

Date: November 8, 2011

Item No. 4

File No. 11047

## SUNSHINE ORDINANCE TASK FORCE

Compliance and Amendments Committee

AGENDA PACKET CONTENTS LIST\*

- |                                     |                               |       |
|-------------------------------------|-------------------------------|-------|
| <input checked="" type="checkbox"/> | <b>Dorian Maxwell v SFMTA</b> | _____ |
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Completed by: Chris Rustom

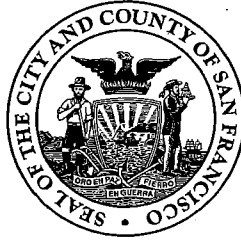
Date: Nov. 4, 2011

**\*This list reflects the explanatory documents provided**

~ Late Agenda Items (documents received too late for distribution to the Task Force Members)

\*\* The document this form replaces exceeds 25 pages and will therefore not be copied for the packet. The original document is in the file kept by the Administrator, and may be viewed in its entirety by the Task Force, or any member of the public upon request at City Hall, Room 244.

**SUNSHINE ORDINANCE  
TASK FORCE**



**City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. (415) 554-7724  
Fax No. 415) 554-7854  
TDD/TTY No. (415) 554-5227**

**ORDER OF DETERMINATION  
October 20, 2011**

**DATE THE DECISION ISSUED**  
September 27, 2011

*DORIAN MAXWELL v MUNICIPAL TRANSPORTATION AGENCY (CASE NO. 11047)*

**FACTS OF THE CASE**

Complainant Dorian Maxwell alleges that the San Francisco Municipal Transportation Agency ("SFMTA") willfully withheld documents responsive to his May 24, 2011 public records request related to the Trust Fund Contribution or trust fund payments pursuant to an agreement between the SFMTA and TWU Local 250-A and 9163 Transit Operators for the period 2008-2011.

**COMPLAINT FILED**

On June 17, 2011, Mr. Maxwell filed a Sunshine Ordinance complaint against the SFMTA.

**HEARING ON THE COMPLAINT**

On September 27, 2011, Mr. Maxwell presented his case to the Task Force. The SFMTA was represented by Eloida Leonardo.

Mr. Maxwell told the Task Force that, in November 1968, San Francisco voters approved Proposition E which added Sections 151 and 321 to the City Charter to compensate Municipal Railway coach and bus operators. He said he wants the actuarial studies done from 1997 to 2003 and from 2008 to 2010. He said the City agreed in 1997 to pay 7.5 percent toward workers' benefits and he is trying to find out what happened to the fund. He wants a copy of the agreement between TWU Local 250-A and the SFMTA regarding the fund. In addition, he wants a copy of the legislation that directed the payout to be made on a quarterly rather than annual basis.

Ms. Leonardo told the Task Force her department received a request for a copy on the outcome of the study that was done between 2008 and 2010. She said Mr. Maxwell has been provided with the report which was delivered through her supervisor, Sonali Bose. On questioning, Ms. Leonardo said she could have provided the pay out information but was under the impression that her supervisor would have taken care of it. She also said she did not have any information on the legislative changes and the MOUs because those issues

would be handled by the SFMTA's human resources office.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on Ms. Leonardo's own admission, the Task Force found that the payout information could have been provided but was not given to Mr. Maxwell. The Task Force further found that the SFMTA representative could not provide sufficient information on the reason Mr. Maxwell did not receive the legislative and agreement documents requested.

### DECISION AND ORDER OF DETERMINATION

The Task Force finds Caroline Celaya and Sonali Bose of the SFMTA in violation of Sections 67.21(e) for failure to send a knowledgeable representative, 67.21(b) for failure to produce the requested documents, and 67.21(c) for failing to assist the requestor.

The SFMTA shall release the payout information, copies of legislation changes regarding trust fund contributions, and any Article 35 agreements between Local 250-A and the SFMTA regarding future trust fund payouts as referenced in Mr. Maxwell's public records request within 5 business days of the issuance of this Order and appear before the Compliance and Amendments Committee on Tuesday, November 8, 2011 at 4 p.m. in Room 406 at City Hall. The committee will assess the SFMTA's compliance with this Order.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on September 27, 2011, by the following vote: (Snyder/Wolfe)

Ayes: Snyder, Knee, Cauthen, Washburn, Wolfe, Chan, Johnson

Excused: Manneh, West.

Absent: Knoebber.



