

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

AFSCME TENTATIVE AGREEMENT

SICK LEAVE

April 7, 2016

The San Francisco Bay Area Rapid Transit District ("BART") and the American Federation of State, County and Municipal Employees Local 3993 ("AFSCME") have negotiated and reached a tentative agreement on this provision of the Collective Bargaining Agreement ("CBA"). No tentative agreement shall be a final agreement except as a part of a total package agreement between the parties. All parties agree that final approval of the tentative collective bargaining agreement is subject to ratification by AFSCME membership and the BART Board of Directors.

The parties agree to revise Section 35 as follows:

35 Sick Leave

- A. Employees will accrue one (1) day of Sick Leave for each full month of employment. Sick Leave credits may be accumulated to a total of two thousand five hundred (2500) hours. Sick Leave will be paid without limitation on their rights under state and federal law when an employee is required to be absent because of:
 - 1. Illness (including alcoholism), including the appropriate use of required prescribed medication which would impair the employee's work performance, injury, quarantine or similar exposure to contagious disease;
 - 2. Required attendance upon a seriously ill spouse, domestic partner (as per Board Resolutions 4455 and 4757), parent or child as required in writing by a doctor, to include the length of the anticipated leave. Said documentation shall be subject to verification;
 - 3. Verifiable medical and/or dental appointments which cannot be scheduled outside the normal working hours of the employee, provided that a minimum of forty-eight (48) hours advance notice is given and provided that subsequent confirmation that the appointment was kept is given, if requested by management.
- B. An employee experiencing a verified industrial injury or illness will be entitled to receive for each separate injury or illness up to five (5) days

industrial accident leave. Sick Leave benefits, to the extent they are available, will be coordinated with Workers' Compensation to maintain the employee's basic straight time earnings.

- C. To be eligible for Sick Leave benefits an employee may be required to provide satisfactory written verification of the necessary and/or compelling reason. If doubt exists as to an illness or injury or that absence from work was required, the decision of a physician selected by District will govern.
- D. The General Manager may grant time off without pay to an employee who has insufficient accumulated Sick Leave.
- E. All unused accumulated Sick Leave shall be cancelled without compensation upon termination of employment.
- F. Incentives For Sick Leave Accrued And Unused On Or After October 19, 2009

To encourage employees to maintain maximum attendance and to improve performance, the District offers employees the following two (2) incentives beginning October 19, 2009:

1. **PERS Retirement Service Credit for Sick Leave:** The District will amend its contract with CalPERS to provide the California Government Code Section 20965 option for service credit for unused sick leave for eligible CalPERS members in the bargaining unit, with an effective date of October 19, 2009. The Public Employees Retirement Law (PERL) and CalPERS rules will govern the eligibility of unused sick leave earned on or after October 19, 2009 for service credit. Those rules presently grant 0.004 years of service credit for each certified unused day of sick leave accrued by the member during the normal course of his/her employment. For employees whose effective date of retirement is within four months of separation from employment with the District, the District shall certify to CalPERS all such unused days of sick leave that were accrued by the employee on or after October 19, 2009. For purposes of Government Code Section 20965, leave accrued prior to October 19, 2009 shall not be considered "unused" sick leave and the District will not certify such sick leave to CalPERS, unless the employee has made the one-time election to convert such pre-October 19 sick leave to PERS-credit-eligible sick leave pursuant to Paragraph G below.

2. **Annual Buy-Back or MPPP Incentive:** The District shall give employees the option each year to make an irrevocable election on the schedule indicated below to buy-back or to deposit into their Money Purchase Pension Plan (MPPP) accounts, the dollar value of the sick leave earned within the annual accrual period indicated in F.2.a below, less sick leave taken during that same period, on an after tax basis.

a) **Sick Leave Accrual/Election Periods:** The maximum sick leave which may be earned for each accrual period is ninety-six (96) hours for employees on a 5-8 or 9/80 Work Plan and one hundred twenty (120) hours for employees on a 4-10 Work Plan. Sick leave for which such an election has been made shall not be included by the District in the certification to CalPERS under the retirement service credit plan described above.

<u>ELECTION PERIOD</u>	<u>ACCRUAL PERIOD</u>
09/02/13 – 09/16/13	09/30/13 – 09/28/14
09/01/14 – 09/15/14	09/29/14 – 09/27/15
09/07/15 – 09/21/15	09/28/15 – 09/26/16
09/05/16 – 09/19/16	09/26/16 – 09/24/17
09/04/17 – 09/18/17	09/25/17 – 09/23/18
09/03/18 – 09/17/18	09/24/18 – 09/22/19
09/02/19 – 09/16/19	09/23/19 – 09/20/20
09/07/20 – 09/21/20	09/21/20 – 09/19/21

b) **Buy-Back / MPPP Deposit Accounts:** An election to “buy-back” or to deposit into the MPPP must also include an election as to the percentage amount of the “buy-back”, based on the percentage increments and maximums provided below. The Maximum Buy-Back percentage that will be allowed is based on the employee’s attendance record during the accrual period.

Days	Banking Percentage of Unused Earned Sick Leave
0	5% up to 50% (in 5% increments)
1-3	5% up to 40% (in 5% increments)

Buy-Back and MPPP amounts shall be calculated at the employee's base rate of pay at the end of the accrual period less applicable tax withholding.

