STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

AMALGAMATED TRANSIT UNION LOCAL 1704, Charging Party, v. OMNITRANS, Respondent.	Case No. LA-CE-427-M PERB Decision No. 2143-M November 18, 2010

Appearances: Neyhart, Anderson, Flynn & Grosboll by William J. Flynn, Attorney, for Amalgamated Transit Union Local 1704; County of San Bernardino by Carol A. Greene, Deputy County Counsel, for Omnitrans.

Before Dowdin Calvillo, Chair; McKeag and Wesley, Members.

DECISION

WESLEY, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by both the Amalgamated Transit Union Local 1704 (ATU) and Omnitrans to the proposed decision (attached) of an administrative law judge (ALJ). The ALJ found that Omnitrans unlawfully bypassed ATU in violation of the Meyers-Milias-Brown Act (MMBA)[1] by establishing a Focus Group to consider changes to the bidding procedures for Extra Board (EB) drivers. The ALJ dismissed the allegation that Omnitrans unilaterally changed the parties' grievance procedure when it rejected a grievance regarding the creation of the Focus Group. The ALJ also denied ATU's request for attorney's fees and costs associated with Omnitrans' late decision to appear by telephone at the informal

[1] MMBA is codified at Government Code section 3500 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

settlement conference. Finally, the ALJ denied two motions filed by ATU to amend the complaint to add additional allegations.

The Board has reviewed the proposed decision and the record in light of the parties' exceptions, responses, and the relevant law. Based on this review, on the issues of bypassing, attorneys fees and the motions to amend the complaint, the Board finds the proposed decision to be a correct statement of the law and well reasoned and, therefore, adopts those portions of the proposed decision as the decision of the Board itself. On the issue of unilateral change of the grievance procedure, the Board reverses the ALJ's dismissal of this allegation and finds an unlawful unilateral change in violation of the MMBA.

BACKGROUND

Omnitrans is a public agency that provides bus service in several southern California communities. ATU is the recognized employee organization of drivers employed by Omnitrans, including regular full-time, regular part-time and relief drivers.

The regular and relief drivers participate in three shift bid periods per year. During any of these bid periods, a driver may make an additional bid to be placed on the EB roster to cover unfilled assignments for last minute and pre-planned absences such as sick leave, jury duty or vacation.[2]

Prior to the dispute in this case, EB assignments were made based on a rotation of drivers on the EB roster. After receiving an EB assignment, the driver's name would move to the bottom of the list. Instead of retyping the list each day, however, an arrow moved down the list to indicate which driver was next on the assignment roster. Drivers could check the position of the arrow to help them anticipate when they might be called for an EB assignment,

[2] An EB assignment lasting a week or more is called a "hold-down." Hold-down bidding procedures are separate from other EB assignments and are not at issue in this matter.

and what route they would possibly be given. Route assignments differ with respect to length of the route, amount a driver is paid, whether or not a break is allowed during the route, and other variables.

Omnitrans established the Cultural Design Team (CDT) in April 2007, to listen to the concerns of all employees within Omnitrans and to try to solve problems. The CDT included representatives from various Omnitrans departments, and included bus drivers and ATU officers. The CDT discussed various issues affecting each department.[3]

At some point, drivers expressed concerns to the CDT that the EB procedures were difficult to understand, and should be modified to be more flexible and fair to all drivers. Based on these complaints, Omnitrans formed the Focus Group to explore possible changes to the EB procedures. The Focus Group consisted of Omnitrans management,[4] senior and junior drivers (including ATU Executive Board Member, Curtis Wilkerson), a dispatcher, and an outside facilitator. After conducting three meetings between December 2007 and February 2008,[5] and surveying employees about their preferences, the Focus Group presented a recommendation to the CDT. The Focus Group recommended that the EB procedures be changed from the arrow rotation system to bidding for assignments by seniority.

In a June 12, 2008 memo to ATU President Dale Moore (Moore), Graham offered to meet and confer regarding any negotiable aspects identified by ATU, of the proposed revisions

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[3] The CTD was referenced in the instant charge, however, its formation was not alleged as an unfair practice. At hearing, ATU's request to amend the complaint to include this allegation was denied by the ALJ on the basis of timeliness.

[4] Director of Operations, Paul Graham (Graham); East Valley Transportation Manager, Doug Stanley; and Dispatch Supervisor, Scott Huffman.

[5] The proposed decision states on page 8 that the Focus Group held approximately ten meetings. However, the evidence reflects that the Focus Group held meetings on December 6, 2007, January 30, 2008, and February 13, 2008. This difference does not affect the outcome or analysis.

to the EB bidding procedures. Ultimately, the parties did not meet after ATU insisted on negotiating the entire scope of EB matters.

On September 2, 2008, Omnitrans issued a new procedure for EB assignments, to be effective September 12, 2008, wherein the arrow rotation was replaced by seniority bidding for EB assignments.[6]

On December 5, 2007, ATU President Moore filed a grievance contesting the formation of the EB Focus Group.[7] The grievance cited violations of several MOU articles, including Article 2, *Exclusive Representative*, and Article 9, *Employee Rights*.[8] As a remedy, the grievance requested that Omnitrans cease attempts to bargain directly with ATU bargaining unit employees and recognize ATU as the exclusive representative of the bus operators.

Article 2 states, in relevant part:

> A. The Agency agrees that it shall recognize Amalgamated Transit Union Local 1704 as the exclusive representative of all Coach Operators of the Agency in said unit for the purpose of meeting its obligations under Meyers-Milias-Brown Act, Government Code 3500, etc. [sic] seq., and Employee Relations Resolution when Agency's rules, regulations, or laws affecting wages, hours or other terms and conditions of employment are amended or changed.

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[6] After the hearing concluded, ATU submitted a motion to amend the complaint to allege that Omnitrans unilaterally implemented new EB procedures. This motion was also denied by the ALJ.

[7] The proposed decision makes note of a separate grievance filed by ATU Vice President, Jeff Caldwell (Caldwell), on December 10, 2007, regarding concerns about the EB bidding procedures. Rather than processing his grievance, Omnitrans referred Caldwell to the Focus Group to address his concerns. This grievance is not referenced in the complaint or ATU's cross exceptions and, therefore, is not discussed herein.