Hope Johnson, Chair  
Sunshine Ordinance Task Force

cc: Dorian Maxwell, Complainant  
Elaida Leonardo, Respondent  
Sonali Bose, Respondent  
Caroline Celaya, Respondent  
David Hill, SFMTA  
Jerry Threet, Deputy City Attorney

Edwin M. Lee | Mayor

Tom Nolan | Chairman

Jerry Lee | Vice-Chairman

Leona Bridges | Director

Cheryl Brinkman | Director

Malcolm Heinicke | Director

Bruce Oka | Director

Joél Ramos | Director

Edward D. Reiskin | Director of Transportation

HAND-DELIVERED

October 17, 2011

Mr. Dorian Maxwell  
 1963 Colosseum Way  
 Antioch, CA 94531

Re: Information Request – Sunshine Ordinance Task Force

Dear Mr. Maxwell:

On October 7, 2011, you confirmed a meeting with Labor Relations Manager Mike Helms to discuss the pending information request under the Sunshine Ordinance. The mutually-agreed upon date and time was today, October 17, 2011 at 10 a.m. in Mr. Helms' office at 1 South Van Ness Avenue, San Francisco, CA.

At approximately 10:25 a.m., Christine Cayabyab, Personnel Analyst placed a telephone call to your home in order to inquire about your intention to attend the meeting. Ms. Cayabyab left a message on your answering machine.

I have enclosed documents that would have provided at the meeting which are responsive to your request:

1. SFMTA Trust Fund Payment
2. Excerpts of "redline" version of the labor agreement between SFMTA and Transport Workers Union (TWU) Local 250-A
3. Digest of Proposition G Transit Operator Wages

The first document is a table which shows trust fund payments from July 31, 2003 through October 29, 2009.

The second document are excerpts from the "red-line" recently negotiated labor agreement between SFMTA and TWU Local 250-A. We are providing this version to show the language of the July 1, 2004 – June 30, 2011 agreement with deletions, revisions and additions clearly noted. Language that has been deleted have "strikethrough" and new language is underlined.

I have provided a copy of the Table of Contents which shows Article 5 – Trust Fund deleted and replaced with Article 5 – Management Rights (moved from Article 25).

RECEIVED  
 BOARD OF SUPERVISORS  
 SAN FRANCISCO  
 2011 OCT 17 PM 3:02  
 AK

Dorian Maxwell  
October 17, 2011  
Page 2

Article 35 – Ordinances pursuant to Charter A8.404 has also been deleted. As you may know, in the past health plan benefits were limited to \$225 per employee. With the passage of Proposition G in November 2010, the Trust Fund was eliminated and Transit Operators are now covered by health plan benefits similar to other City employees by the Health Service System.

The third document is the digest of Proposition G – Transit Operator Wages with the second bullet point “eliminate trust fund that provides additional payments or benefits to MUNI operators; highlighted.

If you wish to reschedule the meeting, please contact me at (415) 701-5382.

Yours truly,



Rumi Ueno  
Employee and Labor Relations Manager

Enclosures

cc: Chris Rustom, SOTF  
Files

SFMTA  
 TWU TRUST FUND PAYMENT

Date Paid	Fiscal Year	Amount	Warrant No.	Warrant Clear Date
7/31/2003	FY 02-03	1,352,000.00	1600-02441317	8/5/2003
11/5/2004	FY 03-04	2,852,000.00	1600-02796449	11/12/2004
8/17/2005	FY 04-05	4,531,000.00	1600-02977143	9/2/2005
8/10/2006	FY 05-06	5,276,644.00	1600-03211231	8/14/2006
			1600-03359580	5/4/2007
			1600-03388004	7/16/2007
7/9/2007	FY 06-07	5,000,000.00	1600-03391085	7/16/2007
8/19/2008	FY 07-08	6,541,243.00	1600-03594829	8/22/2008
10/29/2009	FY 08-09	5,800,000.00	1600-03810555	10/30/2009

**MEMORANDUM OF UNDERSTANDING**  
**BETWEEN**  
**SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY**  
**AND**  
**TRANSPORT WORKERS' UNION, LOCAL 250-A (9163)**  
**JULY 1, 2004 2011 – JUNE 30, 2011 2014**

Memorandum of Understanding Between  
Transport Workers Union, Local 250-A (9163) and Municipal Transportation Agency  
July 1, 2011 – June 30, 2014

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(c) Been involved in no major collisions or incidents and no more than two (2) minor non-preventable collisions or incidents, as defined in Article 23 and determined by the SFMTA, in the previous fiscal year;

(d) Served no disciplinary suspensions in the previous fiscal year

~~An Expert Operator must also individually qualify for the Accident Incentive Program as defined in Article 36.~~

~~An Operator who elects to sign out of a division after qualifying for the Expert Operator Premium will no longer be eligible for the premium pay upon transfer to the new division.~~

~~Operators performing burn-ins do not have to meet the requirement, as set forth in the Accident Incentive Program, requiring a specific amount of hours be spent operating a vehicle in revenue service.~~

38. An Operator who fails to qualify for the Expert Operator Premium solely because the Operator was moved from his/her division at management initiative for the needs of service, under a provision of the contract allowing such a move, the Operator will continue to qualify for the premium.

