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11 Transport Workers Union, Local 250A

12 SUPERIOR COURT, STATE OF CALIFORNIA
13 CITY AND COUNTY OF SAN FRANCISCO

14 TRANSPORT WORKERS UNION, LOCAL
15 250A

16 Petitioner and Plaintiff,

17 vs.

18 CITY AND COUNTY OF SAN
19 FRANCISCO; THE SAN FRANCISCO
20 MUNICIPAL TRANSPORTATION
21 AGENCY, and Does 1 through 20.

22 Respondents and Defendants.
23

Case No.:

**VERIFIED PETITION TO VACATE
ARBITRATION AWARD (CCP§1285)
AND VERIFIED COMPLAINT FOR
DECLARATORY RELIEF (CCP§1060)**

ENDORSED
FILED
FEB 23 2012
San Francisco County Superior Court
CLERK OF THE COURT
By: ROSALY DE LA VEGA-NAVARRO
Deputy Clerk

CPF - 12 - 511972

1 Petitioner and Plaintiff TRANSPORT WORKERS UNION, LOCAL 250A (hereinafter
2 "TWU Local 250A" or "Union") hereby petitions this court for declaratory relief and for an order
3 vacating an interest arbitration award dated June 13, 2011 which purports to set the terms and
4 conditions of employment for certain employees represented by the Union for collective
5 bargaining purposes and employed by the Respondent the CITY AND COUNTY OF SAN
6 FRANCISCO, SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY (hereinafter
7 "SFMTA" or "AGENCY").
8

9 10 THE PARTIES

11 1. Petitioner TWU Local 250A is an unincorporated labor organization affiliated
12 with the International Transport Workers Union of America AFL- CIO. TWU Local 250A is a
13 recognized employee organization within the meaning of the Meyers-Millias-Brown Act ("the
14 MMBA"), Government Code Section 3501(c), in that it includes approximately 2,350 Operators,
15 Fare Inspectors and Automotive Service Workers employed by the City and County of San
16 Francisco and its Municipal Transit Agency within its membership, and has been formally
17 acknowledged as their collective bargaining agent by the City and the Agency. Local 250A
18 brings this action on its own behalf and on behalf of its members in its representative capacity.

19 2. TWU Local 250A is governed by an elected Executive Board including elected
20 Officers. The Principal Officer is the President who is responsible for overseeing the day to day
21 affairs of the Union and serves as the chief negotiator in collective bargaining with the San
22 Francisco Municipal Transit Agency. During 2011 the President of TWU Local 250A was
23 Rafael Cabrera. In December 2011 a regularly scheduled election of Officers was conducted.
24 Mr. Cabrera was replaced by Eric Williams who now serves as President of the Union; other
25 Officers were also replaced.

26 3. Respondent and Defendant the CITY AND COUNTY OF SAN FRANCISCO is a
27 municipal government that operates under the authority of the San Francisco City and County
28 Charter. It is a public agency within the meaning of Section 3501(c) of the MMBA.

1 8. For years prior to the November 10, 2010 election, Charter sections A8.404(a)
2 through (f) required the San Francisco Municipal Railway to pay MUNI's platform employees
3 and coach operators pursuant to a fixed formula tied to other comparable transit districts.
4 Proposition G eliminated this historical method of determining the wages and benefits of these
5 employees and instead expanded Charter Section A8.409 to apply to these MUNI employees.
6 Among the provisions which now apply to collective bargaining between the SFMTA and TWU
7 Local 250A relating to the affected MUNI employees are the impasse resolution procedures
8 contained in Charter sections A8.409-4(a) through (r).
9

10 9. Section A8.409-4 establishes several mandatory steps which the parties must
11 follow in the event the impasse resolution procedures are invoked; to wit:
12

13 a. Section A8.409-4(a) establishes a three-member Mediation/Arbitration
14 Board ("the Board") to which any disputes concerning the wages and other terms and
15 conditions of employment which remain unresolved after good faith bargaining must be
16 submitted;
17