- c) **Impact of Buy-Back / MPPP Election:** Employees may select only one option (Buy-Back or MPPP) for each accrual period. Once the Buy-Back or MPPP incentive election is made for any accrual period it may not be changed. Employees will receive the Buy-Back checks or MPPP credit no later than December 1 following the end of the accrual period. Unused sick leave hours for which an election to Buy-Back or transfer into the MPPP is not made shall be carried over to the next year, subject to maximum accumulation limits, and will no longer be available for any future Annual Buy-Back / MPPP incentive election.

- G. One-Time Election To Convert Sick Leave Accrued Prior to October 19, 2009 To PERS Creditable Sick Leave.

During the month of October 2009, employees will be given a one-time opportunity to convert unused sick leave that has been accrued prior to October 19, 2009 to PERS-credit-eligible sick leave (described in paragraph F.1. above). This election shall be irrevocable, and will include all the employee's unused sick leave, including banked sick leave pursuant to H.1 and unbanked sick leave pursuant to F.2.c. above. If an employee makes this election, such accrued leave will no longer be eligible for pay-out at termination/retirement (previously banked leave) or at retirement (unbanked leave). All leave converted pursuant to this paragraph G will be subject to CalPERS rules for service credit eligibility. Leave converted under this paragraph will thereafter be considered, for purposes of disposition at the end of employment only, to have been accrued on or after October 19, 2009.

- H. Sick Leave Accrued Prior to October 19, 2009:

Sick leave accrued prior to October 19, 2009, which is not converted to PERS creditable sick leave pursuant to paragraph G above, shall be preserved in accounts separate from sick leave accrued on or after October 19, 2009, and shall be used pursuant to the terms of this paragraph H, including 1.-3.

1. Banked Sick Leave (under previously exercised option)

This section refers to sick leave which has been "banked" in accordance with Labor Agreement Section 35 as it was in effect on June 30, 2009, or banked pursuant to Agreements previously in effect. It excludes sick leave electively converted to PERS creditable sick leave pursuant to paragraph G above. It includes sick leave for which a banking election was made during the 2008 or earlier options periods.

Banked sick leave, as defined above, will be preserved in a separate account for use by the employee in accordance with the provisions of former Section 35 including the following:

- a. Such bank shall be set aside for payment upon death/retirement/termination and shall not be included in the calculation of unused sick leave pursuant to paragraph G above or Government Code Section 20965.
- b. Sick leave hours banked will be paid at the employee's base rate of pay, effective on the employee's date of death or retirement/termination from District's employment.
- c. Employees who experience an illness/injury and exhaust their existing sick leave that is available, may utilize sick leave that has been banked under prior Section 35 provided they make a written request to do so through their Department Manager at the time of the illness/injury and the circumstances qualify for sick leave under Section A (sick leave payment).

2. Sick Leave Buy-Back (under previously exercised option)

Employees who exercised the option during the September 2008 period specified in Labor Agreement Section 35 in effect on June 30, 2009 to make an irrevocable election to buy-back or deposit into the MPPP the value of sick leave earned during the annual accrual period, less sick leave taken during the annual accrual period shall receive the buy-back payments and the MPPP deposits required by the prior Labor Agreement.

Buy-back checks for the 2009 accrual period under former Labor Agreement Section 35 will be distributed to employees no later than December 1 following the end of the accrual period, and MPPP elections for that period will be deposited by that same date.

3. Retirement Buy-Back

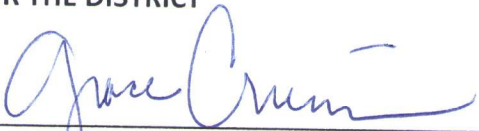
Sick leave accrued prior to October 19, 2009 and not (1) banked pursuant to paragraph 1 above; (2) bought back or deposited in the MPPP pursuant to paragraph 2 above; (3) converted to PERS creditable sick leave pursuant to paragraph G above; or (4) used pursuant to E and A, shall be available for use as Retirement Buy Back incentive. Employees leaving District service on a service retirement (non-disability retirement) shall be paid fifty percent (50%) of this accrued sick leave balance upon the effective date of service retirement. The accrued sick leave shall not be included in the calculation of unused sick leave pursuant to paragraph G above or Government Code Section 20965.

I. Order of Use of Sick Leave from Separate Accounts.

When using sick leave with pay pursuant to Section A above, employees sick leave balances will be deducted in the following order;

1. Sick leave accrued on or after October 19, 2009, if any, including any sick leave accrued before October 19, 2009 which an employee has elected to convert to PERS creditable sick leave pursuant to paragraph G above, if any.
2. If the accruals described in paragraph I.1 are exhausted, unbanked sick leave accrued prior to October 19, 2009, if any.
3. If the accruals described in paragraphs I.1 and I.2 above are exhausted, banked sick leave, if any, may be used subject to the terms of paragraph H.1.c above.

FOR THE DISTRICT



Grace Crunican
General Manager



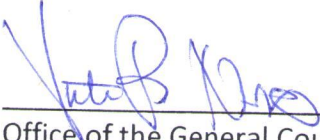
Carol Isen
Chief Labor Relations Officer

FOR AFSCME



Sal Cruz
President

APPROVED AS TO FORM:



Office of the General Counsel
by Victoria R. Nuetzel