39. An Operator who leaves his/her location as a result of a sign up must start over to build the five (5) consecutive year qualifying requirement at the new location.

~~Operators performing burn-ins do not have to meet the requirement, as set forth in the Accident Incentive Program, requiring a specific amount of hours be spent operating a vehicle in revenue service.~~

~~Employees who meet the above criteria of an "Expert Operator" shall be granted a premium of fifty cents (\$.50) per hour.~~

(6) Operator Assigned to Rail

40. SFMTA shall pay Full-Time Operators assigned to rail \$15.74 per run as a "rail premium". SFMTA shall pay Part-Time Operators assigned to rail \$6.89 per run. Rail premiums will be paid to Operators assigned to rail effective the first payroll period after the Operator completes training and meets all regulatory requirements. Rail premium shall be paid only once in each twenty-four (24) hour period.

## ARTICLE 5. MANAGEMENT RIGHTS

41. The SFMTA has the right to exercise all management prerogatives, including but not limited to the right to:

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July 1, 2011 – June 30, 2014

- a. fix operating and personnel schedules;
- b. implement layoffs;
- c. determine work loads;
- d. arrange transfers;
- e. assign personnel; and
- f. issue any other directive intended to carry out its managerial responsibility to operate the transit system safely, efficiently and economically.

42. All matters pertaining to the management of operations, including the type and kind of service to be rendered to the public and the equipment used, the maintenance of discipline and efficiency, the hiring, promotion and transfer of employees, and their discharge or discipline for proper cause, are the prerogatives of the SFMTA, subject to such limitations as are set forth elsewhere in this Agreement, in the Meyers-Milias-Brown Act, San Francisco Charter, Civil Service Rules, the San Francisco Administrative Code and other applicable laws and regulations.

## ARTICLE 5. TRUST FUND

### Section 5.1 Trust Fund Contributions

- ~~22. The SFMTA shall continue to conduct actuarial studies of vacation, retirement and health benefits pursuant to Charter section A8.404 for the term of this contract for purposes of determining the SFMTA contribution to the Trust Fund established under Section A8.404 of the Charter.~~
- ~~23. For fiscal year 2004-2005, the parties agree to establish a Health, Safety and Accident Prevention Committee consisting of three (3) members appointed by the Union and three (3) members appointed by management.~~
- ~~24. The purpose of this Committee shall be to develop programs, initiatives and strategies in support of the SFMTA in its current accident reduction program.~~
- ~~25. The programs developed by the Committee may include, but are not limited to, accident review and investigation, defensive driving training programs, hazard identification and evaluations, recognition and reward programs, acquisition of safety and protective equipment and retention of outside safety experts.~~

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July 1, 2011 – June 30, 2014



- ~~27. The Committee shall meet within 30 days of ratification of this agreement and at least monthly thereafter as determined by the Committee.~~
- ~~26. Recommendations of the Committee shall be forwarded to the Executive Director of the SFMTA and implementation shall be subject to the Executive Director's approval.~~
- ~~27. Recommendations of the Committee shall be forwarded to Transport Workers Union San Francisco Municipal Railway Trust Fund's Board of Trustees and implementation shall be subject to the Board of Trustees' approval.~~

~~The Transport Workers Union San Francisco Municipal Railway Board of Trustees agrees to fund programs developed and implemented by this Committee in an amount not to exceed \$250,000 from the Trust Fund during FY 2004-2005.~~

## ARTICLE 6. CONDITION OF EMPLOYMENT

### Section 6.1 Condition Of Employment

43. As a condition of continued employment, Operators shall maintain all regulatory requirements, including all licenses or medical certifications required to operate the mode(s) of transportation to which they are assigned.
44. Each Operator remains solely responsible for maintaining all regulatory requirements, including all licenses, medical certifications, and training. In addition, each Operator shall submit a validated copy of any required certificate(s), license(s) or other documentation to the SFMTA Safety and Training Division. Failure to meet the requirements of this section will result in termination without the need for progressive discipline.

