

STATE OF COLORADO
DEPARTMENT OF LABOR AND EMPLOYMENT

IN THE MATTER OF INTEREST ARBITRATION BETWEEN
AMALGAMATED TRANSIT UNION, LOCAL 1001 and REGIONAL
TRANSPORTATION DISTRICT

The above-entitled hearing was taken
at the Magnolia Hotel, 818 17th Street, Denver,
Colorado, on June 26, 2009, at 9:10 a.m. before
Arbitrator M. David Vaughn, and taken by Angela
Smith, Professional Reporter and Notary Public.

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P R O C E E D I N G S

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ARBITRATOR VAUGHN: On the record.

We're convened in the continuation of the interest arbitration between the Regional Transportation District of Denver, Colorado, and Local 1001 of the Amalgamated Transit Union.

This proceeding takes place on the 26th of June, 2009, at Denver Colorado. It is the continuation of, I think, the hearing that originally convened on April 27th and continued again yesterday. The parties are represented as before. The court reporter is again present, and we are continuing to receive evidence.

We had discussion yesterday concerning Mr. Fisher's testimony regarding the status of a 50/50 provision in the 2000 contract, and some question if it will remain in the 2003, 2006 contract. I understand that the parties have a stipulation which will resolve that question.

MR. BUESCHER: Yes. Propose to stipulate that prior to 2000, any increases in the health insurance premiums were borne exclusively by the employees. The Union proposal in 2000 ended up with the 50/50 language being agreed to.

1 In 2003, a proposal by RTD to take it
2 out was ultimately agreed to. And in 2006, a Union
3 proposal to put it back in was ultimately agreed to.

4 I'm not swearing to the exact language
5 of those initial proposals, but the concepts came
6 from those directions.

7 MR. ASPHAUG: That's accurate. We
8 accept that.

9 ARBITRATOR VAUGHN: Thank you. That
10 stipulation is received into the record. Unless
11 there are other matters, I understand the District
12 is prepared to present its next witness.

13 MR. ASPHAUG: Yes.

14 ARBITRATOR VAUGHN: As before, the
15 witnesses were sworn at the outset of the present
16 day's hearing, and unless otherwise advised by the
17 parties, I understand that each person who will be
18 testifying was in that group and is testifying under
19 oath.

20 Mr. Asphaug, call your witness.

21 GREGORY DASH,
22 having been previously duly sworn to state the
23 truth, testified as follows:

24 DIRECT EXAMINATION

25 BY MR. ASPHAUG:

1 Q Good morning, Mr. Dash.

2 A Good morning, sir.

3 Q You were here all day yesterday;
4 correct?

5 A Yes.

6 Q And you anticipate continuing until we
7 finish the economic issues; is that correct?

8 A Yes, sir, I do.

9 Q Can you tell us a little bit about
10 your background and your qualifications and what
11 sort of work you do.

12 A Yes. I am with the firm of John A.
13 Dash & Associates. John A. Dash & Associates is a
14 firm which provides labor relations assistance to
15 managements of transit systems. The firm was formed
16 in 1968. I have been with the firm since it was
17 formed in 1968. I am in my 41st year, I guess, if
18 that works out correctly.

19 Q Excuse me. Go ahead.

20 A What we do for any particular client
21 can vary significantly. In some situations, we act
22 as a database, we supply information to management.
23 And in some situations, we are active -- or I am
24 active in negotiations as part of the negotiating
25 team for management.

1 Sometimes I'm the lead spokesman for a
2 client in negotiations. A lot of our work is
3 participation in impasse arbitration procedures, as
4 we find ourselves in here.

5 Q And what arena are we talking about?
6 What kind of industry?

7 A Only transit.

8 Q Only transit?

9 A I only work in the transit industry.
10 At some point, another -- over the last 40 years, I
11 have worked for a majority of the major transit
12 systems throughout this country. I have also worked
13 for many smaller systems.

