

案例研究： 旧金山湾快速运输区(BART) 2013年谈判

**CASE STUDY: SAN FRANCISCO BAY AREA RAPID TRANSIT
DISTRICT (BART)
2013 BARGAINING**

作者：律师Vincent A. Harrington，工会谈判总代表(SEIU)Josie Mooney
2014年11月简报用于中国

背景简介：

2013年春，BART 的两个主要工会Local 1021、ATU Local 1555共同举行自2009年以来的首次集体谈判。

In the Spring of 2013 BART and its two major unions—SEIU Local 1021 and ATU Local 1555—collectively bargained for the first time since 2009.



- 尽管他们拥有一个已久的谈判关系，但在这个谈判期间内还是分别发生了两次罢工事件。

Despite a long-standing bargaining relationship, this bargaining cycle resulted in two separate strikes.

- 加州州长通过“冷却”禁令的方式敦促参与者解决争议。

The Governor of California sought a “cooling off” injunction against the parties.

- 在两个工人被由监管员操作的火车撞死后，这场争端最终才得以解决。

The dispute was finally resolved only in the aftermath of the deaths of two workers struck by a train operated by supervisors.

- **本次展示将对谈判中的主要因素及参与力量进行总结，并对参与者在将来怎样行事以避免同样的争端提出建议。**

This brief presentation will summarize the major factors and forces at play in this bargaining, and suggest what could be done differently by the parties in the future to avoid similar disputes.



争端各方：

THE PARTIES TO THE DISPUTE:

- **BART 区：**

The BART District:

- **旧金山湾快速运输区（BART）是一个由加州立法机关创建的政府机构。它掌控着旧金山湾区域的通勤铁路系统。**

The San Francisco Bay Area Rapid Transit District (BART) is a government agency created by the California Legislature. It operates a commuter rail system in the San Francisco Bay Area.

- **BART由一个九人董事会管理，他们是由服务于该系统的本地区选民选举出的。**

BART is governed by a nine person board elected by voters in the areas served by the system.

- **在2013年，大约有490,000 位乘客每天使用BART。**
In 2013, approximately 490,000 riders took BART everyday.

- **SEIU 1021:**

- **这个工会代表着大约1700位BART的工人，之中有很多不同的职业分类：车辆机修工、电子设备工程师、轨道工人、行政职员、及清洁工。**

This Union represents approximately 1700 BART workers in a large number of classifications: Vehicle Mechanics, Electronic Technicians, Track Workers, Administrative Clerks, and Janitorial Workers.

- **ATU Local 1555:**

- **这个工会代表的约800-900名工人主要分为两类：火车司机、站点服务员。这个工会也代表一些工人在该领域负责管理实施及支配人员，比如：火车调度、时间调配、培训。**

This Union represents approximately 800-900 workers in two major classifications: Train Operators, and Station Agents. It also represents some workers who performed administrative and support activities in areas such as dispatching, scheduling, and training.

历史背景和法律背景：

HISTORICAL BACKGROUND AND LEGAL CONTEXT:

- 历史上各方的谈判行为

Historical bargaining practices of the parties.

- 尽管SEIU和ATU代表着不同的谈判单位，但由1973年起BART和这两个工会都会统一谈判出一个适用于两个工会工人的合同。

Although SEIU and ATU represent different bargaining units, since 1973 BART and the Unions had a practice of bargaining a single contract covering workers in both units.

- **这份单一合同包含一个共同的失效日期，并包含两个工会工人都适用的“通用”条款，以及只适用于其中某个工会工人的“补充”条款。**
- **This single contract had a common expiration date, and contained “general” provisions applicable to workers in both in Unions, and “supplemental” provisions applicable to workers in only one of the two units.**

- **共同集体谈判协议，失效时间为2013年7月30日。**

The common Collective Bargaining Agreement expired at midnight, June 30, 2013.

- **该协议包含一项4年工资恒定及其他让步条件的条款。**

That agreement had contained a 4 year wage freeze and other concessions.

