

1 DAVID A. CONCEPCION
65 Stevenson Avenue
2 Berkeley, California 94708
(415) 849-3832

California State Mediators
and Conciliation Service
Arbitrator's Case No. 05-20-80

3
4
5
6
7
8
9
10

IN PROCEEDINGS PURSUANT TO
CALIFORNIA PUBLIC UTILITIES CODE SECTION 28851

11 In the Matter of Unit Clarification)
12 for)
13 BARGAINING UNIT OF THE SAN FRANCISCO)
BAY AREA RAPID TRANSIT DISTRICT)
14)
15 Involving accretion of Emergency)
Procedures Advisors to one of the)
16 established bargaining units.)
17)

HEARING OFFICER'S
OPINION AND RECOMMENDATION

18
19
20
21
22
23

These proceedings arise pursuant to California Public Utilities Code Section 28851 under which DAVID A. CONCEPCION was appointed by the Director of the California State Department of Industrial Relations to recommend to the Director disposition of this matter.

24
25
26

Hearing was held in Oakland, California on May 20, 1980. The parties to the proceedings were SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT, hereinafter referred to as "BART," AMALGAMATED

1 TRANSIT UNION, DIVISION 1555, hereinafter referred to as "ATU,"
2 UNITED PUBLIC EMPLOYEES, LOCAL 390, hereinafter referred to as "UPE,"
3 and SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT POLICE MANAGERS
4 ASSOCIATION, hereinafter referred to as "BPMA." The parties were
5 afforded the opportunity, of which they availed themselves, for
6 presentation of testimony, for introduction of relevant exhibits,
7 for examination and cross-examination of witnesses and for argument.
8 Further, the parties stipulated to submission of past hearing briefs
9 on or before June 23, 1980. All briefs were received in a timely
10 manner.

11
12 APPEARANCES

13 On behalf of BART

14 Renee Benjamin
15 Attorney at Law
16 800 Madison Street
Oakland, California 94607

17 On behalf of ATU

18 Alan N. Kopke
19 Attorney at Law
Neyhart, Anderson, Nussbaum & Reilly
20 100 Bush Street, Suite 2600
San Francisco, California 94104

21 On behalf of UPE

22 W. Daniel Boone
23 Attorney at Law
Van Bourg, Allen Weinberg & Roger
24 875 Battery Street
San Francisco, California 94111

25 ///

26 ///

1 order to be represented for the purpose of collective bargaining.

2 By direction, the Director initiated these proceedings which
3 shall result in a recommendation to him as to disposition of this
4 matter.

5
6 DISCUSSION

7 Historically, the Director of the Department of Industrial
8 Relation has made unit determinations concerning BART. The current
9 units were decided in 1973 and were followed by elections which
10 resulted in recognition of certain labor organizations to represent
11 the employee of the units as well as subunits. When BART created
12 a new group of employees to meet its need to provide an attendant
13 on its trains, in addition to the Train Operator, a question of
14 who should represent these employees was also created. If the
15 Emergency Procedures Advisors had existed at the time of initial
16 unit determination they would have been afforded the opportunity of
17 selecting their collective bargaining representative by ballot
18 election. However, they were not, and as a result they should be
19 accreted to a unit which is most representative of their community
20 of interest.

21 BPMA contends that a sufficient community of interest exists
22 between its organization and Emergency Procedures Advisors, based
23 on duties performed as well as supervision, including training, to
24 justify accretion to BPMA. BART supports the BPMA position as
25 logical and administratively convenient in that the function per-
26 formed by Emergency Procedure Advisors involves not only safety and

1 On behalf of BPMA

2 Ben K. Dabalos, President
3 BART Policy Managers Association
4 800 Madison Street
5 Oakland, California 94607

6 Larry I. Danner
7 Executive Board Member
8 BART Police Managers Association
9 800 Madison Street
10 Oakland, California 94607

11 BACKGROUND

12 Emergency Procedures Advisors are a class of employees
13 created as a result of action by the Public Utilities Commission
14 following a fire in the Transbay Tube on January 17, 1979. The
15 essence of the Commission's action was that BART could resume
16 service through the Tube provided a second attendant, that is,
17 Emergency Procedures Advisors were on each train to assist in
18 emergencies. Accordingly, BART hired twenty Emergency Procedures
19 Advisors and placed them in the Department of Field Services under
20 the supervision of BART Police Department management.