18 b. Section A8.409 -4 (b) requires that no later than January 20 of any year in
19 which bargaining on an MOU takes place, representatives designated by the bargaining
20 parties must select and appoint one member each to the Board; the neutral chairperson is
21 to be selected jointly by the parties;
22

23 c. Section A8.409-4(c) gives the Board authority to meet with the parties in
24 an effort to mediate the dispute before it is submitted to arbitration. But, if there is to be
25 an interest arbitration proceeding it must be conducted in conformance with, and subject
26 to Title 9, Part 3 of the California Code of Civil Procedure. Pursuant to those provisions,
27 the Board may hold public hearings and receive evidence from the parties.
28

1 d. Section A8.409-4(d) mandates that if no agreement is reached by the
2 parties then the Board must decide each unresolved issue by a majority vote, based on
3 the evidence presented during the arbitration, and applying the specifically enumerated
4 factors which must be taken into account in determining the wages, benefits and terms
5 and conditions of public and private employment. The Board is required to issue written
6 findings as to each and every issue and each of the factors which it must take into
7 consideration.
8

9
10 e. After the Board has issued its Decision and Findings it must be served on
11 the parties which are then granted an initial ten (10) day period, which may be extended,
12 to review the Award and to resume negotiations to determine if they can agree on any
13 modifications. Once the review period has elapsed then the final decision and findings of
14 the Arbitration Board, as it may be modified by the parties, must be publicly disclosed for
15 a period of fourteen (14) days. Only after such public disclosure period has expired does
16 the decision become final and binding.
17

18 10. Under the MMBA an employer and a recognized employee organization have a
19 duty to bargain in good faith over the wages, benefits and terms and conditions of employment to
20 be included in a successor MOU. If the parties reach a tentative agreement on the terms of a
21 successor MOU without reaching an impasse then the impasse resolution procedures contained
22 in Charter Section A8.409-4 do not apply. Instead, the terms of a tentative agreement are subject
23 to ratification by the membership of TWU 250A and must be approved by the Board of Directors
24 of the SFMTA. Charter Section 8A.104(r) mandates that before any tentative agreement may be
25 adopted by the Agency it must disclose at a duly noticed public meeting the content of such
26 tentative agreement.
27
28

1 11. In 2011 the President and principal officer of TWU Local 250A was Rafael
2 Cabrera. In January 2011 Mr. Cabrera designated himself as the Union appointed member of
3 the Mediation/Arbitration Board. Notwithstanding that he was serving on the Board, Mr.
4 Cabrera proceeded to act as the chief negotiator and advocate for the Union throughout the
5 course of collective bargaining with the Agency on the terms and conditions of the successor
6 MOU.
7

8 12. On May 25, 2011 Mr. Cabrera reached a tentative agreement with the SFMTA.
9 On June 8, 2011 the tentative agreement was presented to the Union's membership for review,
10 consideration and possible ratification. The membership of TWU Local 250A overwhelmingly
11 rejected the tentative agreement and consequently it was not then, nor has it ever been ratified.
12

13 13. Following the rejection of the terms of the tentative agreement the representatives
14 of the parties resumed negotiations on June 9, 2011; once again Mr. Cabrera served as the
15 Union's chief negotiator. The chairperson of the Mediation/Arbitration Board presided over the
16 June 9th meeting. At the outset of the meeting Mr. Cabrera informed the chairperson that the
17 Union membership had rejected the tentative agreement and explained some of the subjects
18 which were of particular concern to the membership. Deputy City Attorney Gina Roccanova
19 expressed the position of the SFMTA on the issues in dispute. At the conclusion of the parties'
20 brief statements the chairperson of the Board informed the advocates that if an agreement was
21 not reached on the remaining issues then she would conduct an evidentiary hearing and issue her
22 decision.
23
24