法律背景：

THE LEGAL CONTEXT:

- **法律创造了BART，并要求BART和工会的谈判建立在“诚信”的基础上，谈判范围包含“工资、薪水、上班时间、工作条件和申诉程序”。**

The law creating BART required BART and the Unions to negotiate “in good faith” concerning “wages, salaries, hours, working conditions and grievance procedures”.

- **法律还要求参与者尽“一切合理的努力”对这些问题达成书面协议。**

It also required the parties to make “all reasonable efforts” to reach a written agreement on those issues.

- 按照美国谈判法律的原则，“诚信谈判”的责任并不是指各方必须要同意对方的任何问题。

Consistent with the U.S. bargaining law generally, the duty to “bargain in good faith” does not require either party to actually agree with the other party on any issue.

- 法律同样允许参与者使用州政府提供的调解人、或参与者共同选择的调解人，以帮助他们进行谈判，最后根据“共同协议”作出一个各方必须妥协的“利益仲裁”的结果。

The law also permits the parties to use mediators provided by the State, or agreed to by the parties, to assist them in bargaining, and by “mutual agreement” to submit disputes to final and binding “interest arbitration.”

- “利益仲裁”——由各方参与者共选的仲裁员创建新合同。

“Interest arbitration” – a process in which the arbitrator selected by the parties creates the new contract.

- **加州法律也要求：在参与者各方的要求下，加州州长可以对争议进行调查，如果符合公众利益的需求，则可以动用“60天冷却”禁令，禁止各方的行动，包括BART的停业行动及工会的罢工行为。**

California law also provided that at the request of either party the Governor of California may investigate the dispute, and if the public interest required it, seek a “60 day cooling off” injunction, which prohibited either a lock-out by BART or a strike by the Unions.

工人在谈判过程和劳资纠纷中的角色：

WORKER INVOLVEMENT IN THE BARGAINING PROCESS AND THE LABOR DISPUTE:

- 受工会代表的工人，都广泛的参与了谈判、罢工、及争议的解决过程。

Workers represented by the Unions were extensively involved in the bargaining, the strikes, and the settlement of the dispute.

- 工人通过至少如下的几种主要方式参与：

Workers were involved in at least the following major ways:

- 每个工会的管理者——主席、副主席等职务——都是被工会中的 同行同事们选举出来的工人。

The officers of each Union—President, Vice President, etc.—are workers in the unit elected by their co-workers.

- **每个工会都由工人委员会进行谈判，委员会里的成员和官员都是被其同事们选举出来的工人。**

Each Union bargained through a worker committee which, including the officers, was made up of workers elected to the position by their co-workers.

