

CHARTER AMENDMENT

Note: Additions are *italics, Times New Roman, single underlined.*

Deletions are ~~*strikethrough italics, Times New Roman*~~

Section 1: FINDINGS

Whereas, an effective, efficient, and reliable public transit system is essential to the quality of life, public health, social justice, economic growth, and the environment of the City and County of San Francisco; and

Whereas, effective, efficient, and reliable public transit depends on having labor agreements that are supportive of providing high quality, efficient service to riders; and

Whereas, labor costs are the most significant portion of the Municipal Transportation Agency's (Agency) budget; and

Whereas, the present system for establishing wages for Municipal Railway (MUNI) operators is based on a "formula" that guarantees transit operator wages are at least the second-highest in the country, without requiring that operators bargain for this high level of compensation; and

Whereas, higher labor costs inevitably undercut the Agency's ability to preserve and enhance services; and

Whereas, the voters find that the most appropriate way to establish wages, benefits, and working conditions is through collective bargaining between labor and management; and

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Whereas, the City relies upon collective bargaining to achieve labor agreements with other City employees, with bargaining disputes resolved by a neutral arbitrator; and

Whereas, that system is fair to both the public and employees, and bars strikes by public employees; and

Whereas, the current system for setting transit operator wages prevents effective collective bargaining; and

Whereas, the voters find that transit operator wages should be set by a collective bargaining process that is similar to the process generally used to determine wages for other City employees and other transit systems nationwide; and

Whereas, the voters find and declare that some provisions of existing labor agreements also restrict the ability of the Agency to schedule, deploy, and assign employees in a manner that reflects service and ridership needs, and are therefore an impediment to effective, efficient, and reliable transit operations; and

Whereas, antiquated and inflexible rules contained in labor agreements undercut the City's "Transit First" Policy set forth in Charter section 8A.115 by failing to ensure that employees have their primary work hours scheduled at the times when their services are most needed; and

Whereas, so called "past practices" and side-letters that are not spelled out in a Memorandum of Understanding ("MOU") preserve antiquated and inflexible practices that impair transit operations; and

Whereas, some past practices and side-letters have not been subjected to public scrutiny because they have not been approved by the Agency; and

Whereas, the voters of San Francisco believe the Agency should operate based on best practices, not past practices; and

Whereas, the taxpayers of San Francisco and those who rely on the Agency for service require a system of labor relations that is transparent, and enables them to understand the terms of labor agreements with the public sector workforce; and

Whereas, the voters reiterate the "Transit First" policy and further find that to achieve this policy, labor relations at the Agency must be guided by the principle of "Service First," giving first priority to the needs of the people of San Francisco who rely on the Agency; and

Whereas, the voters find that a broad overhaul of the compensation structure and labor rules and practices is necessary to preserve and expand transit services to the public;

Now, therefore, the qualified electors of the City and County of San Francisco amend their charter as set forth below.

Section 2. The San Francisco Charter is hereby amended by amending Sections 8A.104 and A8.404, relating to the wages, hours, benefits, and terms and conditions of employment of employees of the Municipal Transportation Agency, to read as follows:

SEC. 8A.104. PERSONNEL AND MERIT SYSTEM.

(a) The Agency shall establish its own personnel/labor relations office. The Director of Transportation shall appoint a personnel/labor relations manager, who shall serve at the pleasure of the Director of Transportation and shall establish regular meetings with labor to discuss issues within the scope of representation on terms to be determined through collective bargaining.

(b) Except as otherwise provided in this Section, the Agency shall be governed by the rules of the civil service system administered by the City and appeals provided in civil service rules shall be heard by the City's Civil Service Commission. Unless otherwise agreed by the Agency and affected employee organizations, appeals to the Civil Service Commission shall include only those matters within the jurisdiction of the Civil Service Commission which establish, implement, and regulate the civil service merit system as listed in Section A8.409-3.

(c) Effective July 1, 2000, except for the administration of health services, the Agency shall assume all powers and duties vested in the Department of Human Resources and the Director of Human Resources under Articles X and XI of this Charter in connection with job classifications within the Agency performing "service-critical" functions. Except for the matters set forth in subsection (f), the Department of Human Resources and the Director of Human Resources shall maintain all powers and duties under Articles X and XI as to all other Agency employees.

