told the press that they had decided to eliminate the Chairperson arrangements as stated in the letter but which had never been discussed with the Union. *Cabrera Decl.* ¶ 14.

III. MTA PROPOSES CHANGES TO ATTENDANCE AND SICK LEAVE POLICIES

In July of 2010, while still in the process of attempting to meet and confer with MTA regarding pending health and safety issues as well as the impending service changes Local 250A received a MTA bulletin entitled "Procedures Concerning Transit Employees' Absenteeism." The bulletin announced to 250A members and the press that the MTA was adopting new procedures relating to employees' absenteeism, effective August 1, 2010. *Cabrera Decl.* ¶ 15; Declaration of Walter Scott ("Scott Decl.") ¶ 4.

In two meetings leading up to the receipt of the Absenteeism bulletin Rafael Cabrera, Walter Scott and Irwin Lum of Local 250A had attempted to set forth the Union's stance on changes to absenteeism and sick leave. Local 250A representatives attempted to explain that the current policies were not ineffective but not enforced by MTA. However, Local 250A was instructed that there would be changes and the contents of the bulletin would be effective August

1, 2010. Local 250A was not given the opportunity to engage in any meaningful meet and confer efforts but instead told that this was the new policy. *Cabrera Decl.* ¶ 16; Scott Decl. ¶ 5

In response to MTA's mandate Local 250A, Rafael Cabrera sent a July 12, 2010 letter to MTA which set forth Local 250A's position that the new absenteeism policies contained in the bulletin entitled "Procedures Concerning Transit Employees' Absenteeism" constituted a unilateral change to the terms and conditions of the existing MOU and that MTA had failed to meet and confer in good faith regarding the new policy. The letter set forth the Union's position that the new absenteeism policy implicated Section 23.5 of the MOU in which the parties expressly set forth their agreement as to the manner in which absenteeism is to be handled. In the letter local 250A asked that MTA honor their contractual obligations and continue the status quo and engage in actual meet and confer efforts on the subject. *Cabrera Decl.* ¶ 17. The Absenteeism Bulletin and lack of meet and confer effort resulted in an Unfair Labor Practice Charge being filed on August 2, 2010. *Cabrera Decl.* ¶ 18.

IV. MTA FAILS TO ENGAGE IN GOOD FAITH MEET AND CONFER EFFORT IN REGARDS TO UNILATERAL SERVICE CHANGES

On August 3, 2010 Local 250A met with MTA representatives Mike Helms, Chris Iborra, Debra Johnson, and Rumi Ueno. Local 250A through Rafael Cabrera made objections to the current service changes based on the elimination of certain standby runs as well as the elimination of chairperson runs. Rafael Cabrera presented MTA with letters of agreement as to each issue exhibiting their long existence within past practice and the acknowledgment of such by both Local 250A but also MTA. *Cabrera Decl.* ¶ 19; Scott Decl. ¶6; Declaration of Michael Postell ("Postell Decl.") ¶ 6. At the August 3, 2010 Local 250A could not comment on any further operational issues or health and safety until they were provided with the Rotation Sheets and declined to meet regarding that issue. *Cabrera Decl.* ¶ 20; Scott Decl. ¶7, Postell Decl. ¶ 17.

Shortly after leaving the meeting Rafael Cabrera received a phone call from a news reporter asking me about Local 250A's reaction to the Mayor's morning press release. Mr. Cabrera and Local 250A were unaware of any press release and after reviewing a copy were shocked to read that the press release announced that Mayor Newsom and SFMTA Executive

Director/CEO Nathaniel P. Ford Sr. announced a 61 percent restoration of Muni Service hours based on New Schedules which included a reduction of the number of drivers needed by 20 operators, and reduced standby hours by 232 each day. This press release thereby officially announced the service schedules, elimination of chairperson runs, and standby hours prior to the August 3, 2010 meeting in which MTA and Local 250A first officially attempted to meet and confer regarding these exact issues. *Cabrera Decl.* ¶ 21; Scott Decl. ¶8; Postell Decl. ¶ 18.