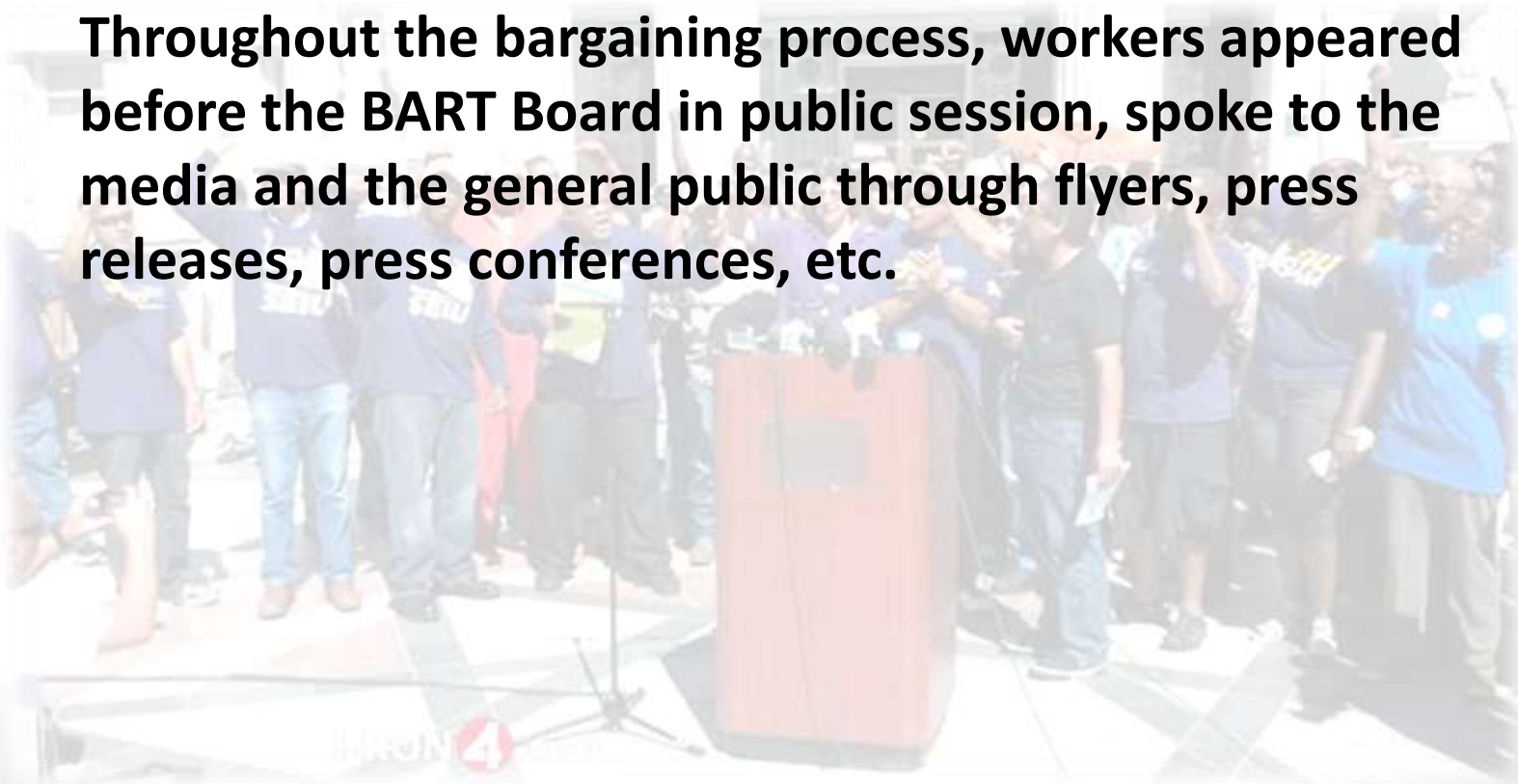
- **在谈判前每个工会会调查其成员，以确认工人的意见和利益，并寻求工人们谈判中的首要话题。**

Each Union used surveys of their units before bargaining began to identify worker interests, and to seek workers' input into prioritizing the bargaining subjects.

- **谈判小组协助编制及批准相关的建议及对策。**
Bargaining team members assisted in writing, and approved, proposals and counter-proposals.
- **必要时，工会工人会通过投票的方式，授权谈判小组组织罢工。**
Unit workers, by vote, authorized the bargaining team to call a strike, if the team deemed it necessary.

- 在整个谈判过程中，工人们在公开场合对BRAT董事会发表演讲，通过媒体及其他主要的宣传方式，如传单、新闻发布会等手段表达意愿。

Throughout the bargaining process, workers appeared before the BART Board in public session, spoke to the media and the general public through flyers, press releases, press conferences, etc.