[8] Additional MOU sections alleged to have been violated include: Article 1, *Preamble*; Article 3, *Warranty of Capacity*; Article 5, *Sole and Entire Memorandum of Understanding*; Article 37, *Overtime Pay*; and Article 42, *Seniority and Work Assignment*.

Article 9 states, in relevant part:

> All employees shall have the following rights:
>
> C. The right to be represented by the exclusive recognized employee organization . . . .

(Underlining in original.)

Article 22 sets forth the grievance procedure.

> A. A grievance is defined as:
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> 1. An alleged violation or noncompliance with the provisions of this M.O.U., the Agency's written personnel rules and regulations, or department rule[s] and regulations. No policy or practice can violate a written term of the M.O.U.
>
> 2. It is further agreed that this grievance procedure will apply to any alleged violation of noncompliance with the provisions of the M.O.U., the Agency's written personnel rules and regulations, department rules and regulations unless otherwise agreed by the parties. No policy or practice can violate a written term of the M.O.U.

(Underlining in original.)

Omnitrans rejected the December 5, 2007 grievance on several grounds, including that Moore had filed the grievance on behalf of ATU, not as an aggrieved employee, and therefore he did not have standing to file the grievance. Omnitrans asserted in correspondence dated December 6, 2007, December 11, 2007, and January 23, 2008, that a grievance submitted by ATU on its own behalf is invalid under Article 22. Moore's subsequent request to submit the grievance to arbitration was rejected on the same grounds.

DISCUSSION

Bypass

In its exceptions to the proposed decision, Omnitrans asserts the ALJ erred in her reliance on PERB case law regarding work groups, and renews its argument that *County of*

Fresno (2004) PERB Decision No. 1731-M (*County of Fresno*) is controlling. The Board finds the ALJ properly distinguished *County of Fresno* from the instant case. In *County of Fresno*, the parties specifically negotiated an acknowledgement of the working group and agreed that bargaining would occur if the county intended to make any changes based on recommendations from the working group. In the present case, there was no prior agreement between Omnitrans and ATU regarding the formation of the employee Focus Group or the promise that changes arising out of the Focus Group's recommendations would be bargained. The ALJ also correctly held that the MOU's management rights provision did not clearly and unmistakably waive ATU's right to bargain work assignment bidding procedures. Accordingly, the Board concurs in the ALJ's determination that Omnitrans bypassed ATU when it dealt directly with employees to modify existing policies by meeting with employees through the Focus Group to develop changes to the EB procedures, surveying employees on their preferences for proposed bidding procedures, and by making a recommendation for changes to the CDT. (*Walnut Valley Unified School District* (1981) PERB Decision No. 160 (*Walnut Valley*).)

Grievance Procedure

ATU excepted to the ALJ's dismissal of the allegation that Omnitrans unilaterally changed the grievance procedure when it denied a grievance, in part, on the basis that ATU was not authorized to file a grievance on its own behalf.

Unilateral changes are considered "per-se" violations if certain criteria are met. Those criteria are: (1) the employer breached or altered the parties' written agreement or its own 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. (*Vernon Fire Fighters v. City of Vernon* (1980) 107 Cal.App.3d 802; *Walnut Valley*; *San Joaquin County Employees Assn. v. City of Stockton* (1984) 161 Cal.App.3d 813; *Grant Joint Union High School District* (1982) PERB Decision No. 196.)

ATU argues that Omnitrans unilaterally changed the grievance procedure when it refused to process the December 5, 2007 grievance regarding the formation of the Focus Group. Omnitrans repeatedly rejected ATU's request to submit the grievance to the formal grievance procedure, stating, in writing, that a grievance submitted by ATU on its own behalf, as opposed to by an employee, is not valid under the grievance procedure.[9]

In a prior case between Omnitrans and ATU, involving the same language in Article 22 of the parties' MOU, the Board considered whether ATU had the right to file a grievance on its own behalf. In *Omnitrans* (2009) PERB Decision No. 2010-M (*Omnitrans I*),[10] the Board held that under the MMBA a union has a statutory right to file a grievance in its own name that can only be limited by clear and unmistakable waiver. The Board further held that the MOU did not contain a "clear and unmistakable prescription that an individual employee must be the grievant, or a clear and unmistakable proscription that the Union itself may not be the grievant." Furthermore, the Board found that reading the definition of a grievance to restrict the filing of grievances to only an aggrieved employee would effectively render meaningless those provisions in the MOU that address rights granted to ATU.

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[9] Omnitrans denied the grievance on other grounds as well, including that the management rights provisions authorized its action. We do not address the merits of the other bases for denial of the grievance.

[10] *Omnitrans I* was decided by the Board after the ALJ issued the proposed decision in the present case.

In the present case, the record reflects that the essential complaint in the grievance filed by Moore was the formation of the Focus Group in contravention of ATU. This conduct arguably violates both the exclusive representative and employee rights articles of the MOU, cited in the grievance. Omnitrans stated numerous times, in writing, that the grievance request would not be entered into the formal procedure because the grievance was filed on behalf of ATU rather than an individual aggrieved employee. Omnitrans repeatedly asserted that the MOU did not permit ATU to file a grievance on its own behalf. Consistent with the holding in *Omnitrans I*, the Board finds that Omnitrans unilaterally changed the grievance procedure when it refused to process the December 5, 2007 grievance because it was filed on behalf of ATU.

Attorney's Fees

PERB recently clarified the test for an award of attorney's fees under the MMBA, holding that PERB will award attorney's fees only if the charge is both without arguable merit and pursued in bad faith. The term "bad faith" includes conduct that is dilatory, vexatious or otherwise an abuse of process. (*City of Alhambra* (2009) PERB Decision No. 2036-M (*City of Alhambra*).) Although the ALJ in the instant case did not specifically rely on the *City of Alhambra* test,[11] the analysis in the proposed decision addresses both prongs of the test. Therefore, the Board finds the ALJ adequately addressed the issue of attorney's fees in the present case.

REMEDY

MMBA section 3509(b) provides that PERB has jurisdiction to determine "the appropriate remedy necessary to effectuate the purposes of this chapter."

[11] *City of Alhambra* was also issued after the instant proposed decision.

In the case at hand, Omnitrans has been found to have violated the MMBA by bypassing ATU and dealing directly with its employees when it established the Focus Group to develop changes to EB bidding procedures. Therefore, it is appropriate that Omnitrans be ordered to cease and desist from such conduct.