(d) On or before April 15, 2000, the Agency shall designate "service-critical" classifications and functions for all existing classifications used by the

Municipal Railway; provided, however, that employees in classifications designated as "service-critical" shall continue to be covered by any Citywide collective bargaining agreement covering their classifications until the expiration of that agreement.

(e) For purposes of this Article, "service-critical" functions are:

1. Operating a transit vehicle, whether or not in revenue service;
2. Controlling dispatch of, or movement of, or access to, a transit vehicle;
3. Maintaining a transit vehicle or equipment used in transit service, including both preventive maintenance and overhaul of equipment and systems, including system-related infrastructure;
4. Regularly providing information services to the public or handling complaints; and
5. Supervising or managing employees performing functions enumerated above.

The Agency shall consult with affected employee organizations before designating particular job classifications as performing "service-critical" functions. If an employee organization disagrees with the Agency's designation of a particular job classification as "service-critical" pursuant to the above standards, the organization may, within seven days of the Agency's decision, request immediate arbitration. The arbitrator shall be chosen pursuant to the procedures for the selection of arbitrators contained in the memorandum of understanding of the affected employee organization. The arbitrator shall determine only whether

the Agency's designation is reasonable based on the above standards. The arbitrator's decision shall be final and binding.

The Agency may designate functions other than those listed above, and the job classifications performing those additional functions, as "service-critical," subject to the consultation and arbitration provisions of this Section. In deciding a dispute over such a designation, the arbitrator shall decide whether the job functions of the designated classes relate directly to achievement of the goals and milestones adopted pursuant to Section 8A.103 and are comparable to the above categories in the extent to which they are critical to service.

(f) In addition, the Agency shall, with respect to all Agency employees, succeed to the powers and duties of the Director of Human Resources under Article X to review and resolve allegations of discrimination, as defined in Article XVII, against employees or job applicants, or allegations of nepotism or other prohibited forms of favoritism. To the extent resolution of a discrimination complaint or request for accommodation involves matters or employees beyond the Agency's jurisdiction, the Agency shall coordinate with and be subject to applicable determinations of the Director of Human Resources.

(g) The Agency shall be responsible for creating and, as appropriate, modifying Agency bargaining units for classifications designated by the Agency as "service-critical" and shall establish policies and procedures pursuant to Government Code sections 3507 and 3507.1 for creation and modification of such bargaining units. When the Agency creates or modifies a bargaining unit,

employees in existing classifications placed in such bargaining unit shall continue to be represented by their current employee organizations.

(h) The Agency may create new classifications of Agency employees. Such classifications shall be subject to the civil service provisions of the Charter unless exempted pursuant to Section 10.104, or subsection (i).

(i) The Agency may create new classifications and positions in those classifications exempt from the civil service system for managerial employees in MTA bargaining units M and EM in addition to those exempt positions provided in Section 10.104; provided, however, that the total number of such exempt managerial positions within the Agency shall not exceed 2.75 percent of the Agency's total workforce, exclusive of the exempt positions provided in Section 10.104. This provision shall not be utilized to eliminate personnel holding existing permanent civil service managerial positions on November 2, 1999.

Persons serving in exempt managerial positions shall serve at the pleasure of the Director of Transportation. Such exempt management employees, to the extent they request placement in a bargaining unit, shall not be placed in the same bargaining units as non-exempt employees of the Agency.

(j) The Civil Service Commission shall annually review both exempt and non-exempt classifications of the Agency to ensure compliance with the provisions of subsections (h) and (i).

(k) Upon the expiration of labor contracts negotiated by the Department of Human Resources and approved by the Board of Supervisors, and except for retirement benefits, the wages, hours, working conditions, and benefits of the

employees in classifications within the Municipal Railway designated by the Agency as "service-critical" shall be fixed by the Agency after meeting and conferring as required by the laws of the State of California and this Charter, including Sections A8.346, A8.404 and A8.409. These agreements shall utilize, and shall not alter or interfere with, the health plans established by the City's Health Service Board; provided, however, that the Agency may contribute toward defraying the cost of employees' health premiums. For any job classification that exists both as a "service-critical" classification in the Agency and elsewhere in City service, the base wage rate negotiated by the Agency for that classification shall not be less than the wage rate set in the Citywide memorandum of understanding for that classification.