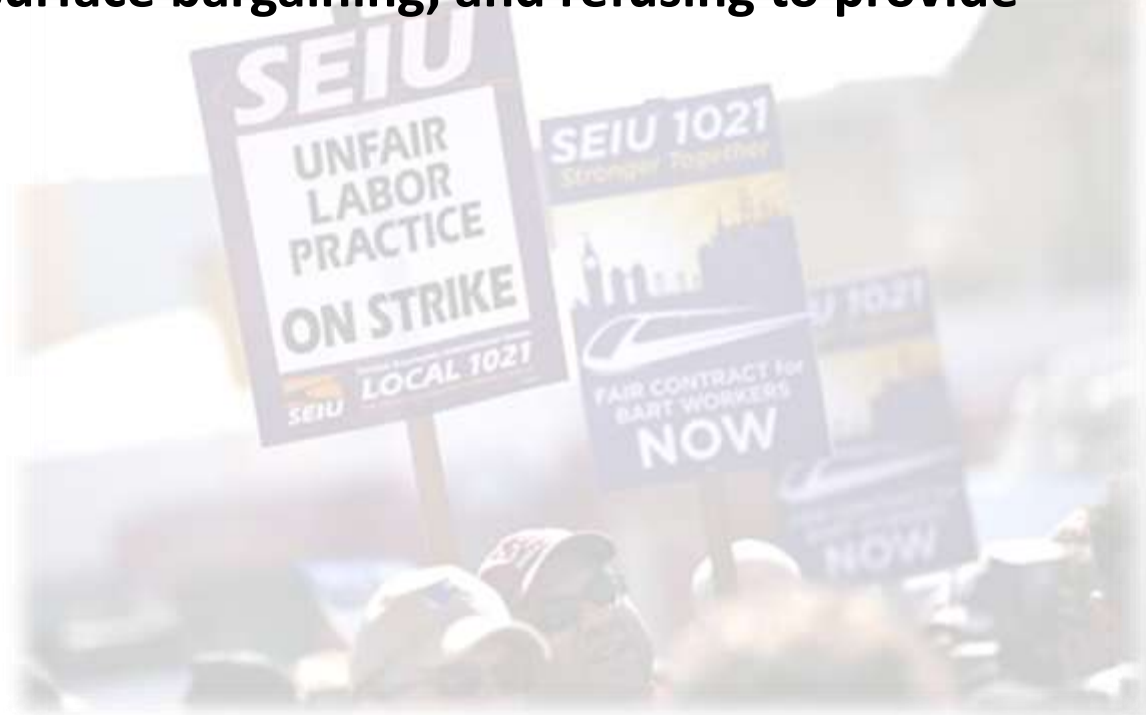
- 工人们于7月举行罢工，并在10月再次罢工。工人们游行，向公众散发传单，为其他罢工者提供水、食物、用品等。

Workers went on strike in July, and again in October, walking a picket line, distributing flyers to the public, assisting workers on strike with water, food, supplies, etc.

- 工人们以无记名投票的方式批准新的劳动合同。

Workers ratified, by secret ballot, the terms of the new labor contract.

- **2013年6月24日，两个工会在县法院起诉BART，声称其采用各种恶意的方式进行谈判，包括表面上进行谈判，实际上却不提供信息。**
- **On June 24, 2013, both Unions sued BART in the County court claiming BART was bargaining in bad faith in various ways, including surface bargaining, and refusing to provide information.**



- **“表面谈判”——一种策略，其中一方的行为看起来像是在谈判，虽然他们交换意见，举行会议，答复建议等，但并没有真心想达成任何实质性的协议。其特点通常是长时间的延迟反应，漫长的会议，拒绝讨论建议的细节等。工会宣称BART就是这样做的。**

“Surface bargaining”—a tactic by which a party to the bargaining acts as though they are bargaining, by exchanging pieces of paper, holding caucuses, and responding to proposals, without any real intent to reach an agreement. Often characterized by long delays in responding, long caucuses, a refusal to discuss the proposals in detail, etc. Unions claim BART did this.

- **“拒绝提供有关的信息”——谈判法规要求，当地责任部门在工会的要求下，必须提供与谈判“有关的”信息。这些信息包括：谈判组人员名单、哪个员工是属于什么级别、工资等级、当前的工作规定、或者BART惯例、某些员工参与了哪些受益项目的信息、及其他事项信息。**
- **“Refusal to provide relevant information.” The bargaining law requires the District to provide the Unions, on request, information “relevant” to the bargaining. This includes information on such things as who is in the bargaining unit, which employees are in which job classes, at which salary levels, and information about the existing work rules, or practices of BART, information about which employees participate in which benefit plans, and other matters.**

- **2013年6月27日，工会提前72小时告知BART和公众，谈判如果没能达成一致，他们将在7月1日凌晨零点起举行罢工。虽然法律没有要求，工会还是提前72小时通知公众。**

On June 27, 2013, the Unions gave BART and the general public a 72-hour notice that they would go on strike at 12:01 a.m., July 1, if no agreement was in place. The Unions had promised 72 hours of notice to the public, although no law required it.