An order to bargain with ATU regarding any changes in the EB bidding procedures, as set forth in the proposed decision, is not appropriate in this case. ATU's motion to amend the complaint to include a unilateral change allegation based on the implementation of new EB bidding procedures was denied, and therefore no finding was made on the merits. Therefore, it is not appropriate to order a make whole remedy, such as an order to bargain, with respect to this issue.

Additionally, the Board finds that Omnitrans unilaterally changed the grievance procedure by refusing to process a grievance filed on behalf of ATU. The normal remedy for unilateral change is to restore the status quo by rescinding the unilateral change. (*California State Employees Assn. v. Public Employment Relations Bd.* (1996) 51 Cal.App.4th 923, 946.) Therefore, it is appropriate that Omnitrans be ordered to process and reconsider the December 5, 2007 grievance upon request of ATU. It is also appropriate that Omnitrans be ordered to cease and desist from refusing to process grievances filed by ATU on its own behalf.

Finally, it is appropriate to order Omnitrans to post a notice incorporating the terms of this order, signed by an authorized agent of Omnitrans indicating that it will comply with the terms thereof.

ORDER

Based on the foregoing findings of fact and conclusions of law and the entire record in this matter, it is found that Omnitrans violated the Meyers-Milias-Brown Act (MMBA) by bypassing Amalgamated Transit Union Local 1704 (ATU) and dealing directly with bargaining unit employees on negotiable subjects. It is further found that Omnitrans violated the MMBA by unilaterally changing the grievance procedure when it refused to process a grievance filed on behalf of ATU. By this conduct, Omnitrans violated the MMBA, Government Code Sections 3505, 3506, and 3503.

Pursuant to Section 3509(a) and (b) of the Government Code, it is hereby ORDERED that Omnitrans, its governing board and its representatives shall:

A. CEASE AND DESIST FROM:

1. Bypassing ATU and dealing directly with bargaining unit employees on negotiable subjects, including bidding procedures for Extra Board (EB) assignments;

2. Failing or refusing to meet and confer in good faith with ATU, by unilaterally changing the parties' grievance procedure and refusing to process a grievance filed on behalf of ATU;

3. Interfering with the rights of employees to be represented by ATU;

4. Denying ATU its right to represent bargaining unit employees.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE MMBA:

1. Upon demand by ATU, process and reconsider the December 5, 2007 grievance regarding the EB Focus Group.

2. Within ten (10) workdays following the date this Decision is no longer subject to appeal, post at all work locations where notices to employees are customarily posted, copies of the Notice attached hereto. The Notice must be signed by an authorized agent of Omnitrans, indicating that Omnitrans will comply with the terms of this Order. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to ensure that the Notice is not reduced in size, altered, defaced or covered with any other material.

3. Written notification of the actions taken to comply with this Order shall be made to the General Counsel of the Public Employment Relations Board or the General Counsel's designee. Omnitrans shall provide reports, in writing as directed by the General Counsel or his/her designee. All reports regarding compliance with this Order shall be concurrently served on ATU.

Chair Dowdin Calvillo and Member McKeag joined in this Decision.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD
An Agency of the State of California

After a hearing in Unfair Practice Case No. LA-CE-427-M, *Amalgamated Transit Union Local 1704 v. Omnitrans*, in which all parties had the right to participate, it has been found that Omnitrans violated the Meyers-Milias-Brown Act (MMBA), Government Code section 3500 et seq.

As a result of this conduct, we have been ordered to post this Notice and we will:

A. CEASE AND DESIST FROM:

1. Bypassing Amalgamated Transit Union Local 1704 (ATU) and dealing directly with bargaining unit employees on negotiable subjects, including bidding procedures for Extra Board assignments;

2. Failing or refusing to meet and confer in good faith with ATU, by unilaterally changing the parties' grievance procedure and refusing to process a grievance filed on behalf of ATU;

3. Interfering with the rights of employees to be represented by ATU;

4. Denying ATU its right to represent bargaining unit employees.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE MMBA:

Upon demand by ATU, process and reconsider the December 5, 2007 grievance regarding the Extra Board Focus Group.

Dated: _____ OMNITRANS

By: _____
Authorized Agent

THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN POSTED FOR AT LEAST THIRTY (30) CONSECUTIVE WORKDAYS FROM THE DATE OF POSTING AND MUST NOT BE REDUCED IN SIZE, DEFACED, ALTERED OR COVERED WITH ANY OTHER MATERIAL.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

AMALGAMATED TRANSIT UNION LOCAL 1704, Charging Party, v. OMNITRANS, Respondent.	UNFAIR PRACTICE CASE NO. LA-CE-427-M PROPOSED DECISION (February 24, 2009)

Appearances: Neyhart, Anderson, Freitas, Flynn & Grosboll by William J. Flynn, Attorney, for Charging Party; Carol A. Greene, Deputy County Counsel, County of San Bernardino, for Respondent.

Before Ann L. Weinman, Administrative Law Judge.

PROCEDURAL HISTORY

Amalgamated Transit Union Local 1704 (ATU) filed an unfair practice charge and amended charge alleging in essence that Omnitrans unlawfully formed a Focus Group to discuss Standard Operating Procedures for Extra Board (EB) drivers,[1] and unlawfully denied a grievance complaining about this conduct. On May 6, 2008, the office of the General Counsel of the Public Employment Relations Board (PERB or Board) issued a complaint alleging that by forming the Focus Group, Omnitrans attempted to bypass, undermine, and derogate the authority of ATU, and that by denying the grievance, Omnitrans made a unilateral change in the grievance policy, in violation of the Meyers-Milias-Brown Act (MMBA or Act) section 3505.[2] In its answer to the complaint, Omnitrans denied any wrongdoing.

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[1] The function of Extra Board drivers is discussed below.

[2] The MMBA is codified at Government Code section 3500 et seq. Section 3505 requires that "[t]he governing body of a public agency . . . shall meet and confer in good faith regarding wages, hours, and other terms and conditions of employment with representatives of . . . recognized employee organizations."