21 Emergency Procedures Advisors being new to BART were not
22 represented for the purpose of collective bargaining. Consequently,
23 on September 12, 1979, ATU filed a Petition for Unit Clarification
24 with the California State Department of Industrial Relations noting
25 that its Director is empowered under Section 28851 of the Public
26 Utilities Code and Title 8 of the California Administrative Code,
 Section 15902 to determine the appropriate collective bargaining
 unit within which Emergency Procedures Advisors shall be placed in

1 evacuation assistance, but also includes emergency response and
2 security procedures. Further, the latter reasons prompted BART to
3 place Emergency Procedures Advisors under its Police Department for
4 administration and supervision.

5 While there is a functional community of interest, the fact
6 that BPMA members are the supervisors of Emergency Procedures
7 Advisors presents a conflicting employment interest adverse to
8 effective representation and renders BPMA less suitable to accrete
9 the Emergency Procedures Advisors than the other labor organizations
10 which do not have a managerial relationship with these employees.

11 The primary function of Emergency Procedures Advisors is
12 serve as the second uniformed attendant on each train in compliance
13 with Decision No. 90144 of the Public Utilities Commission. In
14 performing their duties Emergency Procedures Advisors respond to
15 requests for assistance from Train Operators, Police Officers, BART
16 Control and others, including the riding public. Also as a result
17 of their duties, they interface with Station Agents, Consumer
18 Affairs Representatives, Fire Vehicle Operators and Maintenance
19 Personnel.

20 Emergency Procedures Advisors are part-time employees who
21 ride trains as they transverse the Transbay Tube and Berkeley Hills
22 Tunnel during peak rider periods. Their presence on the trains is
23 primarily to assist the Train Operator in the event of an evacuation
24 of the train; however, their typical duties also encompass maintain-
25 ing compliance with policies and practices governing conduct on the
26 trains, removing combustible materials, and performing crowd control

1 duties.

2 UPE's claim is based on a community of interest in terms of
3 hours of work, employment benefits, job qualifications, training
4 and skills, similarity of job function, contact with other employees,
5 and integration of work functions with others. In its brief, UPE
6 shows how it satisfies the foregoing criteria and concludes that its
7 claim, if not predominant is equal to that of ATU.

8 There is no doubt that UPE can satisfy the basic application
9 of the community of interest criteria; however, the strength of the
10 claim is based on its representation of the only other part-time
11 employees at BART and the similarity of the function performed by
12 Consumer Affairs Representatives, of which there are two, as well
13 as interaction with Maintenance Personnel and Fire Vehicle Operators
14 in the event of an emergency, with those functions performed by
15 Emergency Procedures Advisors. UPE concludes that the appropriate
16 method of determination is an election in which Emergency Procedures
17 Advisors may select either UPE or ATU.

18 UPE's suggestion of an election is not without merit; however,
19 beyond the community of interest is the effect of accretion on
20 existing bargaining relationships including availability and
21 authority of employer representatives to deal effectively with
22 employee organizations. In this latter regard, Emergency Procedures
23 Advisors being part of Police Service come under the Field Services
24 Division. UPE has only one member in this Division. Consequently,
25 accretion of Emergency Procedures Advisors to UPE would require
26 that BART labor relations personnel situated in the Support and

1 Analysis function of Field Services gain extensive knowledge of the
2 UPE contract in addition to its current administration of the ATU,
3 BPMA and BART Police Officers Association contracts. (BPOA did not
4 pursue accretion of the Emergency Procedures Advisors.)

5 Although the Emergency Procedures Advisors relate to employees
6 who are members of BPMA and UPE the strongest correlation is to the
7 Train Operators who are members of ATU. As was revealed at the
8 hearing, the Emergency Procedures Advisors serve to observe what is
9 happening on the train as a direct function and on behalf of the
10 Train Operator, and it is through the Train Operator that they have
11 their primary communication. Also, like the Train Operator, their
12 primary duty station is on the train. The likeness of duties vary
13 at the secondary level, but in an emergency if the Train Operator
14 is unable to lead the evacuation that duty falls to the Emergency
15 Procedures Advisors.

16 Moreover, the terms and conditions of employment designed
17 for Train Operators are a product of where they work and it is the
18 same place that the Emergency Procedures Advisors perform their
19 primary duties.

20 Given the testimony and the able arguments setforth in the
21 post-hearing briefs of the parties, each union has shown it is able
22 and willing to represent the collective bargaining interest of the
23 Emergency Procedures Advisors; however, the most substantial
24 community of interest established by the evidence is with ATU.

25 ///

26 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

RECOMMENDATION

Accrete the Emergency Procedures Advisors the
Transportation Sub-Unit represented by Amalgamated
Transit Union, Local 1555.

Dated July 8, 1980

DAVID A. CONCEPCION

DAVID A. CONCEPCION,
Hearing Officer