# Negotiations for BART Police Collective Bargaining Agreements ("CBAs")

## Agency Role

The District's collective bargaining team generally consists of the Director of Labor Relations or his/her designee, an official notetaker and other staff from the Labor Relations Department as assigned by the Dir. of Labor Relations, an outside Labor Relations Consultant who may act as the Chief Negotiator, an attorney from the BART Legal Department, and designated members of District management from Departments where the employees covered by the collective bargaining agreement work. The Labor Relations Department consists of the Director of Labor Relations, Manager of Labor Relations, two Principal Labor Relations Representatives, two Senior Labor Relations Representatives, and two Labor Relations Representatives. The Department also has one Senior Labor Relations Analyst whose responsibility is to provide costing for grievances and negotiations. The Director of Labor Relations is responsible for overall management of the Department, including all negotiations, and all team members, including outside consultants, and reports to the AGM, Administration.

## Bargaining Preparation

Approximately one year before successor bargaining begins (this means the parties are negotiating a CBA that will **succeed** the one currently in effect), BART Labor Relations will begin meeting with District Executives and Managers to discuss how to proceed once bargaining commences. This involves reviewing the CBAs and determining what proposed changes would best serve the District. For example, if overtime payments have skyrocketed, LR and District management would discuss, in advance, what contractual changes would ameliorate the overtime burden.

Once BART LR and District management have determined what changes will be sought in bargaining, LR prepares proposals to address the District's concerns in each contractual area. Proposals will be circulated amongst bargaining team members, and BART Legal to ensure they do not violate the agreement, any District policies or guidelines, or the law. In particular, if BART Legal identifies any potential violation of any Equal Employment Opportunity ("EEO") law, or a provision that may lead to disparate impact based on an EEO protected category, Legal will forward that proposal to the Office of Civil Rights ("OCR") for additional review. Once the proposals have been reviewed and approved by all who must weigh in, the District may propose them in negotiations with the Union.

## Conduct of Negotiations

The District is obligated by the law to negotiate in good faith with the exclusive representatives of the District's employees. Failure to do so may result in Unfair Labor Practice Charges being filed by the Unions against the District, which are time-consuming to respond to, and undermine the credibility of both the District and the bargaining process, while the District continues to improve labor-management relations. A finding of "bad faith" during contract negotiations can result in tentative agreements being set aside, and can cause lengthy delays in concluding negotiations, which could result in the District incurring backpay liability.

At the onset of negotiations, the District's bargaining teams meets with the Union's bargaining team to schedule bargaining dates, ideally with enough frequency that negotiations are concluded before the expiration of either contract. The parties also attempt to reach agreement on ground rules to govern the method and manner by which negotiations will be conducted. The District recognizes it is obligated to abide by ground rules negotiated and agreed to by the parties prior to the formal commencement of contract negotiations. Failure to abide by ground rules can also be determined to be bad faith as it marks a failure to abide by rules agreed to by the District. Ground rules may include a requirement the parties maintain the confidentiality of the negotiations and not discuss negotiations with the media.

Among other ways to show compliance with the good faith requirement for negotiations is an obligation that the parties show movement on their proposals. If the District were to submit its opening proposals and not show any flexibility or movement, or offer counterproposals in response to the Union's proposals, it may be an indication of bad faith.

After each party makes opening proposals, the parties discuss the subject matter of the proposals, the underlying problems the proposals are purported to resolve, the cost or savings the proposal would result in, the consequence of the proposals not being accepted, and possible alternative solutions. As a result of these discussions, the parties will then present counter-proposals to the other side's proposals. The District vets all counter-proposals in the same manner that opening proposals are vetted prior to presenting them to the Union, including OCR review of potential EEO issues as identified by Legal. This discussion and counter-proposal process continues until such time as the parties either withdraw a proposal or reach an agreement on the subject matter.

When the parties do reach an agreement, the agreement is deemed a "Tentative Agreement" or "TA", meaning it is agreed to on its own, but that agreement is subject to the parties reaching a total agreement on all matters being discussed in negotiations. The TA must be signed by the District's Legal representative noting it has been "Approved as to Form", and it must also be signed by the Chief Negotiator for both parties, as well as any other bargaining team members designated by the Chief Negotiator or indicated in the ground rules.

**Implementation of New Agreement**

Once negotiations on a new, successor contract are concluded, each party must get the agreement ratified in accordance with the Union bylaws or District Board of Directors protocol, respectively. Upon ratification by the parties, each side is bound by the terms and conditions of the agreement. Failure to abide by the agreement violates the basic premise of collective bargaining, which is to provide a binding document agreed to by the parties.

Once the contract has been ratified by the parties, Labor Relations staff work with District management to advise other managers of their obligations under the newly ratified agreement, including any changes from the previous agreements. Copies of the newly ratified agreement, including the fully executed signature page, will be distributed to all District executives and managers, and distributed to the Union as provided for in the CBA. All modifications to the agreement must be included in the final version of the document, including an outline of any changes in compensation.