An informal settlement conference was scheduled for June 17, 2008, in the Los Angeles office of PERB. The day before, Omnitrans' attorney Carol Greene (Greene) phoned the PERB Board agent assigned to conduct the conference and left a message that she would not attend in person but would be available by telephone. She did not phone Omnitrans or its attorney. The Board agent was absent on June 16 and did not receive Greene's message until the morning of June 17. Officers of ATU and its attorney, William Flynn (Flynn), who flew to Los Angeles from his office in San Francisco, appeared at the PERB office for the settlement conference, at which time the Board agent conveyed Greene's message. ATU declined to proceed under these circumstances and left the PERB office. On June 25 ATU submitted a second amended charge and motion to amend the complaint, alleging the above facts and seeking attorney fees and costs based thereon.

Formal hearing was held by the undersigned on July 29 and 30, 2008. In his opening remarks at the hearing, ATU's attorney proposed the standard remedy as well as attorney fees and costs based on the settlement conference events. The second amended charge and motion to amend the complaint were denied on the basis that they do not allege unfair practices, nor are they necessary in order to obtain the requested remedy; however, the requested remedy was taken under consideration.

During the hearing ATU also moved to amend the complaint to include the unlawful formation of Omnitrans' Cultural Design Team (CDT), a matter referred to in the charge but not alleged therein as an unfair practice.[3] The motion was denied as untimely.

After the hearing, on December 18, 2008, ATU filed a motion to amend the complaint to allege Omnitrans' unilateral implementation of changes to EB procedures. The undersigned denied the motion by order dated December 22, 2008.

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[3] The CDT is described below.

Upon the filing of post-hearing briefs, the matter was submitted for decision on January 12, 2009.

FINDINGS OF FACT

Few of the facts are disputed. Omnitrans is a public agency within the meaning of MMBA section 3501(c). ATU is a recognized employee organization within the meaning of section 3501(b). Omnitrans provides public bus service in the San Bernardino area. It operates two facilities, East Valley located in San Bernardino under transportation manager Doug Stanley (Stanley) and West Valley located in Montclair under transportation manager John Steffon (Steffon). Omnitrans employs regular full-time bus drivers, regular part-time drivers, and relief drivers who fill in the additional 2 days per week for the regular drivers' 5-day schedules. It also allows its regular or relief drivers to bid on the EB for those times when they are not otherwise assigned. The EB covers unfilled assignments on a daily basis for last-minute absences, e.g., sick leave or emergency, and also for absences known in advance, e.g., jury duty, military leave, vacation, or extended sick leave. If the EB assignment will be for a week or more, it is called a "hold-down," which has its own procedure (see posting rules below). At any given time the EB has approximately 50 drivers on its roster.

Omnitrans and ATU have been parties to a series of collective bargaining agreements; the most recent Memorandum of Understanding (MOU) is dated April 1, 2004 through March 31, 2007. It contains no provision regarding the formation of a Focus Group or the CDT. The only provisions specifically regarding EB drivers are in Article 42, Seniority and Work Assignment, section G, Extra Board Posting:

> 1. It is the sole responsibility of the extra board operator to confirm their actual work assignment. The Agency agrees that the next day's Division Extra Board assignments, known at 1700 (5:00 p.m.) will be posted at 1800 (6:00 p.m.) at the Dispatch window in each Division. The posting will not be updated for assignments due to additional call offs, no shows, etc. The

postings will reflect the Extra Board personnel, their shift number assignment and initial sign on time. This posting will be removed between 1200 (noon) and 1300 (1:00 p.m.) on the day the assignments are worked.

2. Extra Board Hold Down Bidding. There will be a bid process by Operators signing on the Extra Board to bid durations of absence by other Operators from work of at least one week or more. This process will be a hold down process meant to cover the entire time posted for bid which should correspond to the period of absence an Operator is not at work. Hold Down Bid process will be used to cover absences due to vacation, extended known periods of sick leave, absence due to industrial injury or illness, military, personal leave, or any known absence that will last at least one week or more from work.

[If the Agency has been advised that an employee will vacate his/her assignment for a period of thirty (30) days or more the employee is placed in an inactive bid status, said assignment shall be covered as an Extra Board hold down for the remainder of the bid period or until that employee returns to work. In the case of maternity leave, the employee will return to the shift they vacated.][4]

Extra Board Operators will bid for these hold downs by their divisional classification seniority in the posting week which is the week prior to the start of the absence. The Operator will assume the days off on the assignment, pay and must work the entire duration of the posted bid. Some bids may be posted "until further notice" in which the successful bidder will remain on the assignment until the operator returns to work or the Bid Period ends which ever occurs first.

On Monday of each week Omnitrans will post for bid by extra board operators in each division all vacancies of at least one week or more. Bidding on the postings will end on 7:00 A.M. Friday of the same week. On Friday by Extra Board posting time (6:00 P.M.), the results of the bid process will be posted with successful bidders awarded and those forced by Dispatcher assignment, by inverse seniority because of lack of interest. Any Operator working an inversed hold down assignment may only get off the hold down as a result of new hires, changing seniority on the Extra Board or the expiration of the duration. Operators will be responsible for checking to see if their bid slip was

[4] In October 2007 the parties reached tentative agreement on a new MOU, dated April 1, 2007, through March 31, 2010. It has been drafted but not executed. This paragraph was added in the new MOU.

successful or whether they were forced by seniority to cover unbid work. Bid slips will contain the Extra Board Operator's name, badge and the option of bidding at least fifteen choices. All bid slips will be retained for at least three weeks should there be a question of seniority to resolve.

All bid work will be effective Monday morning of the following week and run until further notice or the end duration as posted. There will be a difference in color between an Open run bid slip and a Hold Down bid slip. Open bids are made by system seniority within division and Hold Down bids are made by classification seniority on the Extra Board of a division. Part time Operators will not work hold downs and open runs.

Article 8, Management Rights, provides:

All management rights and functions shall remain vested exclusively with the Agency, except those which are clearly and expressly limited in this M.O.U. It is recognized merely by way of illustration that such management rights and functions include, but are not limited to:

A. The right to determine the mission and organizational structure of each of its departments.

B. The right to full and exclusive control of the management of the Agency; supervision of all operations; determination of the position, assignment, direction, location and determination of the size and mission of the work force.

C. The right to determine the work to be done by the employees, including establishment of levels of service and staffing patterns.

D. The right to change or introduce new or improved operations, methods, means, facilities, or to contract for work to be done.

E. The right to contract (or sub-contract) any work or operation provided no employee employed as of March 31, 2004, or upon ratification is laid off as a result of the contracting or subcontracting.