14 Q There is a letter or kind of a resume
15 letter; is that correct, that's in the record as
16 Exhibit 60?

17 A Exhibit 60, yes, sir.

18 Q And is that -- that letter is dated
19 April 15, 2009, but does it still accurately reflect
20 the kind of work and the kind of areas that you work
21 in today?

22 A Yes, it does.

23 Q And in that letter, you indicate,
24 among other things, that your firm maintains the
25 most extensive files of data available to managers

1 on collective bargaining in the transit industry,
2 including copies of collective bargaining agreements
3 for all major transit systems for at least the past
4 30 years, detailed computerized wage histories of
5 bus operators, databases analyzing transit
6 contracts, other information as set forth in the
7 letter.

8 Is that accurate?

9 A Yes, it is.

10 Q Thank you. Now, we've agreed that
11 with respect to outside witnesses, such as
12 yourself -- well, now, let me back up a second.

13 You are not an economist; is that
14 correct, in terms of an economic degree like a --

15 A I have a degree from Villanova in
16 business administration.

17 Q Business administration. All right.
18 But you've done analyses based on information that
19 you and your firm surveyed from all those transit
20 systems throughout the country; is that right?

21 A Yes.

22 Q We've agreed that with respect to
23 outside witnesses, we are going to allow more of a
24 narrative-type testimony, if you're comfortable with
25 that. If you can go ahead and -- I have asked you

1 at this point, if you could provide testimony
2 relative to the District's case in chief. If you
3 would go ahead and do that.

4 A Yes, sir. I wanted to begin with just
5 a brief statement on the economy and the environment
6 in which this proceeding is taking place. And I've
7 made a couple of summary-type exhibits.

8 The first one is Exhibit 118. I mean,
9 obviously, the economic conditions in which the
10 parties find themselves, and which the world finds
11 itself, is unprecedented in any of our lifetimes.

12 Q I have read somewhere, and it's in the
13 record, that this has been the worst economic
14 downturn since the Great Depression.

15 A There have been many, many references
16 in the press to that type of thing. It just -- when
17 you have bankruptcies of General Motors and
18 Chrysler, and that type of thing, it's just an
19 amazing time to be observing what's going on.

20 But Exhibit 118 is entitled Examples
21 of Bankruptcies, Foreclosures, and Bank Failures.
22 Of course it covers -- and they're just one liners.
23 There's just one or two sentence events on General
24 Motors or Chrysler. It's not in any great detail.

25 Q These have been compiled by you, based

1 on your research?

2 A Yes. Actually, I took them off of
3 America Online as of June 17, 2009. They had a
4 listing like this, and I just cut and pasted the
5 listing into this exhibit. It includes, obviously
6 GM, Chrysler, Polaroid, Circuit City, Trump Casinos,
7 Six Flags. It's just an amazing list.

8 The way this thing is structured, if
9 you go through the first one, two, three, four
10 pages, they are bankruptcies. Beginning about a
11 third of the way down -- or two-thirds of the way
12 down, on page 5, it begins with store closings and
13 includes the Costcos, Macys, and Tiffanys and so
14 forth.

15 And if you go through page 7, it
16 begins bankruptcies with the sixth bullet point
17 down, the page which says Federal Regulators Shut
18 Down Florida's BankUnited, May 24th, the largest
19 bank failure of 2009. The collapse is expected to
20 cost the Federal Deposit Insurance Corporation \$4.9
21 billion.

22 Q Of course, we're all familiar with
23 General Motors recently filing for bankruptcy. Is
24 the -- are the effects of this economic downturn
25 having an effect on employment?

1 A Absolutely. National unemployment
2 hovers today around 10 percent. I'm not sure of the
3 exact figure, but it's over about 10 percent. I
4 think it's a little bit less in the Denver area.
5 Obviously, some areas are significantly worse than
6 others. If you go up to the Detroit, Michigan area,
7 it's up around zero. It's terrible.

8 Q Could you turn with me to Exhibit 63.
9 Can you tell us what that is?

10 A Yes. That is really another of these
11 summary pieces. It's titled Examples of Recent
12 Layoff Announcements. Again, this is a
13 geographically diverse listing. It includes
14 high-tech outfits such as Hewlett Packard, the first
15 one on the list you will find.