- 后来一份独立的**审查透露**，BART存在**预测失误**：
It was later revealed by an independent review, that BART miscalculated:
 - BART相信工会不会在7月1日这周罢工，因为7月4日是国庆日假期，搭乘率会降低；
It believed that the Unions would not go on strike in the week of July 1 because it was a low ridership week due to the July 4 national holiday;
 - BART相信工会不会罢工，因为这样做他们就不能得到7月4日的节假日工资；
BART believed that the Unions would not strike because by doing so their members would be denied holiday pay for July 4;
 - BART致信给州长，请求他不要实行“冷却”禁令。
BART wrote to the Governor urging him not to seek a “cooling off” injunction.

第二阶段——2013年7月至8月初： PHASE TWO—JULY THROUGH EARLY AUGUST, 2013:

- **SEIU和ATU于2013年7月1日进行罢工，其他BART工人同时也拒绝工作并参加游行。**
SEIU and ATU went on strike July 1, 2013. Other BART workers honored the picket line and refused to work.
- **旧金山湾区发生了大规模运输/交通系统瘫痪。大规模交通堵塞，如公交、拼车等可替代资源不足。**
A massive disruption of the transportation/commute system in the Bay Area occurred. Huge traffic jams, inadequate alternative systems such as buses, carpools, etc.
- **由加州劳工部长直接指派的调解人，与工会达成一项暂停罢工30天的协议，并与BART达成重返谈判桌，诚信谈判的协议。**
Mediators directly assigned by the California Labor Secretary arrived and negotiated an agreement by the Unions to end the strike for a period of 30 days, and an agreement by BART to return to the table and bargain in good faith.



海湾大桥收费站广场前的交通堵塞
TRAFFIC JAMS at BAY BRIDGE TOLL PLAZA



挤满了乘客的渡轮
FERRY BOAT CROWDED WITH COMMUTERS



公交线路排了长队
LONG BUS LINES

- **7月5日工会复工，谈判在调解人及联邦仲裁调解服务部（FMCS）的协助下重新开始。**

Unions returned to work July 5, and bargaining resumed with assistance of mediators from the State, and from the Federal Mediation and Conciliation Service (FMCS).

阶段三——2013年8月4日至10月11日：

PHASE THREE—AUGUST 4 THROUGH OCTOBER 11, 2013:

- **2013年8月4日，BART董事会要求政府实行“冷却禁令”。第二天，政府宣布指派一个专家组对争议进行调查。**

On August 4, 2013, BART Board asked the Governor to seek a “cooling off injunction.” Next day, Governor announces appointment of a panel to investigate the dispute.

- **专家组组织了一场上百人出席的公开听证会，对双方在争议中提出的问题通过电视、电台进行直播。专家组将问题点和争议产生的社会影响的情况向州长进行了报告。**

The panel conducted a public hearing attended by hundreds of members of the public, broadcast live on television, and by radio, during which the issues in dispute were presented by the parties. The panel reports to the Governor on the issues and the public impact of the dispute.

- **2013年8月11日，州长宣布他决定发布禁令，县法院在当天就针对BART和工会发布禁令，禁止罢工和停业的行为。**

On August 11, 2013, the Governor announces his intent to seek an injunction, and on that same day a County court issues an injunction against both BART and the Unions, prohibiting a strike or lock-out for 60 days.