The right to hire, schedule, set and enforce performance standards, promote, demote, reduce in step or grade, transfer, release, and layoff employees; to suspend, discipline, discharge regular employee only for just cause (all probationary employees are "at will"); to prescribe qualifications for employment and to determine whether they are met; to establish, revise and enforce

> work rules, and to otherwise maintain orderly, effective and efficient operations.

And Article 22, Grievance Procedure, defines a grievance as:

> 1. An alleged violation or noncompliance with the provisions of this M.O.U., the Agency's written personnel rules and regulations, or department rule[s] and regulations. No policy or practice can violate a written term of the M.O.U.[[5]]
>
> 2. It is further agreed that this grievance procedure will apply to any violation of noncompliance with the provisions of the M.O.U., the Agency's written personnel rules and regulations, department rules and regulations unless otherwise agreed by the parties. No policy or practice can violate a written term of the M.O.U.

Historically, EB assignments were rotated among drivers on the EB roster, i.e. the first opportunity would go to the first driver on the list and so forth; after finishing an EB assignment, the driver's name would then go to the bottom of the list. Rather than constantly rewriting the list, an arrow was used, which moved down the list to the next name when the previous name was assigned. Under that procedure, EB drivers could calculate whether or when on any given day they were likely to get an assignment. However, they could not be assured that their next assignment would be on any particular day or at any particular hour.

During negotiations for a successor agreement, in early to mid-2007, ATU made several proposals on EB procedures, including the addition of the following clauses on the following dates:

> February 20: The parties will meet and agree on the rules of operating the rotation of the Extra Board which will create consistency and accountability for Dispatcher decisions.
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> May 31: [same as above]
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> June 6: [same as above]

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[5] In the 2007-2010 MOU draft, the definition of a grievance is modified to read "An alleged violation or noncompliance with the <u>disciplinary</u> provisions of this M.O.U. . . ." [Underline added.]

> July 16: The parties will **meet and discuss** the Standard Operating Procedures for the Extra Board. A new set of procedures will be issued not more than sixty days after ratification which will create more objectivity, consistency and accountability for Dispatcher decisions. [Emphasis added.]
>
> July 31: The Agency will revise the current Standard Operating Procedures for the Extra Board after **meeting and discussing** them with the Union. A new set of procedures . . . [same as July 16]. [Emphasis added.]

All of ATU's proposals were rejected outright by Omnitrans and none are included in the Tentative Agreement for the 2007-2010 MOU.

In April 2007[6] Omnitrans established the CDT for the purpose, according to Director of Operations Paul Graham (Graham), of "look[ing] at better processes within those departments for efficiency, cost savings, general methodology of procedures and to be more, I guess, in touch with an exchange of communications with . . . all employees within Omnitrans to listen to their concerns and try to solve problems." Members of the CDT included representatives from the various departments, as well as drivers, who were paid to attend CDT meetings and were relieved of driving duties during those times. ATU president Dale Moore (Moore) was asked to join the CDT but he declined, often stating that the CDT had no authority to make changes to mandatory subjects of bargaining. Other ATU officers did participate in the CDT.

Graham testified that before the development of the CDT, dispatch supervisor Scott Huffman (Huffman) told him that some drivers had difficulty understanding how EB assignments were made and wanted the process to be easier and more flexible, and that the subject was raised again by drivers at CDT meetings. By memo to all drivers dated November 14 Graham announced the formation of a Focus Group to be composed of volunteers among senior and junior drivers, an ATU representative, a dispatcher, Huffman, Stanley, himself, and an outside facilitator, Kent Kingman (Kingman). As with the CDT, driver members were paid

[6] All dates refer to the year 2007 unless otherwise specified.

to attend meetings and were relieved of their driving duties. The announced purpose of the Focus Group was to speak with drivers, get their suggestions, and report to Graham regarding the rotation of EB assignments. The first Focus Group meeting was held on December 6. Curtis Wilkerson (Wilkerson), a regular driver from West Valley and an ATU Executive Board member, who served on both the CDT and the Focus Group, testified that at the first meeting, Kingman said that they were only going to discuss EB matters not covered by the MOU, and were not going to change anything in the MOU. Moore attended at least one of the meetings, and Graham kept him informed of the others. The information gathered by the Focus Group showed that some EB drivers wanted to keep the arrow, while others wanted to be able to bid, by seniority, for permanent day or hour slots. The Focus Group was not a part of the CDT and did not report to it; however, its findings were discussed at CDT meetings. At the CDT meeting on January 30, 2008, the Focus Group recommended that the arrow and the rotation be discontinued and that bidding be by seniority. The Focus Group held approximately ten meetings; the last was on February 13, 2008.

On December 5 Moore, a regular driver, filed a grievance under his own name contesting the formation of the Focus Group. He cited various violations of the MOU: Article I – Preamble; Article 2 – Exclusive Representative; Article 3 – Warranty of Capacity; Article 5 – Sole and Entire Memorandum of Understanding; Article 9 – Employee Rights; Article 37 – Overtime Pay; and Article 42 – Seniority and Work Assignment. On December 11 Graham denied the grievance on the grounds that Moore was not an affected employee, that the matter was outside the grievance procedure, and that Article 8 of the MOU gave Omnitrans the unilateral right to change procedures. Moore submitted a request for arbitration, which was denied by CEO/General Manager Durand Rall (Rall) on the same grounds. On December 10 ATU vice president Jeff Caldwell (Caldwell) filed a grievance contesting changes to EB bid-

posting procedures. MOU violations cited were Article 42 section G, and Article 22 – Grievance Procedure; also cited was "past practice." On December 21 Graham denied the grievance on the ground that it did not meet the MOU definition of a grievance. Caldwell filed a request for arbitration which Rall denied on the same ground. There is no evidence as to how Omnitrans handled prior grievances on similar issues, or even on different issues.

By memo of June 12, 2008,[7] to Moore, Graham summarized the work of the Focus Group as a "fact gathering process," and stated that management's goal was to make the EB easier and more understandable. Included in the memo is the following language:

> Although these improved business practices do not change any terms of the labor contract and only involve internal management procedures, you may consider some selected changes as meet and confer items. Therefore, as a final step I would like to schedule a meeting to address any concerns you may have regarding these improvements and come to some resolution in the interest of our employees . . . .