25 14. TWU Local 250A is informed and believes and thereupon alleges that, despite the
26 chairperson's statement, no evidentiary hearing was conducted before the Board and no
27 arbitration hearings were convened as contemplated in Section A8.409-4 (d).
28

1 15. On June 13, 2011 the chairperson of the Board issued a written decision
2 purporting to be an interest arbitration award issued pursuant to Charter section A8.409-4(d). A
3 true and correct copy of that "Award" is attached hereto as Exhibit "A". In the text of the
4 decision the chairperson makes it clear that the terms of the tentative agreement which had been
5 rejected by the Union membership served as the decision of the Mediation/Arbitration Board.
6 Rafael Cabrera signed the chairperson's decision in his capacity as the Union appointed member
7 of the Board.
8

9
10 16. The next day, June 14th, the SFMTA posted the terms of the decision, including
11 the terms of the tentative agreement on its web-site, accompanied by a memorandum
12 specifically referring to Charter Section 8A.104 (r) as the authority for such posting. By so
13 doing, the SFMTA was treating the decision as a tentative agreement between the parties not as
14 an interest arbitration decision issued in accordance with the impasse resolution procedures
15 established by Section A8.409-4. The membership of TWU Local 250A were not afforded an
16 opportunity to vote upon the terms of the June 13, 2011 decision, though they had rejected such
17 terms on June 8th.
18

19 17. Upon assuming office the current Officers of TWU Local 250A caused an
20 investigation to be done in to the circumstances surrounding the 2011 negotiations, and the
21 issuance of the June 13, 2011 document which purports to be an arbitration decision. As recently
22 as December 6, 2011 the SFMTA forwarded to the Union a document which it contended
23 reflected the terms of the new MOU, including changes the parties had made since the June 13th
24 decision. The SFMTA stated that if it did not receive a signed copy within a week of its
25 December 6th letter then it would "deem it final and post it on the SFMTA website". Since then
26 no posting or other disclosure of the June 13th decision has been made by the Agency.
27
28

1 18. Representatives of TWU Local 250A met with representatives of the SFMTA on
2 January 23, 2012 to discuss the status of the MOU between the parties. During the course of that
3 meeting the SFMTA stated its position that the MOU is in effect and that it is based on the June
4 13th arbitration decision which SFMTA asserted is final and binding on the parties.
5

6 **FIRST CAUSE OF ACTION – DECLARATORY RELIEF (CCP§1060)**

7 19. Petitioner realleges and incorporates paragraphs 1 through 18 as if fully set for the
8 herein.
9

10 20. An actual controversy exists with respect to the legal rights and duties of
11 Petitioner and Respondents as to whether there is a final and binding MOU currently in place
12 which governs the terms and conditions of employment for those platform employees and coach
13 operators employed by the SFMTA and represented by TWU Local 250A.
14

15 21. Petitioner seeks a declaration that the putative MOU is invalid in that either it was
16 not adopted by the parties in accordance with the requirements under the MMBA governing
17 ratification and approval of tentative agreements, or if treated as an interest arbitration award the
18 Mediation/Arbitration Board failed to comply with the mandatory strictures governing impasse
19 resolution procedures under Charter Section A8.409-4.
20

21 **SECOND CAUSE OF ACTION – VACATION OF AWARD (CCP§1285)**

22 22. Petitioner realleges paragraphs 1 through 18 as if fully set for the herein.

23 23. CCP section 1286.2(5) provides that a court shall vacate an arbitration award
24 where the rights of the party are substantially prejudiced by the refusal of the arbitrators to, *inter*
25 *alia.*, hear evidence material to the controversy, or by other conduct of the arbitrators contrary to
26 the provisions of Title 9, Part 3 of the CCP. Similarly, Charter Section A8.409-4 requires
27 arbitration proceedings conducted thereunder to conform to the requirements of CCP§ 1280 *et*
28

1 *seq.*, including the holding of evidentiary hearings and affording the parties due process. CCP§
2 1286.2(a) provides that a court shall vacate an arbitration award if it determines that such award
3 was procured by corruption, fraud or other undue means.
4