- **虽然实行“60天冷却期”的目的是给当事人双方更进一步的机会来解决谈判桌上的争议，但是有人听到BART的首席谈判代表对一个工会代表说：“59天后见。”**

Although the purpose of the “60-day cooling off period” is to give the parties a further opportunity to resolve the dispute at the bargaining table, the chief negotiator for BART is overheard to say to a Union representative that “I will see you on day 59.”

- 在60天内，FMCS的“官方调解人”和众多的“非官方调解人”，包括当地政府官员、副州长、及其他人员都参与其中。

“Official mediators” from the FMCS, and numerous “unofficial mediators”, including local public officials, the Lieutenant Governor of the State, and others engaged the parties throughout the 60 days.

最后阶段——2013年10月12日至21日：

FINAL PHASE—OCTOBER 12 THROUGH OCTOBER 21, 2013:

- **第二次罢工于2013年10月12日开始，BART系统再次关闭。**
October 12, 2013, the second strike begins, and the system shuts down again.
- **包括由奥巴马总统指派的FMCS负责人在内的额外调解人到来，协助各方处理纠纷。虽然他成功的建立了一个用于解决双方存在分歧的经济问题的框架，但是仍然没有达成任何协议。**
Additional mediators arrive to assist the parties, including the head of the FMCS, appointed by President Obama. Although he is successful in establishing a framework for settlement of the economic issues that separated the parties, no agreement is reached.
- **2013年10月17日，对话失败，FMCS负责人退出调解。**
October 17, 2013, the talks fail, FMCS head leaves.

工人死亡促使问题化解

Worker deaths lead to settlement

- **2013年10月19日，两个工人——一个BART工人和一个承包商雇员——被火车撞死，当时火车是由监督员和实习生操作。这件事被确信是BART不顾罢工，努力培训人员来维持铁路系统运作。（工会曾强烈要求BART不要尝试运行交通系统）**

October 19, 2013, two workers—one a BART employee and one a contractor employee—are killed by a train being operated by supervisors and trainees. This is believed to be an effort by the District to train persons to run the system despite a strike. (Unions had strongly urged the District not to try to run the system.)

- **公众的负面反应引发了一场风暴，罢工于2013年10月21日结束。双方签署了初步协议解决争端、并制定合同。**

A storm of negative public reaction erupts, and on October 21, 2013, the strike ends, and the parties sign a tentative agreement resolving the dispute, and settling the contract.

合同结果：

Contract Results

- 工人的主要谈判成果，根据新合同上调工资和福利，并改进安全措施。
 - ❖ 2013—2017的4年期合同；
 - ❖ 加薪：第1年增加1.86%，第2—3年各增加3.72%；第4年增加4.22%；
 - ❖ 增加养老金费用：第1—2年增加0.5%；第3—5年增加1%；
 - ❖ 医疗保险费增加到37美元/月
- Key gains for the workers under the new contract included wage and benefit increases, and improved safety measures.
 - ❖ 4-year contract from 2013-2017
 - ❖ Wage increase: two increases of 1.86% each in Years 1; 3.72% in Years 2-3; 4.22% in Year 4
 - ❖ Pension contribution increase: 0.5% in Years 1-2; 1% in Years 3-4-5
 - ❖ Healthcare contribution increase of \$37/month

- ❖ 建立工人和管理人员安全与健康联合委员会，编制管理规定、指导手册、并培训、及提升工人和乘客安全。

Joint Worker-Management Safety and Health Committee established to address regulations, guidelines, training, and corrective action to improve safety for workers and riders.

- ❖ 危险追踪设备；未解决的安全纠纷将迅速进行仲裁。

Electronic tracking of hazards; unresolved safety disputes will be expedited to arbitration.

后果：

AFTERMATH:

- 一部防止罢工的新法案在建议和讨论中诞生，它要求解决劳资问题的利益仲裁在BART内进行。

Proposals and discussions circulate for a new law preventing strikes, and requiring interest arbitration to resolve labor issues at BART.

- 工会和BART基于各自的原因，对这样的主意表示抵制。州议员们也表现谨慎。

The Unions and BART express opposition to such an idea, for their own separate reasons. State level politicians express caution.