(l) Notwithstanding subsection (k), the Agency may, in its sole discretion, utilize the City's collective bargaining agreements with any employee organization representing less than 10 percent of the Agency's workforce.

(m) ~~Notwithstanding any limitations on compensation contained in Section A8.404, and i~~In addition to the base pay established in collective bargaining agreements, ~~all~~ agreements negotiated by the Agency relating to compensation for Agency managers and employees in classifications designated by the Agency as "service-critical" shall ⁴~~shall~~ may provide incentive bonuses based upon the achievement of the service standards in Section 8A.103(c) and other standards and milestones adopted pursuant to Section 8A.103. Such agreements may also provide for additional incentives based on other standards established by the Board of Directors, including incentives to improve attendance. The Board of

Directors ~~shall~~ may also establish a program under which a component of the compensation paid to the Director of Transportation and ~~all~~ exempt managers ~~shall be~~ is based upon the achievement of service standards adopted by the Board of Directors. Notwithstanding any other provision of Article 8A, all such incentive programs shall be at the sole discretion of the Agency Board of Directors, subject to any bargaining obligation imposed by state law.

(n) For employees whose wages, hours and terms and conditions of employment are set by the Agency, ~~pursuant to Sections A8.404 or A8.409 et seq.,~~ the Agency shall exercise all powers of the City and County, the Board of Supervisors, the Mayor, and the Director of Human Resources under ~~those sections Sections A8.404 and A8.409.~~ ~~For employees covered by Section A8.409 et seq.,~~ ~~The~~ mediation/arbitration board set forth in Section A8.409-4 shall consider the following additional factors when making a determination in any impasse proceeding involving the Agency: the interests and welfare of transit riders, residents, and other members of the public; ~~and~~ the Agency's ability to meet the costs of the decision of the arbitration board without materially reducing service or requiring that the Agency raise fares in a manner inconsistent with Section 8A.108(b); 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. Notwithstanding the timelines described in Section A8.409-4, to be effective the beginning of the next succeeding fiscal year, all collective bargaining agreements must be submitted to the Board of Directors no later than June 15 for final adoption on or before June 30. ~~For employees whose wages, hours and terms and conditions of employment are set~~

~~by the Agency pursuant to Sections A8.404, the Agency shall perform the functions of the Civil Service Commission with respect to certification of the average of the two highest wage schedules for transit operators in comparable jurisdictions pursuant to Section A8.404(a), and conduct any actuarial study necessary to implement Section A8.404(f).~~

(o) The voters find that for transit system employees whose wages, hours and terms and conditions of employment are set by the Agency, the Agency's discretion in establishing and adjusting scheduling, deployment, assignment, staffing, sign ups, and the use and number of part-time transit system personnel based upon service needs is essential to the effective, efficient, and reliable operation of the transit system. In any mediation/arbitration proceeding under Section 8.409-4 with an employee organization representing transit system employees, the employee organization shall have the burden of proving that any restrictions proposed on the Agency's ability to exercise broad discretion with respect to these matters are justified. To meet this burden, the employee organization must prove by clear and convincing evidence that the justification for such restrictions outweighs the public's interest in effective, efficient, and reliable transit service and is consistent with best practices. The mediation/arbitration board shall not treat the provisions of MOUs for transit system employees adopted prior to the effective date of this provision as precedential in establishing the terms of a successor agreement. The mediation/arbitration board's jurisdiction shall be limited to matters within the mandatory scope of bargaining under state law.

~~(o)(p)~~ The voters find that unscheduled employee absences adversely affect customer service. Accordingly, not later than January 1, 2001, the agency shall create a comprehensive plan for the reduction of unscheduled absences. In

addition, the Agency shall take all legally permitted steps to eliminate unexcused absences. Neither tThe Agency nor an arbitrator shall have no authority to approve or award any memorandum of understanding or other binding agreement which restricts the authority of the Agency to administer appropriate discipline for unexcused absences.