### Section 6.2 Drivers License Reimbursement

45. Operators in service for one year or more shall be reimbursed for the renewal fees of Class B California Drivers License and Verification of Transit Training ("VTT") renewal required by this Article 6.

### Section 6.3 Customer Service Training

46. SFMTA shall provide professional customer service training as part of the initial training for all newly employed Operators. A minimum of 8 hours annually of professional customer service training shall be provided to all Operators.

### "AMBASSADOR" AND "FRIENDS OF MUNI" PROGRAMS

Memorandum of Understanding Between  
Transport Workers Union, Local 250-A (9163) and Municipal Transportation Agency  
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387. A number of active 9163 positions will be set aside by the SFMTA Executive/CEO or his/her designee and shall be designated transitional work.
388. Any employee who is medically certified and qualified for any one of the designated positions must be able to perform the job or be trained to perform the job within five (5) days or less.
389. Employees will be assigned to these positions on a first-come, first-serve basis. If two or more requests are made on the same date, seniority shall prevail.
390. Preference shall be given to:
- a. Employees returning from industrial injury and released for transitional work;
  - b. Medical reasons;
  - c. Union request.
391. Once all designated positions are filled, a waiting list will be kept in the Offices of the Executive Director/CEO or his/her designee. The list will be maintained in receipt order.
392. Exceptions to the above are by approval of the SFMTA Executive Director/CEO or his/her designee only.
393. The positions that will be designated Light duty shall be at the discretion of the SFMTA Executive Director/CEO or his/her designee.

**ARTICLE 34. NO STRIKE CLAUSE**

394. Strikes, slowdowns or work stoppages are prohibited during the term of this MOU. The SFMTA agrees not to conduct a lockout against any of the employees covered by this MOU during the term of this MOU.

~~ARTICLE 35. ORDINANCES PURSUANT TO CHARTER A8.404~~

~~On the execution of an MOU containing the wage rates, Trust Fund contribution or other reopened terms for fiscal years 2004-2011, the SFMTA will enact appropriate legislation each year pursuant to Section 8.404 of the Charter containing the new wage rates, Trust Fund contribution, and any modified terms resulting from the meet and confer process. Said legislation shall remain in effect until the adoption of different legislation.~~

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ATTACHMENT A~~ARTICLE 36. AGREED POLICY ON AN APPROACH TO SOLVING CURRENT OUTSTANDING PROBLEMS ON MUNI~~

~~In recognition of the service and accountability requirements mandated by Proposition E, (Article VIII A. of the City Charter) approved in November 1999, the SFMTA and TWU jointly recognize that MUNI is facing a number of substantial problems that will best be resolved by MUNI management and the Union working together to solve them. It is also recognized that arriving at solutions will take time and will require collaboration on problem solving approaches to reach solutions. To that end, the parties hereto agree on the following principles:~~

~~In planning and implementing all new programs that will involve or affect transit Operators, MUNI will collaborate and meet and confer with TWU as required by the Meyers Milias Brown Act.~~

~~In dealing with issues such as reduction in industrial injuries and accidents, safety (including the Integrated Safety and Loss Prevention Program), stress reduction and similar programs, to the extent legally permissible, all programs will be conducted by MUNI personnel. In this way, the experience and learning involved will be retained within MUNI, to the benefit of future programs.~~

~~Among the issues that are recognized to exist to be dealt with include:~~

- ~~a. Managing and reducing workers compensation costs.~~
- ~~b. Managing and reducing unscheduled absenteeism~~
- ~~c. Improving delivery of public transportation services~~
- ~~d. Improving safety of passengers and Operators~~
- ~~e. Improving driver-passenger relations.~~
- ~~f. Improving morale of MUNI employees~~

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# G Transit Operator Wages

Shall the City eliminate the formula for setting minimum MUNI operator wages and instead set MUNI operator wages through collective bargaining and binding arbitration; add rules for arbitration proceedings regarding MTA's transit employees; and make other changes to terms of employment for MTA employees?

YES

NO

## Digest by the Ballot Simplification Committee

**The Way It Is Now:** The San Francisco Municipal Transportation Agency (MTA) oversees the City's Municipal Railway transit system (MUNI) and other City transportation functions. The MTA employs transit employees such as MUNI operators and mechanics, and non-transit employees such as parking control officers and traffic engineers.

The Charter requires the MTA to pay MUNI operators at least as much as the average salary of transit operators at the two highest paying similar transit systems in the country. When benefits paid to MUNI operators are worth less than the benefits provided to operators at similar transit systems, the difference is placed in a trust fund and paid to MUNI operators.