- **BART董事会授权雇佣第三方， 评估谈判中出现了哪些错误。厚厚的报告书虽然没有明确“责怪”任何人，但是指出了许多因素导致这次谈判变的如此艰难：**

BART Board authorizes the hire of a third party to evaluate and report on what went wrong in the bargaining. That long report, although not assigning “blame” does comment on a number of factors which caused the bargaining to be so difficult:

- **双方互不信任的氛围；**

A climate of distrust between the parties;

- **BART管理层的新总经理和新首席谈判代表，在现场有“工会克星”的名声；**
A new General Manager, and a new chief negotiator for the District (Management) who came on the scene with a reputation as a “union buster”;
- **在媒体面前谈的过多，在谈判桌上却谈的太少；**
Too much “bargaining in the media,” and not enough bargaining at the table;

- **BART董事会成员在此事直接的参与和沟通都太少。**
Too little direct communication and involvement by members of the BART Board;
- **因为受到BART谈判小组、首席谈判代表、总经理的隔离，董事会未能深入参与谈判过程。**
the Board was too remote from the bargaining process, insulated by: the BART bargaining team, the chief negotiator, and the General Manager.
- **双方的谈判小组之间缺乏沟通，且BART管理者们并不在谈判小组之中，也不了解争议的问题。**
Poor communication between the bargaining team and BART managers not on the team about the issues in dispute.

经验教训/总结

LESSONS LEARNED/TAKEAWAYS

- 尽管承受着巨大的内部和外部压力，工会还是成功的维护了自身的团结。

The Unions succeeded in maintaining solidarity among themselves despite intense internal and external pressure.

- 工会达成了他们的总体目标，包括公正的工资待遇、并抵抗住了BART征收大量医疗保险和养老金的努力。

The Unions achieved their overall goals for a fair wage package and resisted efforts by BART to impose large new costs on workers for health care and pension benefits.

- 工会和工人们在工人安全问题方面表示诚恳也获得公司的理解，在这方面得到新的承诺和行动。

Unions and workers convinced management that worker safety was their legitimate concern and obtained new processes and commitments in that area.

- 因为这次谈判的缘故，BART管理层对劳工关系部门进行了大量的人事和组织变更。

As a consequence of this bargaining BART Management has since made large personnel and organizational changes in its labor relations functions .

- 最近的文章“旧金山湾快速运输区集体谈判报告和建议”（2014年9月5日）给雇者提出了许多建议与改善，以应对未来的谈判。

The recent report, “Bay Area Rapid Transit Collective Bargaining Report and Recommendations,” (Sep. 5, 2014) suggests many changes for management to consider for future bargaining.

- 工会虽然幸存下来，但是无法真正消除大众对BART工人的负面看法、及对大众利益造成的影响和破坏。工会认识到在经济衰退时试图维持/提升工资标准是非常困难的。

Unions survived but did not really overcome the negative view large segments of the public had of BART workers, their wages and benefits, and the disruption caused. Union realized the difficulty of trying to maintain/ improve standards in a recessional economy.

- 但愿这些经验将引导当事人在以后的谈判中会另选更好的处理方案。

The experience will, hopefully, lead the parties down a different path next time.

讨论问题

Discussion Questions

- 应当禁止通勤铁路系统的工人罢工吗？如果是，要怎样解决劳资纠纷？
Should workers in the commuter rail system be barred from striking? If so, how should labor disputes be resolved?
- 在这种纠纷中，像BART董事会这样的政府管理者应当怎样对自己的行为/失败负责？
How should public management like the BART board be held accountable for its actions/ failures to act in disputes like this?
- 在解决像这样的纠纷中，政府应该扮演什么角色？
What role should the government have in resolving disputes such as this?
- 在解决这种集体协议谈判中，罢工是一种必要手段吗？
Was the strike a necessary tool in resolving this collective bargaining agreement?
- 媒体在这样的争议中的角色和作用是什么？
What should be the role and use of media in disputes such as this?



THANK YOU!! 谢谢！！