A few weeks later Graham asked Moore how his (Graham's) memo conflicted with the MOU. Moore refused to answer, believing that the matter should be discussed in formal negotiations rather than casual conversation. On July 3 Moore called Graham and suggested they meet and confer to produce a side letter for EB procedures which would then become part of the next MOU. Graham responded by letter of July 8 that he would be willing to negotiate a side letter limited to the bidding process but not the entire operating procedure, which would be subject only to "meet and discuss." A meeting was scheduled for July 21. On July 17 Moore met with Graham and Stanley regarding other issues. Graham asked what Moore thought was negotiable about EB procedures; Moore said he was not prepared to discuss the EB at that time and it would be a waste of time to meet unless it consisted of formal negotiations on the entire EB process; Graham rejected the suggestion. Moore then gave him a

[7] All dates hereafter refer to the year 2008 unless otherwise specified.

letter and said it was his answer. The letter stated that it was unacceptable to limit negotiations to just the EB bidding process because Omnitrans was obligated to negotiate the entire scope of EB matters. Graham cancelled the July 21 meeting.

By memo of September 2, Graham issued a new Standard Operating Procedure for the EB, providing, inter alia, for permanent bids rather than the arrow rotation method, to become effective on September 12. The proposed procedures also address bidding for stand-by and part-time operators, days off, work assignments and shifts, job postings, minimum pay hours, hold-down bidding, right of first refusal, and overtime. Omnitrans contends that the proposed procedures do not change any terms of the MOU. ATU argues that any change in the manner of rotation could result in changed work hours or earned wages for any particular EB driver, and that rotation as well as the proposed changes in days off, shifts, minimum pay, and overtime are matters within the scope of representation and would change terms of the MOU. Also, according to ATU, the new procedures were unilaterally implemented after the close of this hearing, but that matter is not before me, as noted above.

Moore testified that historically, e.g., in 2005, EB changes were made only after the parties met and discussed them and reached agreement. Specifically, he pointed to discussions he had with then-Director of Operations Cindy Peterson (Peterson) in November and December 2005 and a meeting he had with Huffman in November 2006 regarding EB procedures. The record also reflects discussions held between Omnitrans and ATU in March 2004. ATU contends that anything which changes the terms of the MOU or any terms or conditions of employment, e.g., wages, hours of work, or seniority, must be negotiated. However, outside of his letter of July 17, Moore never specified to Omnitrans, nor at the hearing, just which EB items must be negotiated and which items Omnitrans was free to change on its own. Further, Moore admitted that EB operating procedures are not included in

Omnitrans' policy manual, are not routinely given to new drivers upon hire, and are not sent to ATU unless requested, that some aspects of EB procedures need not be negotiated, and that the employer can speak to employees about workplace issues and request their feedback.

In Omnitrans' defense, Graham testified that he was unsure which EB matters were subject to negotiations and which were not, and looked to Moore for guidance which was not provided. Omnitrans contends that the arrow and rotation, along with other procedural matters, are not negotiable. Omnitrans contends that it has never engaged in formal negotiations on EB procedures, but rather has discussed the matter with ATU in an attempt to reach consensus, and has made unilateral changes thereafter. In that regard, Omnitrans points to ATU's last two EB proposals in 2007 in which changes in procedure were only to be "discussed." The record reflects that the most recent changes prior to those at issue were made in mid-2005, well before Moore's discussions with Peterson, which Omnitrans contends were not the result of negotiations, as no signed agreement was prepared. Further, the 2005 changes, like the September 2008 changes, did not contradict any terms of the MOU. Omnitrans also contends that the Focus Group only discussed information gathered by drivers but did not reach any decisions, and that when new procedures were proposed, Omnitrans offered to bargain over any items which ATU believed were negotiable; therefore Omnitrans was not trying to bypass the union.

Attorney's fees and costs

With regard to the settlement conference and ATU's request for attorney fees and costs, Moore admitted in testimony that ATU has gone forward with at least one settlement conference when Omnitrans participated by telephone. However, ATU did not provide evidence as to whether Omnitrans had ever appeared in person, how often Omnitrans did not appear in person, or what was different about the June 17 settlement conference and why ATU chose not to proceed, other than Moore's argument that it did not get its five-day notice.[8]

ISSUES

1. Did Omnitrans bypass its bargaining obligations to ATU by establishing the Focus Group to discuss EB bidding procedures?

2. Did Omnitrans unilaterally change its grievance policy by denying ATU's grievances regarding the Focus Group?

3. Should Omnitrans be assessed attorney fees and costs for failing to appear in person at the informal settlement conference?

CONCLUSIONS OF LAW

Focus Group

An employer may not communicate directly with employees to undermine or derogate the representative's exclusive authority to represent unit members. (Muroc Unified School District (1978) PERB Decision No. 80.) Similarly, the employer violates the duty to bargain in good faith when it bypasses the exclusive representative to negotiate directly with employees over matters within the scope of representation. (Walnut Valley Unified School District (1981) PERB Decision No. 160 (Walnut Valley).) However, once a policy has been

[8] The official Notice of Informal Conference, sent by the Board agent to the parties on May 12, 2008, states that a request to change the date of the conference must be submitted in writing no less than five working days prior to the scheduled date.

established by lawful means, an employer has the right to take necessary actions, including consulting with employees, to implement the policy. (Ibid.) To establish that an employer has unlawfully bypassed the union, the charging party must demonstrate that the employer dealt directly with its employees (1) to create a new policy of general application, or (2) to obtain a waiver or modification of existing policies applicable to those employees. (Ibid.)

As to work groups or discussion groups, in Oak Grove School District (1986) PERB Decision No. 582 (Oak Grove), the school district had established a "Teachers Forum," composed of staff representatives from each school, with the selection method determined by each principal; the union was not invited to participate as a separate entity. It met monthly and discussed various items, including those within the scope of representation as well as those currently being negotiated, although no actual negotiations took place at forum meetings. The Board found that the forum was a labor organization, and that by discussing negotiable items, it undermined the union's authority, and stated:

> This is not to say that all faculty councils or groups are per se unlawful, or that individual employees cannot speak to their employers about working conditions, including those within the scope of representation. But when the District sets up an organized group of teachers to meet at regular intervals on school time to discuss topics of mutual interest, it permits discussion of negotiable subjects at its own risk. [Id. at p. 18.]

