

The Facts Related to the Disputed Family Medical Leave Act Proposal

What is the disputed proposal?

The District and its unions last month agreed to a \$67M contract proposal that included a combination of agreements on wage increases, contributions to health care and pension by BART employees, and work rule changes that will make the District run more efficiently.

All of these proposals are articulated in a series of tentative agreements (TA's) signed by both the BART unions and by management over the course of six months of bargaining.

As we approach a decision on the contract by the BART Board of Directors next week, one TA is in dispute. The District said a union proposal relating to the Family Medical Leave Act was never agreed to by the District, had been rejected many times at the table and was signed in error. Under FMLA, workers get up to 12 weeks of unpaid leave when the need arises for them to care for a sick child, spouse, parent, etc. BART employees use vacation, sick time or floating holidays to pay for the time that they are away from the District under FMLA.

The disputed proposal (TA #4.8) would require the District to provide additional paid leave for 6 of the 12 weeks allowed under FMLA.

The potential cost of the program is being determined by the District, with participation from union leaders. Cost estimates are expected to be completed in time for the Board meeting scheduled for November 21, 2013

Is it true that management will recommend that the Board reject the contract today?

No

How did the "mistake" happen?

A tentative agreement (TA) relating to a union proposal on issue #4.8 was included in a stack of tentative agreements, and was signed in error by the District in July 2013.

After six months of bargaining, why do some members of the BART Board claim to be unfamiliar with this issue?

This FMLA proposal was rejected several times by the District early in negotiations. Specifically, it was rejected in writing on June 6 and June 11, 2013. Since the District assumed the proposal was not in play, the BART Board never discussed it.

Up until now, the Board has been told that the package agreed to by the District and the unions was a \$67M package. This proposal increases that cost of the package and it must be considered by the Board before a vote is taken.

Has former lead negotiator Tom Hock been spoken to about this issue?

Yes. Mr. Hock affirms that the issue was never agreed to at the table and that it was repeatedly rejected by the District.

How could something like this happen when you have a highly paid team of negotiators acting on the District's behalf?

Mistakes happen in the business world and in life every day. That is not an excuse – it is just a fact. During a final review process, the mistake was caught by staff before a BART Board vote on the contract and it will be fully vetted before the contract is considered.

Has an issue like this ever happened in another contract negotiation?

Professional negotiators say that it happens occasionally.

In a professional environment, honest misunderstandings occur. Parties then get back together and resolve the differences.

Did anyone read the tentative agreements?

Yes, they were reviewed throughout the process and the mistake was uncovered during a final review.

So what will you tell your riders now that the contract is up in the air?

This remains a fair contract that is good for the workers and good for the riders. There is significant taxpayer money involved in the disputed proposal. It must be reviewed by the Board in the context of all the other agreements that make up this contract.

Can the riders expect another strike?

A strike scenario is controlled entirely by the unions. Certainly, no one wants another strike. It is premature to discuss that option.