(q) In addition, the voters find that Agency service has been impaired by the existence of side-letters and reliance on "past practices" that have been treated as binding or precedential but have not been expressly authorized by the Board of Directors or the Director of Transportation, and have not been and are not subject to public scrutiny. Accordingly, for employees whose wages, hours and terms and conditions of employment are set by the Agency, no side-letter or practice within the scope of bargaining may be deemed binding or precedential by the Agency or any arbitrator unless the side-letter or practice has been approved in writing by the Director of Transportation or, where appropriate, by the Board of Directors upon the recommendation of the Director of Transportation and appended to the MOU of the affected employee organization or organizations subject to the procedures set out in this charter. No MOU or arbitration award approved or issued after the November 2010 general election shall provide or require that work rules or past practices remain unchanged during the life of the MOU, unless the specific work rules or past practices are explicitly set forth in the MOU. All side-letters shall expire no later than the expiration date of the MOU.

~~(p)(r)~~ Before adopting any collective-bargaining-tentative agreement with an employee organization covering matters within the scope of representation, the Agency

shall, ~~no later than June 15,~~ at a duly noticed public meeting, disclose in writing the contents of such ~~collective bargaining~~ tentative agreement, a detailed analysis of the proposed agreement, a comparison of the differences between the agreement reached and the prior agreement, ~~and~~ an analysis of all costs for each year of the term of such agreement, and whether funds are available to cover these costs. Such tentative agreement between the Agency and employee organization shall not be approved by the Agency until 15 calendar days after the above disclosures have been made.

A8.404 SALARIES AND BENEFITS OF CARMEN

(a) The wages, conditions and benefits of employment ~~as provided for in this section~~ of the various classifications of employment of platform employees and coach or bus operators of the municipal railway as compensation, shall be determined ~~and fixed annually as follows:~~ pursuant to Charter section A8.409 et seq. as modified by Charter section 8A.104.

(b) In the first MOU negotiated or awarded through arbitration pertaining to transit operators covered by this section after the November 2010 general election, the Agency's contribution for active employee health coverage shall not be less than the City contribution for the majority of other employees covered by section A8.409 et seq. for the employee only, and at each level of dependent coverage provided under the Health Service System. This subsection may be waived upon the mutual consent of the Agency and the employee organization representing transit operators.

~~(a) On or before the first Monday of August of each year, the civil service commission shall certify to the Board of Supervisors for each classification of~~

~~employment the average of the two highest wage schedules in effect on July 1st of that year for comparable platform employees and coach or bus operators of other surface street railway and bus systems in the United States operated primarily within the municipalities having each a population of not less than 500,000 as determined by the then most recent census taken and published by the director of the census of the United States, and each such system normally employing not less than 400 platform employees or coach or bus operators, or platform employees; coach and bus operators.~~

~~(b) The Board of Supervisors shall thereupon fix a wage schedule for each classification of platform employees and coach and bus operators of the municipal railway which shall not be less than the average of the two highest wage schedules so certified by the civil service commission for each such classification.~~

~~(c) When, in addition to their usual duties, such employees are assigned duties as instructors of platform employees or coach or bus operators they shall receive additional compensation that shall be subject to negotiation in addition to the rate of pay to which they are otherwise entitled under the wage schedule as herein provided.~~

~~(d) The rates of pay fixed for platform employees and coach and bus operators as herein provided shall be effective from July 1st of the year in which such rates of pay are certified by the civil service commission.~~

~~(e) The terms "wage schedule" and "wage schedules" wherever used in this section are hereby defined and intended to include only the maximum rate of pay provided in each such wage schedule.~~

~~(f) At the time the Board of Supervisors fixes the wage schedule as provided in (b) above, the Board of Supervisors may fix as conditions and benefits of employment other~~