After receiving the requested rotation sheets on August 5, 2010, Local 250A representative sat down with MTA on August 9, 2010. During this meeting MTA informed Rafael Cabrera, Walter Scoot and Mike Postell of the Union that the joint agreements that had been presented to them regarding stand by runs and Chairperson Runs were invalid despite the Union explaining that they also constituted long standing past practices. Local 250A continued to object to the elimination of standby runs and chairperson runs and wished to further meet and confer. MTA represented that they would present Local 250A with a Legal Memorandum from the City Attorney of San Francisco which set forth their position. *Cabrera Decl.* ¶ 22, 23; Scott Decl. ¶ 9; Postell Decl. ¶ 19. Local 250A has yet to receive any documentation from the City Attorney's Office setting forth their legal opinion as to the validity of the side letters since August 9, 2010. *Cabrera Decl.* ¶ 24; Scott Decl. ¶ 10; Postell Decl. ¶ 20.

On August 10, 2010 MTA for the first time engaged in any discussions regarding the Health and Safety of Transit Operators in light of the proposed schedules. MTA stated that Ed Wong would set up meetings with Chairpersons regarding Health and Safety Concerns. Rafael Cabrera in an attempt to meet and confer in good faith drafted a letter in his own handwriting which set forth the Union's position that Local 250A would allow the Chairpersons to look at the schedules in order to start a meet and confer regarding Health and Safety but that Local 250A but would not agree to the schedules as written until the Schedules were in compliance with the Force Totals under Section 13 of the MOU and MTA provided the City Attorney's Legal Opinion as promised in the August 9, 2010 meeting. *Cabrera Decl.* ¶25; Scott Decl. ¶ 11; Postell Decl. ¶ 23.

On August 11, 2010 Local 250A Chairpersons spoke to Ed Wong regarding Health and Safety concerns and the proposed changes to the service schedules. Numerous issues were discussed with Mr. Wong, including lack of runs, headway time, turnaround times, insufficient prep time, lack of restroom facilities or sufficient time to find a restroom as well as the stress and effects the schedules had on Operators. Cabrera Decl. ¶ 26; Scott Decl. ¶ 12; Postell Decl. ¶ 22 Declaration of Terrance Hall ("Hall Decl.") ¶ 16. When Local 250A representatives Rafael Cabrera, Walter Scott, and Mike Postell returned to meet with MTA on August 12, and attempted to discuss the Health and Safety issues that had been presented on August 11, 2010 to Ed Wong by Local 250A Chairpersons, Mike Helms stated that each Chair had been met with individually and there were no outstanding issues. Knowing that this statement was false Rafael Cabrera attempted to bring in the Chairpersons who were waiting in the hall, at this suggestion, MTA asked to caucus. After caucusing, the Chairpersons were not allowed to be brought in and MTA informed Mr. Cabrera that they would not be discussing the Health and Safety issues further. When asked whether MTA was still going to provide a legal opinion from the City Attorney as to the force of the side letters regarding Chairperson and Stand by Runs. MTA stated that they were not required to provide such an opinion letter and that the side letters had no effect. When further inquiry was placed by Local 250A as to their stance on the extra board and force totals under the MOU, MTA responded that the issue was closed and they were not in violation of the MOU. *Cabrera Decl.* ¶ 27; Scott Decl. ¶ 16; Postell Decl. ¶ 23.