The same reasoning was followed, and the same results reached, in Redwoods Community College District (1987) PERB Decision No. 650 (Redwoods), where a representative committee set up by the college district made recommendations to management on negotiable issues, and in Ventura Community College District (1994) PERB Decision No. 1073 (Ventura), where the college district "crossed the line by . . . openly deferring to [the employee committee] positions on negotiable topics."

However, in County of Fresno (2004) PERB Decision No. 1731-M, the Board upheld the dismissal of a charge which, in the dismissal letter, distinguished Oak Grove because the union was asked to, and did, provide the employer with a list of potential members to the employee committee, and because it had agreed in writing that "further discussions could be forthcoming if the County intended to make any changes that resulted from the recommendations of the [committee]." The dismissal letter goes on to state that "SEIU had ample opportunity to inquire of its members on the committee or of management what the scope of the committee's responsibility was." The letter concludes that the charge failed to establish that the county's establishment of the committee was an attempt to bypass the union.

Here, the Focus Group was a representative body. Unlike Oak Grove, Omnitrans management did not choose its members; they volunteered. ATU was invited to have a representative, ATU Executive Board member Wilkerson became a member, and ATU President Moore was specifically invited and attended one meeting. However, as in Oak Grove and Redwoods, it met regularly, and drivers who attended were paid for their time and released from their driving duties.

Further, while I do not see Focus Group meetings as "negotiations," the members did discuss negotiable subjects. In Anaheim City School District (1983) PERB Decision No. 364 (Anaheim), the Board held that a bidding procedure is a mandatory subject of bargaining:

> Since the various bus routes differed in the amount of time needed to complete them, the procedure for assigning bus drivers to a particular route directly determined the wages that employees would receive, their hours of employment, and the amount of relief time they were entitled to during the workday. . . (w)e conclude that the bidding procedure is reasonably and logically related to wages and hours of employment . . . .

(See also, Mt. San Antonio Community College District (1983) PERB Decision No. 297, where the employer unlawfully changed the rotation system for summer school assignments.)

Here, it is undisputed that a change in EB bidding procedure would have a general application to all EB drivers and would undoubtedly result in a change in work hours and wages for most, if not all, EB drivers. As in Oak Grove, Omnitrans permitted "discussion of negotiable subjects at its own risk," and as in Walnut Valley, these discussions could lead to "a new policy of general application" for EB drivers.

I do not find that the EB bidding procedures are covered by the MOU. It is not addressed in Article 42 section G, the only article which deals with the EB. Nor is it reserved to the agency by Article 8, the management rights clause. A change in the order in which drivers bid for assignments is not a new operation or method for work to be done (section D) - the same work would be done in the same manner by whomever would perform it. Nor does it fall within the agency's right to schedule employees, as a change in bidding order would have no effect on bus route schedules.

Graham's June 12, 2008, memo states his willingness to meet with Moore to discuss any concerns Moore might have that any changes would violate terms of the MOU or were subject to meet and confer. Graham also stated this to Moore personally more than once, and offered to meet and confer on the EB bidding process, but Moore rejected the offer, consistently responding that the entire scope of EB procedures must be negotiated. However, Graham's memo was sent long after the last Focus Group meeting in February 2008, and does not excuse those meetings. Further, the fact that Omnitrans had changed bidding procedures in the past without negotiating with ATU, or that ATU's last proposal in 2007 was to "meet and discuss" rather than "meet and confer," does not mean that the subject matter was no longer within the scope of representation or that ATU had "clearly and unmistakeably" waived its right to negotiate. (Lucia Mar Unified School District (2001) PERB Decision No. 1440.) Omnitrans did not have the right to go around the union and instead discuss this negotiable

subject with unit employees. (See, e.g., Clovis Unified School District (2002) PERB Decision No. 1504 (Clovis); employer may not deal directly with employees on matter which union opposed.)

Accordingly, I find that Omnitrans failed to bargain in good faith with ATU by bypassing it and establishing the Focus Group to discuss EB bidding procedures, in violation of MMBA section 3505. I further find that by this conduct, Omnitrans interfered with the rights of unit employees to be represented by ATU in violation of section 3506, and denied ATU its right to represent unit employees in violation of section 3503. (Clovis.)

Denial of grievance

In determining whether a party has made unlawful unilateral changes, PERB utilizes either the "per se" or "totality of the conduct" test, depending on the specific conduct involved and the effect of such conduct on the negotiating process. (Stockton Unified School District (1980) PERB Decision No. 143.). Unilateral changes are considered "per se" violations if Charging Party establishes that: (1) the employer implemented a change in policy concerning a matter within the scope of representation, and (2) the change was implemented before the employer notified the exclusive representative and gave it an opportunity to request negotiations. (Vernon Fire Fighters v. City of Vernon (1980) 107 Cal.App.3d 802; San Joaquin County Employees Association v. City of Stockton (1984) 161 Cal.App.3d 813; Grant Joint Union High School District (1982) PERB Decision No. 196.)

In the instant case, the parties' MOU limits the definition of a grievance to a violation of the terms of the MOU, written personnel rules and regulations, or department rules and regulations; it specifically excludes policy and past practice. Moore's grievance complains about the formation of the Focus Group and proposed changes to EB procedures, and Caldwell's grievance complains about new bid posting procedures; they both cite various

MOU violations. Omnitrans denied the grievances on the grounds that they did not conform to the MOU's definition of a grievance and that no MOU provision was violated.

I agree with Omnitrans. The MOU articles cited in Moore's grievance regarding the preamble, exclusive recognition of ATU, warranty of capacity, sole and entire understanding, employee rights, and overtime pay, are so tangential to the gravamen of his complaint, i.e., the formation of the Focus Group, as to be legitimately seen by Omnitrans as irrelevant boilerplate. The only MOU article relevant to his complaint is Article 42, Seniority and Work Assignment, specifically section G, Extra Board Posting. However, that section specifies time periods when bids are to be posted and how assignments are to be made; but does not specify what posting procedures are to be used or how the bidding order is to be determined, other than that it must be by seniority. What the Focus Group discussed was how the bidding order is to be determined, and there is no evidence that any of its suggestions would abrogate the seniority requirement. These discussions therefore do not appear to contradict any term of the MOU. Caldwell also cited Article 42 section G as well as "past practice." However, past practice is specifically excluded from the MOU definition of a grievance. Thus, Omnitrans could legitimately deny both grievances on the grounds that its conduct did not violate the MOU and also, therefore, that the grievances do not conform with the MOU's definition of a grievance.