~~than wages as compensation for platform employees and coach or bus operators of the municipal railway, conditions and benefits not to exceed those conditions and benefits granted by collective bargaining agreements to the comparable platform employees and coach or bus operators of the two systems used for certification of the average of the two highest wage schedules by the civil service commission. The Board of Supervisors may establish such conditions and benefits notwithstanding other provisions or limitations of this Charter, with the exception that such conditions and benefits shall not involve any change in the administration of, or benefits of the Retirement System, health service system or vacation allowances as provided elsewhere in this Charter. For all purposes of the Retirement System as related to this section, the word "compensation" as used in Section 8.509 of this Charter shall mean the "wage schedules" as fixed in accordance with paragraphs (a) and (b) above, including those differentials established and paid as part of wages to platform employees and coach and bus operators of the municipal railway, but shall not include the value of those benefits paid into the fund established as herein provided. Provided that when in the two systems used for certification as provided above, vacation, retirement and health service benefits are greater than such similar benefits provided by this Charter for platform employees, coach or bus operators of the municipal railway, then an amount not to exceed the difference of such benefits may be converted to dollar values and the amount equivalent to these dollar values shall be paid into a fund. The fund shall be established to receive and to administer said amounts representing the differences in values of the vacation, retirement and health service benefits, and to pay out benefits that shall be jointly determined by representatives of the City and County government and the representatives of the organized platform employees~~

~~and coach and bus operators of the municipal railway. The civil service commission shall adopt rules for the establishment and general administration of the fund as herein provided. Such rules shall provide for a joint administration of the fund by representatives of the City and County government, which shall include representatives of the administrator of the agency responsible for the municipal railway and representatives of the organized platform employees, coach and bus operators of the municipal railway. Such rules may provide a procedure for final and binding arbitration of disputes which may arise between representatives of the City and County government and the representatives of the organized platform employees and coach and bus operators of the municipal railway. Such rules shall provide that all investments of the fund shall be of the character legal for insurance companies in California. Such rules and any amendments thereto shall be effective upon approval by the Board of Supervisors by ordinance.~~

~~(g) Notwithstanding any provisions of this Charter, including other subparts of this section, the Board of Supervisors may, after meeting and conferring with and reaching agreement with the employee organization certified as the representative for municipal railway operators, fix wages and benefits of employment other than wages for platform employees and coach and bus operators of the municipal railway under this section for periods in excess of one year. Any ordinance fixing wages and benefits of employment other than wages adopted pursuant to this section for a period of more than one year shall contain a provision to the effect that during said period of time it shall be unlawful for the employees receiving the compensation so fixed to engage in a strike; work stoppage or conduct delaying or interfering with work at City and County facilities.~~

~~Wages and benefits of employment other than wages established under this section shall not in any year exceed the limits established under paragraphs (b) and (f) of this section.~~

~~(h) Not later than the 25th day of August, the Board of Supervisors shall have the power and it shall be its duty, subject to the fiscal provisions of the Charter but, without reference or amendment to the annual budget, to amend the annual appropriation ordinance and the annual salary ordinance as necessary to include the provisions for paying the rates of compensation and conditions and benefits other than wages fixed by the Board of Supervisors as in this section provided for platform employees and coach or bus operators for the then current fiscal year.~~

~~On recommendation of the civil service commission the Board of Supervisors shall establish a rate of pay for trainee platform men and bus or coach operators at a level reflecting the current labor market but below the basic hourly rate for motorman, conductor and bus operator.~~

Section 3: Severability. This Charter Amendment shall be interpreted so as to be consistent with all federal and state laws, rules, and regulations. If any section, sub-section, sentence, or clause ("portion") of this Amendment is held to be invalid or unconstitutional by a final judgment of a court, such decision shall not affect the validity of the remaining portions of this Amendment. The voters hereby declare that this Amendment, and each portion, would have been adopted irrespective of whether any one or more portions of the Amendment are found invalid. If any portion of this Amendment is held invalid as applied to any person or circumstance, such invalidity shall not affect any application of this Amendment which can be given effect. This Amendment shall be broadly

construed to achieve its stated purposes. It is the intent of the voters that the provisions of this Amendment be interpreted or implemented by the City and County, Agency, courts, and others in a manner that facilitates the purposes set forth herein.

Section 4: Effective date. This Charter Amendment shall be effective upon its acceptance and filing by the California Secretary of State under California Government Code sections 34450.

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