Due to MTA's continued failure to meet and confer in good faith on the issue of Health and Safety I filed Local 250A filed a third grievance regarding the Service Schedules for the proposed September Sign Up on August 17, 2010. 29. Cabrera Decl. ¶ 28. Further Rafael Cabrera sent a letter to Debra Johnson and Rumi Ueno of MTA outing three issues which he believed MTA had failed to meet and confer in good faith on with Local 250A and which Local 250A considered pending violations of the MOU and longstanding past practice. Theses issues included the proposed service changes and the upcoming September General Sign Up. Again pointing out the existing letters of agreement and long standing past practices between the parties regarding both Chairperson runs and standby runs noting that these letters of agreement had been

renewed and clarified as recently as January 2008 roughly 6 months prior to the renewal of the MOU in June of 2008. Mr. Cabrera also cited relevant MOU provisions governing force totals. Lastly, Mr. Cabrera pointed out that counter to long standing past practice that for the first time in the history of the MOU the MTA has taken the position that proposed discipline would be enforced against an employee prior to his opportunity to exhaust his administrative remedies. *Cabrera Decl.* ¶ 29.In response to Mr. Cabrera's letter MTA took the position that again that the existing side letters were invalid and that MTA was in compliance with all sections of the MOU as to each issue. *Cabrera Decl. ¶ 30.*

On August 19, 2010 Local 250A received a letter by email transmission dated August 17, 2010 from Tom Nolan regarding the Union's August 17, 2010 grievance. In his letter Mr. Nolan stated the Local 250A's grievance was untimely and that the Union had failed to raise any health and safety issues in its discussions with management. *Cabrera Decl.* ¶ 31. Local 250A responded by letter on August 23, 2010 setting forth Local 250A's position that the grievance was not untimely and that MTA had failed to meet and confer in good faith considering their press release setting forth their proposed service changes was released prior to ever meeting with Local 250A over those very same changes. *Cabrera Decl. ¶ 31,32.*

On August 18, 2010 the MTA posted the division sign ups in order to institute the proposed changes to the service schedules. Despite a lack of meaningful meet and confer efforts regarding, health and safety, chair person runs, and stand by runs, Transit Operators were forced to sign up for the new schedules. On September 4, 2010 the proposed service schedules will take affect. *Cabrera Decl.* 33, 34

LEGAL STANDARD

The California Court of Appeal in Pubic Employment Relations Board v. Modesto City School District (1982) 136 Cal.App.3d 881 896, sets forth the two prong test used by courts and PERB to determine whether injunctive relief is appropriate:

(3) "reasonable cause" must exist to believe an unfair practice charge has been committed; and

(4) The relief sought must be "just and proper."

I. REASONABLE CAUSE

"In construing whether there is reasonable cause to believe an unfair labor practice has been committed...,it has been stated that PERB is required to sustain a minimal burden of proof. 'It need not establish an unfair labor practice has in fact been committed, nor is the court to determine the merits of the case Rather, the reasonable cause aspect of the two prong test is met if [PERB's] theory is neither insubstantial nor frivolous. *Modesto City School Dist. supra*, at 896 (*PERB inserted for ALRB*).

It is well established that an employer who makes pre-impasse unilateral change in an established, negotiable practice violates its duty to meet and confer in good faith. *NLRB v. Katz*, (1962) 369 US 736. "A unilateral change in negotiable subject prior to the completion of bargaining or the completion of impasse procedures is a 'per se' violation. *Regents of the University of California, (2010) PERB Decision No. 2105-H; Grant Joint Union High School District (1982) PERB Decision No. 916*. Such unilateral changes are inherently destructive of employee rights and are a failure per se of the duty to negotiate in good faith. *Davis Unified School District, et al. (1980) PERB Decision No. 116.*

An established negotiable practice may be reflected in a CBA (*Grant Joint Union High School District, (1982) PERB Decision No. 196*) or where the agreement is vague or ambiguous, it may be determined by an examination of bargaining history (*Colusa Unified School District (1983) PERB Decision Nos. 296 and 296a*) or the past practice (*Rio Honda Community College District (1982) PERB Decision No. 279*). Therefore the criteria for establishing a "per se" violation are: 1) the employer breached or altered the parties' written agreement or an established past practice; 2) such action was taken without giving the other party notice or an opportunity to bargain over the change; 3) the change was not merely an isolated breach of the contract but amounts to a change in policy (i.e. it has a generalized effect or continuing impact upon bargaining unit members' terms and conditions of employment); and 4) the change in policy concerns a matter within the scope of representation. *Regents of the University of California, (2010) PERB Decision No. 2105-H citing Vernon Fire Fighters v. City of Vernon (1980)* 107

Cal.App.3d 802; *Walnut Valley unified School District (1981) PERB Decision No. 160; San Joaquin County Employees Assn. v. City of Stockton (1984)* 161 Cal.App.3d 813.

