News

William B. Gould: BART, other transit strikes should be prohibited by law

By **WILLIAM B GOULD** |
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Gov. Jerry Brown must immediately call upon the Legislature to enact a statute providing for arbitration and the prohibition of strikes in public transit disputes. A renewed Bay Area Rapid Transit (BART) strike would be excessively disruptive to the public and to our local economy.

In a democratic society, the right to strike is all that most workers possess when they have economic differences with their employer. But, as with most matters in life, there are limits.

Public transit strikes, prohibited in most states — though protected at the federal level for private sector workers — constitute a twilight zone of emergencies against which the state must take action.

Ever since the 1966 New York City transit dispute, it has become clear that there must be another way to solve such difficulties. The next year saw the enactment of the Taylor Law. It was denounced by organized labor because it retained the strike prohibition that union defiance made unworkable in 1966, but it established a new neutrality mechanism wherein a third party could issue a

Iowa, Wisconsin, Connecticut and New York City have extended arbitration to other public workers.

Brown is using the existing law to create an investigative panel that has seven days to report, and he should seek a 60-day injunction to prevent a strike at the end of it. This would be a stopgap. Brown should use the cooling-off period to enact a new statutory answer, including arbitration, that safeguards the public interest in uninterrupted transit and simultaneously enhances the genuine give and take which should be present in collective bargaining and seems to have been lacking in this dispute.

To maintain an incentive for both sides to compromise, the arbitrator must be allowed only to select the final position of one side or the other. This process is frequently called last-best-offer arbitration, or baseball arbitration because of its 1973 adoption in baseball salary disputes. It encourages each side to moderate its demands so that its position will be more likely to be accepted. Frequently, it induces voluntary settlements.

Even after announcing which offer has been chosen in this system, the arbitrator can give the parties one last chance to address impracticalities that might flow from acceptance of either side's entire position. The arbitrator can use the chance to do a more sensible second draft and attempt mediation, promoting a voluntary agreement at the same time.

Beyond the potential harm to collective bargaining and compromise, another objection to such a new law is rooted in voter dissatisfaction with costly police and fire arbitration recently expressed in municipalities as diverse as Palo Alto and Vallejo. The new statute must oblige the arbitrator to give primacy to public investment needs (new equipment in the case of BART), and the taxpayer consequences of the award in addition to how wages and benefits compare with other transit districts.

Nothing in labor-management disputes is perfect. But this approach is superior to the existing statute, which Brown should only invoke as a vehicle to the enactment of a new one. The governor and the Legislature should convene in special session if necessary to get this done.

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