The Charter also requires the MTA to pay most managers and employees incentive bonuses if MUNI achieves certain service standards.

For most City employees, if the City and employee unions are unable to agree in collective bargaining, disputes are subject to binding arbitration. The MTA's negotiations with MUNI operators are not subject to binding arbitration.

In some instances, the MTA has followed informal agreements about terms of employment even when they have not been approved by the MTA Executive Director or Board or included in any collective bargaining agreement. These informal agreements may be reflected in "side-letters" or past practices.

**The Proposal:** Proposition G would eliminate the formula for setting minimum MUNI operator wages. Instead, it would allow the MTA to set MUNI operator wages and benefits through collective bargaining and binding arbitration. It would also establish rules for arbitration proceedings regarding MTA's transit employees, and make other changes to terms of employment.

In particular, Proposition G would:

- eliminate the requirement that MUNI operator wages be at least as high as the average for transit operators in the two highest paying similar transit systems;
- eliminate the trust fund that provides additional payments or benefits to MUNI operators;
- require the MTA contribution for MUNI operators' health coverage to be at least equivalent to the City contribution for the majority of other City employees. This requirement applies only to the first collective bargaining agreement approved after adoption of this measure;
- require binding arbitration when the MTA and MUNI operator unions are unable to agree in collective bargaining. It also requires arbitrators considering disputes between the MTA and its transit employees to consider the impact of disputed proposals on MUNI fares and service;
- make incentive bonuses for MTA managers and employees optional instead of required; and
- provide that informal agreements reflected in past practices or "side-letters" be binding only if approved in writing by the MTA Executive Director or Board and included in the affected employees' collective bargaining agreements.

**A "YES" Vote Means:** If you vote "yes," you want the City to:

- eliminate the formula for setting minimum MUNI operator wages and instead set MUNI operator wages and benefits through collective bargaining and binding arbitration;
- establish rules for arbitration proceedings regarding MTA's transit employees; and
- make other changes to terms of employment for MTA employees.

**A "NO" Vote Means:** If you vote "no," you do not want to make these changes.

**This measure requires 50%+1 affirmative votes to pass.**

Arguments for and against this measure immediately follow the facing page. The full text begins on page 180. Some of the words used in the ballot digest are explained on page 61.

## Controller's Statement on "G"

My Controller Ben Rosenfield has issued the following statement on the fiscal impact of Proposition G:

Should the proposed Charter amendment be approved by the voters, in my opinion, it could either increase or decrease the cost of government depending on the outcome of collective bargaining and labor arbitration processes.

The amendment provides for changes to the method by which wages are set for Municipal Transportation Authority (MTA) transit operators. Currently, these wages are set through a national survey of the hourly wage in comparable transit agencies, averaging the two highest wage levels and setting that amount as a minimum. In addition, if fringe benefits for the comparable agencies surveyed exceed the value of those provided by the City, a payment is made to a transit operators benefit trust fund. Using the survey method, as of July 2010, MTA transit operators' highest wage rate is \$19.92 per hour, and for the last five years the City has been required to make deposits averaging \$5.0 to \$7.0 million annually to the transit operators benefit trust fund. Finally, the amendment makes incentive pay optional that is now mandated for certain MTA employees—as of fiscal year 2009-2010, the amount of that incentive pay that would be made optional is approximately \$3.0 million.

The proposed charter amendment would provide that transit operator wage levels be set through collective bargaining and labor arbitration processes as are used by other City employee unions. The amendment would eliminate the benefits trust fund and provide instead for health benefits at the same levels as are provided for the majority of other City employees.

Overall, collective bargaining and labor arbitration processes could result in either a decrease or an increase to drivers' wage and benefit levels.

## How "G" Got on the Ballot

On July 12, 2010, the Department of Elections certified that the initiative petition calling for Proposition G to be placed on the ballot had a sufficient number of valid signatures to qualify the measure for the ballot.

44,382 signatures were required to place an initiative Charter Amendment on the ballot. This number is equal to 10% of the registered voters at the time a "Notice of Intent to Circulate Petition" was published. A random check of the signatures submitted by the proponents of the initiative petition prior to the July 6, 2010, submission deadline showed that the total number of valid signatures was greater than the number required.

**This measure requires 50%+1 affirmative votes to pass.**

Arguments for and against this measure immediately follow this page. The full text begins on page 180. Some of the words used in the ballot digest are explained on page 61.