1. Scope of Representation

In its ULP charge the Union has recounted numerous actions by MTA that it considers to constitute a series of breaches of the collective bargaining. For the purposes of this argument in the favor of a preliminary injunction they are dealt with together in order to exhibit the ongoing attack that MTA has brought against the MOU, and the lack of good faith meet and confer efforts that have been exhibited throughout the process. There is little question that the current changes in service schedules including the total elimination of Chairperson Runs; a vast reduction in Stand By Runs; the impact such changes have upon Operator health and safety; and the introduction of a new absentee policy, all fall within the scope of representation. The term "scope of representation is defined by the MMBA in section 3504 of the Government Code as including "all matters relating to employment conditions and employer –employee relations, including, but not limited to, wages, hours and other terms and conditions of employment, except, however, that the scope of representation shall not include consideration of the merits, necessity, or organization of any service or activity provided by law or executive order. *Cal. Gov. Code § 3504.*

The service and schedule changes materially change the hours worked, routes driven and service schedules of Transit Operators resulting in changes to their turnaround times, head ways, schedules, hours and available positions all of which have a large impact on the health and safety of drivers and impact the conditions of their employment. Hall Decl. ¶ 16. Section 14.1 of the MOU sets forth provisions relating not only to management rights regarding schedules but also their development of schedules and schedule changes and the duty to meet and confer regarding schedule changes specifically in relation to health and safety of Operators. Exh. A to Cabrera Decl. at Art. 14.1-14.2. Additionally, Article 13 of the MOU sets forth relevant force totals of what are called extra board operators that are to be maintained by MTA. Article 13 sets forth a specific equation based on current runs and blocks which dictates the number full time operators that should be staffed under the MOU. *Exh. A to Cabrera Decl.* Currently due to the elimination

of the Stand By Runs as well as the Chairperson Runs such force totals are not being met having a direct impact on Operators wages and hours of work. Lastly, under the current MOU Article 15 sets forth that there should be only one General Sign Up and three division sign up each year. Local 250A has already seen its second General sign up this year due to service changes. *Exh. A to Cabrera Decl.*

Likewise, the Absentee Bulletin also constitutes a change within the scope of representation of TWU 250A. First, the MOU in Article 23 subsection 23.5 relating to Discipline sets forth the parties mutually agreed upon discipline as relating to Lateness and Absence without Leave (AWOL) Program. MTA's Absentee Bulletin while dealing with sick leave ultimately impacts section 23.5. Logically under the policy any sick leave determined to be unjustified would be an Absence without Leave and thereby subject the member to Section 23.5's disciplinary schedules. Further, MTA's sick leave policy itself sets forth its own disciplinary process thereby affecting the conditions of a Transit Operators employment. *Vernon Fire Fighters Local 2312*, supra at 816 ("*The fact that penalties were prescribed for breaches thereof sufficiently affected the conditions of employment to make them mandatory subjects of bargaining.*"); *Exh. A, I to Cabrera Decl.*

2. MTA has Breached the MOU and/or Established Past Practice.

As exhibited in the statement of facts above and is evident in the many letters sent by Local 250A to MTA, the Union contends the current service changes constitute breaches of the current MOU and or long established past practices.