5 24. The June 13, 2011 arbitration award is subject to vacatur on several grounds,
6 including the following:

7 a. the Mediation/Arbitration Board was not properly constituted in
8 accordance with the requirements of Charter section A8.409-4(a) and (b);
9

10 b. the rights of the membership of TWU Local 250A were substantially
11 prejudiced by (1) the Board's failure to provide timely notice that it would be conducting
12 arbitration proceedings; (2) the chairperson's failure to convene the full Board to conduct the
13 arbitration hearings; (3) the parties' failure to properly select and appoint the partisan members
14 to the Board; (4) the Board's failure to conduct any evidentiary hearings; (5) the Board's failure
15 to take any evidence relating to the factors which the Board was required to consider in making
16 its decision; and (6) the Board's failure to make an independent decision on the issues presented
17 but merely adopting the terms of a tentative agreement which had been rejected by one of the
18 parties.
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VERIFICATION

I, ERIC WILLIAMS, hereby state that I am the duly elected President of Transport Workers Union Local 250A, Petitioner and Plaintiff in the above entitled action. I have read each of the allegations set forth in the Verified Petition to Vacate Arbitration Award and Verified Complaint for Declaratory Relief and the same are true of my own personal knowledge, except as to the matters which are therein stated on information or belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing statements are true and correct. Executed this 23 day of February, 2011 in the City and County of San Francisco, California.


ERIC WILLIAMS

INTEREST ARBITRATION PURSUANT TO
THE CHARTER OF THE CITY AND COUNTY OF SAN FRANCISCO

In the Matter Between

San Francisco Municipal Transportation Agency,
Employer

and

Transport Workers Union, Local 250-A,
Union

Re: Contract Negotiations 2011

Arbitrator

Carol A. Vendrillo, Esq.

June 13, 2011

Appearances:

For the Employer:

Gina Roccanova, Esq.
Deputy City Attorney
City and County of San Francisco
1390 Market Street, 5th Floor
San Francisco, CA 94102-5408

For the Union:

Peter W. Saltzman, Esq.
Leonard Carder
1330 Broadway, Suite 1450
Oakland, CA 94612

INTRODUCTION

This matter comes before the undersigned Mediator/Arbitrator pursuant to Section A8.409 of the San Francisco Charter. The parties have been engaged in negotiations over a successor memorandum of understanding since the beginning of March 2011. The parties requested that I attempt to mediate a resolution to their bargaining disputes and, should the parties reach impasse, that I serve as the neutral chairperson of the three-person Mediation/Arbitration Board.

On May 25, 2011, I conducted a mediation session in San Francisco, California, on the remaining issues in dispute at that time. Participants included the parties' legal counsel, members of the Agency's bargaining team, and members of the Union's Executive Board. In the course of the proceedings, the Mediation/Arbitration Board received extensive documentary evidence relevant to the parties' proposals. After much give-and-take from both sides, the parties reached a tentative agreement (TA) covering all terms of the successor MOU.

Thereafter, on June 8, 2011, the Union presented the TA to its members for ratification. The members disapproved of the TA.

On June 9, 2011, the parties were required to meet with the Mediator/Arbitrator to present their final positions under Charter Sections A8.409-4(d) and 8.409-4(k). The Union expressed its members' concerns with several aspects of the TA, and management expressed the SFMTA's own concerns with the TA. Further discussion made it clear to the Mediator/Arbitrator that if any provision of the TA were altered, the careful equilibrium that the parties had established in that agreement would be upset, and virtually all aspects of the MOU would have to be re-opened, including all economic

provisions. Nevertheless, the parties asked me to decide two central issues in dispute: (1) whether the changes to the discipline and grievance procedures should be upheld; and (2) whether the Agency is entitled to wage reductions and/or the elimination of the pension pick-up.