More importantly, ATU presented no evidence that Omnitrans' denials of these grievances are any different from its denials of prior grievances or that it has otherwise changed the grievance procedure.

I therefore do not find that by denying these grievances, Omnitrans changed the grievance policy stated in the MOU.

Attorney's fees and costs

Educational Employment Relations Act (EERA)[9] section 3541.5(c) gives PERB the power "to take such affirmative action . . . as will effectuate the policies of this chapter." In Hacienda La Puente Unified School District (1998) PERB Decision No. 1280-E, the Board, citing this section, stated its long-held position that attorney's fees and costs were justified "where a case is without arguable merit, frivolous, vexatious, dilatory, pursued in bad faith or otherwise an abuse of process." In addition, such an award is appropriate where "incurred as a result of bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay." (Ibid.) The above principles have been applied to cases brought under the MMBA. (See, Marin County Law Library (2004) PERB Decision No. 1655a-M, where charging party was assessed attorney's fees and costs for its attorney's filing of a frivolous and derogatory request for reconsideration of a Board order.)

Thus, legal precedent allows for an award of attorney's fees and costs in the instant case, for Omnitrans' failure to appear in person at the settlement conference. However, I do not find that the agency engaged in a deliberate attempt to delay the proceedings, as its attorney was available by telephone. Nor do I find that it acted in bad faith. I am aware that Omnitrans failed to make a timely request that the hearing be rescheduled, that Greene notified the Board agent only the day before the informal hearing that neither she nor her client would attend, and that neither the Board agent, ATU, or Flynn were aware of this situation until the morning of the hearing, after which Flynn had already come to Los Angeles from San Francisco. However, I do not agree with ATU that "Omnitrans' failure to appear resulted in the cancellation of the informal conference." As noted above, ATU acknowledged that it had participated in a prior settlement conference when Omnitrans appeared by telephone, and it did

[9] EERA is codified at Government Code section 3540 et seq.

not proffer any reason why the instant settlement conference was different, or why it could not proceed under the circumstances.

I do not find Greene's conduct so frivolous or egregious as to award attorney fees or costs. Accordingly, ATU's motion is DENIED. However, I do not condone Greene's conduct, and this Order should be taken as a warning that sanctions may be assessed should this situation occur again in the future.

REMEDY

Section 3509(b) of the Act gives the Board the exclusive jurisdiction to determine "the appropriate remedy necessary to effectuate the purposes of this chapter . . . ."

Here is has been found that Omnitrans violated sections 3505, 3506, and 3503 of the Act by bypassing ATU and dealing directly with unit employees through its establishment of the Focus Group and discussions on EB bidding procedures. It is therefore appropriate that Omnitrans be ordered to cease and desist from such conduct. It is also appropriate that Omnitrans be required to post a notice incorporating the terms of this order, signed by an authorized agent of Omnitrans indicating that it will comply with the terms thereof. The notice shall not be defaced, reduced in size or otherwise altered. Posting such a notice will provide employees with notice that Omnitrans has acted unlawfully and is being required to cease and desist from this activity and otherwise to comply with the order. It effectuates the purposes of the Act that employees be informed of the resolution of this controversy and of Omnitrans' readiness to comply with the ordered remedy. (Placerville Union School District (1978) PERB Decision No. 69.)

PROPOSED ORDER

Based on the foregoing and the record as a whole, it has been found that Omnitrans did not violate the Act by unilaterally changing the grievance policy; therefore those portions of

the complaint in the matter of Amalgamated Transit Union Local 1704 v. Omnitrans, Case No. LA-CE-427-M are hereby DISMISSED. It has also been found that Omnitrans violated sections 3505, 3506, and 3503 of the Act by bypassing Amalgamated Transit Union Local 1704 (ATU) and dealing directly with unit employees on negotiable subjects. Pursuant to Government Code section 3509(b), it is hereby ORDERED that Omnitrans, its governing board and its representatives shall:

A. CEASE AND DESIST FROM:

1. Bypassing ATU and dealing directly with bargaining unit employees on negotiable subjects, including bidding procedures for Extra Board assignments;

2. Interfering with the rights of employees to be represented by ATU;

3. Denying to ATU its right to represent bargaining unit employees.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE ACT:

1. Upon demand, bargain with ATU regarding any change in Extra Board procedures, including bidding procedures for Extra Board assignments;

2. Within ten (10) workdays of the service of a final decision in this matter, post at all work locations where notices to employees in Omnitrans customarily are posted, copies of the Notice attached hereto as an Appendix. The Notice must be signed by an authorized agent of Omnitrans, indicating that it will comply with the terms of this Order. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to ensure that the Notice is not reduced in size, altered, defaced or covered with any other material.

3. Written notification of the actions taken to comply with this Order shall be made to the General Counsel of the Public Employment Relations Board (PERB or Board),

or the General Counsel's designee. Respondent shall provide reports, in writing, as directed by the General Counsel or his/her designee. All reports regarding compliance with this Order shall be concurrently served on ATU.

Pursuant to California Code of Regulations, title 8, section 32305, this Proposed Decision and Order shall become final unless a party files a statement of exceptions with the Public Employment Relations Board (PERB or Board) itself within 20 days of service of this Decision. The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95811-4124
(916) 322-8231
FAX: (916) 327-7960

In accordance with PERB regulations, the statement of exceptions should identify by page citation or exhibit number the portions of the record, if any, relied upon for such exceptions. (Cal. Code Regs., tit. 8, sec. 32300.)

A document is considered "filed" when actually received during a regular PERB business day. (Cal. Code Regs., tit. 8, secs. 32135(a) and 32130; see also Government Code section 11020(a).) A document is also considered "filed" when received by facsimile transmission before the close of business together with a Facsimile Transmission Cover Sheet which meets the requirements of California Code of Regulations, title 8, section 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Cal. Code Regs., tit. 8, sec. 32135(b), (c) and (d); see also Cal. Code Regs., tit. 8, secs. 32090 and 32130.)

Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall accompany each copy served

on a party or filed with the Board itself. (See Cal. Code Regs., tit. 8, secs. 32300, 32305, 32140, and 32135(c).)

Ann L. Weinman
Administrative Law Judge