The current Service changes would eliminate Chairperson Runs, thereby forcing Chairpersons to leave their divisions and work full time on the road. There has been a long standing past practice that Chairperson's play an important roll within the labor relations interplay between Union, Operator and MTA. Each Chairperson has historically held a specific set of duties and responsibilities that have been expected of them on a day to day basis by not only the membership they serve but also MTA. These duties and responsibilities were set forth and acknowledged in a Joint Agreement signed January 4, 2008 by the Local 250A and representatives of MTA. This joint agreement states "[t]his agreement is an update of former

agreements and to update and confirm present practices." *Exhibit L to Cabrera Decl.* Without running through each specific duty individually, taken together the duties and responsibilities of a Chairperson constitute a full time job and the nature of these duties mandate that the Chairperson maintain a presence within each division in order to carry them out. *Hall Decl.* ¶ 3-15; *Postell Decl.* ¶ 3-15. The elimination of the Chairperson Runs, would all but eliminate the Chairperson position entirely. A Chair simply cannot be out of the division all day as an Operator and fulfill his duties as a Chairperson.

The reduction of the Stand By Runs also constitutes a breach of the current MOU and past practices. *Exh. M to Cabrera Decl. Cabrera Decl.* ¶ 19. Like Chairperson Runs, Stand By Runs historically have been maintained at levels of at least four per division through a series of joint agreements between MTA and Local 250A. *Exh. M to Cabrera Decl.* The current reduction of Stand By Runs also constitutes a direct breach of the mandated force totals set forth in the MOU under Article 13. More Specifically paragraph 132 of Article 13 addresses the number of runs and blocks in the context of establishing the 21.5% Extra Board complement of full time Operators The schedules as currently set, fall well below this Extra Board total. Local 250A has maintained this position throughout both the May service changes as well as the current service changes and it has been so articulated in a series of letters of protest to MTA. *Exh. B, P, S to Cabrera Decl; Cabrera Decl.* ¶ 5, 25. The elimination of Stand By Runs has caused MTA to fall well below their contractual duty under the MOU to maintain the request extra board numbers constituting a breach of the contract.

On top of the direct breaches of the MOU in regards to the reduction in Stand By runs and elimination of Chairperson Runs set forth above. The MOU at Article 14 subsection 14.2 sets forth an affirmative duty to meet and confer with the Union as to the effect of service changes upon the health and safety of operators. As will be fully set forth below MTA breached its duty to meet and confer in good faith not only under Meyers Milias Brown Act ("MMBA") but also under the express provisions of the MOU.

As briefly mentioned above the new Absentee Bulletin mandated by MTA upon Local 250A membership seeks to make changes that are in direct breach of the current MOU.

Specifically, Article 23 Section 23.5 which establishes a joint MTA Union committee to develop a new lateness and absence without leave Prevention Program. The following sub paragraphs set forth established disciplinary guidelines by which absence deemed to be without leave are to be handled. *Exh. A to Cabrera Decl.* The New Absentee Bulletin directly conflicts with Section 23.5 in that it imposes a new set of discipline for absences without leave in which operators claim illness. This new policy was created without calling upon the joint committee as articulated under the contract and changes the levels of discipline that may be imposed upon members for absences without leave. *Exh. J to Cabrera Decl.*

3. Isolated Breach vs. Change in Policy

To establish a prima facie case for an illegal unilateral change based on the breach of a collective bargaining agreement, the charging party must allege facts that show that the breach 'amounts to a change in policy having generalized effect or continuing impact upon the terms and conditions of employment of bargaining unit members. *Regents of the University of California, (2010) PERB Decision No. 2105-H citing Clovis Unified School District (1986) PERB Decision No. 597.* Each and every breach articulated above amounts to a direct change in policy as opposed to an isolated incident. The service changes that will go into effect on September 4, 2010 will affect the entire Local 250A membership by drastically altering the amount of available positions for full time Operators. By allowing force totals to drop below those mandated by the MOU the MTA will be breaking from its contractual duty and past practice and reducing the hours available for current Operators, and changing their scheduled runs without regard for positions and runs and eliminating positions that have been historically important. These changes will continue to be in effect till which time MTA decides to again alter the schedules.