Although the members of TWU Local 250-A did not ratify the TA, and the SFTMA's stakeholders expressed significant criticisms of the TA, it is the opinion of the Mediator/Arbitrator that the terms of the TA on the disputed issues represent the best resolution of these protracted labor negotiations and are in the best interests of both the parties and the riding public. For these reasons, the terms of the TA, which are incorporated by reference herein, shall serve as the decision of the Mediation/Arbitration Board.

The terms of the TA, as they relate to the disputed issues, conform to those factors traditionally taken into consideration in the determination of wages, hours, benefits and terms and conditions of public and private employment, as is mandated by A8.409-4(d) of the Charter. Specifically, in the issues presented, the Mediator/Arbitrator has considered changes in the average consumer price index for goods and services; the wages, hours, benefits and terms and conditions of employment of employees performing similar services; the wages, hours, benefits and terms and conditions of employment of other employees in the City and County of San Francisco; health and safety of employees; the financial resources of the City and County of San Francisco, including a joint report to be issued annually on the City's financial condition for the next three fiscal years from the Controller, the Mayor's budget analyst and the budget analyst for the Board of Supervisors; other demands on the City and County's resources including

limitations on the amount and use of revenues and expenditures; revenue projections; the power to levy taxes and raise revenue by enhancements or other means; budgetary reserves; and the City's ability to meet the costs of the decision of the final contract proposals as presented to the Mediator/Arbitrator.

In addition, pursuant to Municipal Code Section 8A.104(n), the Mediator/Arbitrator also considered the interests and welfare of transit riders, residents, and other members of the public; the Agency's ability to meet the costs of the proposed bargaining agreement without materially reducing service or requiring that the Agency raise fares; and the agency's ability to efficiently and effectively tailor work hours and schedules for transit system employees to the public demand for transit service.

On the financial condition of the City and SFMTA, consideration of the financial resources of the City and SFMTA and their ability to pay the costs of the award without materially reducing service or raising fares weighs in favor of adopting the terms of the tentative agreement as the Mediation/Arbitration Board's award. The changes included in the TA, including the renewed use of a part-time workforce and changes to the discipline and grievance procedures, are expected to improve efficiency and net significant savings for SFMTA on an ongoing basis. Additional economic concessions are not warranted and not supported by the Charter factors.

A comparison of the wages, hours, benefits, and working conditions of other City employees and of employees performing similar services also supports the award. The tentative agreement modifies the terms of the previous MOU in a manner that is consistent with the wages, hours, benefits, and working conditions found in other City

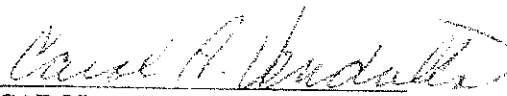
contracts and in the collective bargaining agreements that cover transit operators in comparable jurisdictions.

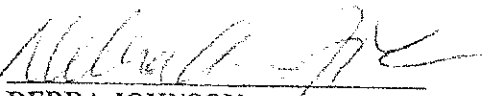
On balance, health and safety considerations also weigh in favor of the terms of the tentative agreement on the discipline and grievance issue. By assuring that SFMTA has adequate time to conduct thorough investigations and that the parties have disciplinary cases decided on the merits in binding arbitration, the changes to the existing procedures will potentially result in more appropriate and targeted discipline.

Finally, on each issue in dispute, the interests and welfare of the SFMTA's riders, San Francisco residents, and the public generally are best served by the provisions to which the parties agreed on May 25.

The Union-appointed member of the Mediation/Arbitration Board agrees with this decision except as to the conclusions reached with respect to the discipline and grievance procedures. The MTA-appointed member of the Mediation/Arbitration Board agrees with this decision except as to the conclusions reached with respect to economic concessions.

Dated: June 13, 2011


CAROL A. VENDRILLO, ESQ.
Arbitrator


DEBRA JOHNSON
Director of Administration, SFMTA


RAFAEL CABRERA
President, TWU Local 250-A