Similarly, the elimination of Chairperson Runs will effectively deprive the membership and MTA of a longstanding past practice of a Division Chairperson. Those duties and responsibilities which have historically been performed by the Chairpersons including; preparing and attending disciplinary proceedings, processing complaints and grievances, general assistance to Operators, and performing and conducting safety checks, will effectively be eliminated

because each Chair will be required to be out on the road and not in the division. The elimination of the Chairperson Runs also will do away with a historically effective labor liaison between the Operators in the field, the Union that represents them and management.

As described above, the issuance of a new Absentee Policy has an effect on each and every Transit Operator by subjecting them to a new set of discipline for absences without leave outside the contract. The Absentee Policy is was put into effect August 1, 2010 and constitutes a continuing impact upon the employment conditions of every Operator.

4. MTA has Failed to Meet and Confer in Good Faith.

Section 3505 of the MMBA requires the MTA to "meet and confer in good faith" with representatives of the union over mandatory negotiable matters. *Cal. Gov. Code § 3505*. Section 3505 defines "meet and confer in good faith" to mean:

> *that a public agency, or such representatives as it may designate, and representatives of recognized employee organizations, shall have the mutual obligation personally to meet and confer promptly upon request by either party and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on matters within the scope of representation prior to the adoption by the public agency of its final budget for the ensuing year. The process should include adequate time for the resolution of impasses where specific procedures for such resolution are contained in local rule, regulation, or ordinance, or when such procedures are utilized by mutual consent.*

Cal. Gov. Code § 3505.

The meet and confer requirements of the MMBA are fundamental to the overall purpose of the statue, being to promote full communication between public employers and their employees. *Vernon Firefighters supra*, at 823. The obligation to meet and confer in good faith under the MMBA corresponds to that in the private sector which has held the duty as "a subjective attitude and requires a genuine desire to reach agreement." *Vernon Firefighters supra,* Foot Note 20 citing *NLRB v. MacMillan Ring-Free Oil Co.* (1968) 394 F.2d 26. The meet and confer process involves actual effort on the part of the parties, "[t]he effort is inconsistent with a 'predetermined resolve not to budge from an initial position.'" *Vernon Firefighters supra,* Foot Note 20 citing *Labor Board v. Truitt Mfg.Co.* (1956) 351 U.S. 149,154.

As is recounted by the statement of facts above in roughly seven months MTA has made two sweeping changes to the Service Schedules, without ever meeting and conferring in good faith in regards to the health and safety of Operators. This has resulted in three grievances being filed all directly stemming from the inability of Operators to voice their concerns with the pressures that the current schedules have on them as Operators. *Exh. C,F,R to Cabrera Decl; Cabrera Decl.* ¶ 6,12,28. On August 11, 2010 when individual chairpersons were actually called into discuss health and safety with Ed Wong, MTA stated the very next day that there were no outstanding issues. *Cabrera Decl.* ¶ 25, 26, 27; *Scott Decl.* ¶ 11, 12, 13; *Postell Decl.* ¶ 21, 22, 23. Such a statement is in total contradiction to that of the Chairpeople, who brought up numerous issues relating to health and safety with Mr. Wong. *Hall Decl.* 16. When Rafael Cabrera offered to have the Chairs come into the meeting to restate their positions the meeting was quickly ended by MTA. *Cabrera Decl.* ¶ 27; *Scott Decl.* ¶ 13; *Postell Decl.* ¶ 23. Certainly this is not the type of open discussion envisioned by the meet and confer requirements of the MMBA.

Likewise in meetings regarding MTA's new Absentee Policy, the Union's objections and questions were of no consequence to MTA's establishment of the Policy. Local 250 was told summarily that the policy was going into effect with no meaningful negotiations nor free exchange of information, opinions, and proposals as described by section 3505 of the MMBA. *Cabrera Decl.* ¶ 16 While MTA uses the term "meet and confer" in every letter it sends to Local 250A the reality is that each meeting begins with MTA's proposals already a fait accompli before any negotiation begins.

However, the most blatant and obvious deficiency in MTA's meet and confer efforts corresponds with the most recent set of meetings between MTA and Local 250 in regards to the service changes that are to result in a reduction of Stand By Runs and the elimination of Chairperson Runs. After meeting and conferring with MTA in good faith on August 3, 2010, and voicing their objections and requesting information, Local 250 was notified and received a copy of an official press release from the San Francisco Mayor's office in conjunction with MTA released that morning, announcing that MTA was instituting the same service changes that were

the focus of the later negotiations. The futility of the following meetings becomes understandable in the wake of an official announcement preceding MTA's meet and confer efforts. *Cabrera Decl.* ¶ 21; *Exh. N to Cabrera Decl.* Quite simply, this press release is compelling evidence that the MTA had no intention of meeting and conferring in good faith on these mandatory subjects of bargaining, instead it presented the Union with a fait accompli in defiance of its statutory duty. Further, MTA has refused to provide promised legal analysis and refused to openly dialog concerning past practices. Their efforts are merely an attempt to go through the motions in hollow attempt to satisfy their obligations under MMBA. *Cabrera Decl.* ¶ 21; *Scott Decl.* ¶ 8; *Postell Decl.* ¶ 18.

MTA has failed and continues to fail to meet and confer with Local 250A over its unilateral changes to the MOU and past practices in direct violation of the good faith meet and confer standard of the MMBA.

II. THE RELIEF SOUGHT IS JUST AND PROPER

Local 250A is seeking an injunction to maintain the status quo thereby enjoining MTA from instituting the unilateral changes above including the impending September 4, 2010 Service Changes. The just and proper standard is met where "there exists a probability that the purposes of the Act will be frustrated unless temporary relief is granted ...when the circumstances of a case create a reasonable apprehension that the efficacy of the Board's final order may be nullified, or the administrative procedures will be rendered meaningless....Preservation and restoration of the status quo are then appropriate considerations in granting temporary relief pending determination of the issues by the Board. *Angle v. Sacks* (10th Cir. 1967) 382 F.2d 655, 660.

The ability of MTA to unilaterally make sweeping service changes that constitute breaches of the MOU and past practices without any real meet and confer effort would fly in the face of the intent of the Act. Certainly an official press release announcing the service changes that are to be the topics of the meet and confer process that very day shows a brash disregard for

the main purpose of the MMBA and its attempt to promote full communication between and to improve relations among employers and employees within the various public agencies.

Further, the Union and the public of the city of San Francisco will face irreparable harm if the status quo is not maintained. The Service Changes that are much of the focus of the above analysis are set to be put into affect on September 4, 2010. This means routes will change, Operators schedules and hours will change, numerous Stand By runs will be eliminated and Chairpersons will be removed from their current duties and placed out on the streets in Operation unable to uphold their historical duties. Unlike a back pay issues or contractual dispute that can be remedied as easily two months from now as today, the situation at hand involves the entire Local 250A membership of which there are over a thousand. Further, maintaining the status quo will allow operations to continue unchanged while PERB decides whether MTA's actions constituted Unfair Labor Practices that must be remedied. If an injunction were not to issue, and PERB did in fact find ULP's relating to service changes the entire system would again have to be halted and changed back again resulting in only further complication for both MTA and Local 250A's membership as well as the public they both serve.

CONCLUSION

In light of the foregoing arguments and relevant legal analysis Local 250A asks that PERB take immediate action to obtain a preliminary injunction to maintain the status quo. In conclusion Local 250A asks PERB to seek an order enjoining the MTA from:

1) Implementing the scheduled service changes on September 4, 2010;
2) Eliminating the Chairperson Runs
3) Reducing the Stand By Runs
4) Implementing its New Absentee Policy

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