16 Finance industry, you will find
17 manufacturing. You'll find retail, everything from
18 the high-end retail like Neimann Marcus, to Sach's
19 Fifth Avenue, down to Macys, down to Wal-Mart. They
20 are all in there. You'll find newspapers like the
21 Chicago Tribune.

22 It's an interesting list. Like the
23 Postal Service is in there. The postal service had
24 a huge reduction. It's on page 2, Battered by the
25 economy, the U.S. Postal Service, on March 21, is

1 offering early retirement to 150,000 workers,
2 eliminating 1,400 management jobs, closing 6 of 80
3 district offices.

4 But as you go through there, you'll
5 find it isn't just little guys, obviously. I mean,
6 we have the postal service in there. Nokia is
7 identified as the world's largest mobile phone
8 maker.

9 Goodyear is identified as the nation's
10 largest tire maker. Panasonic, as the world's
11 largest maker of plasma TVs. Corning Glass is the
12 world's largest maker of liquid crystal display
13 glass.

14 WellPoint is the largest health
15 insurer in the United States. Anheuser Busch, in
16 beverage, is the world's largest brewery.

17 And it is across the board. And when
18 we hear of the auto industry. We hear of Chrysler
19 and we hear of the bad times in Michigan because of
20 the auto, but it's a very pervasive problem in the
21 economy today.

22 And generally, economists are
23 predicting that the unemployment rate will continue
24 to rise for a period of time. There are varying
25 opinions on when things might get better. But for a

1 period of time, it's expected to get worse.

2 Q So if the Colorado Legislative
3 Council, that we've previously heard on, has advised
4 the Colorado legislature and governor that --
5 quoting from Exhibit 99, on page 28, quote,
6 Coloradoans are suffering through a deep recession
7 with consumer and business optimism at record-low
8 levels. Unemployment continues to move upward, as
9 job losses are further depressing consumer spending.

10 Although many are choosing to save,
11 others who want to make big-ticket purchases are
12 prevented from lockup in lending in doing so. The
13 Colorado economy will be in recession until some
14 time in 2010, after which a credit-constrained
15 recovery will follow.

16 Is that local information in Colorado
17 consistent with what's going on nationwide?

18 A Absolutely, yes.

19 Q Likewise, if the Colorado Fiscal
20 Policy Institute has stated -- and I quote from RTD
21 Exhibit 102, page 1: The economic downturn is
22 causing a precipitous decline in state revenues.
23 state economists consider the state in a deep
24 recession.

25 And that is from the April 6, 2009,

1 issue brief. Is that consistent with what's going
2 on across the country at this point in time?

3 A Yes, it is.

4 Q As part of your job, do you maintain
5 close contact with transit agencies across the
6 country with what's going on with them at the
7 present time?

8 A Yes, we do.

9 Q Can you tell us, do you have a sense
10 as to whether or not the economic downturn being
11 experienced nationwide at this point is of a
12 magnitude similar to, larger than, smaller than the
13 economic situation that was going on after the 9-11
14 situation going into 2002, 2003?

15 A It's the worst I've seen in my 40
16 years in the industry. I haven't seen anything like
17 this.

18 Q Are there -- you've talked about
19 layoffs and things in other places. Are there
20 layoffs and situations occurring in the transit
21 industry as well?

22 A Yes. There's many layoffs. I think.
23 I think there's information in the
24 record already. One of the things we haven't --
25 looking -- at a couple major systems. There's

1 Exhibit No. 65, current issue of Metro Magazine.
2 This is a trade industry magazine. There's an
3 article entitled Recession Creates High Anxiety for
4 Transit Workforce.

5 Q And that article summarizes various
6 issues that are going on across the country in the
7 transit industry?

8 A Yes. It's very difficult to read on
9 the screen, but after the words -- after Recession
10 Creates, there in the darkness off to the right are
11 the words High Anxiety. Just so you understand what
12 that article is about.

13 Generally, it talks about the anxiety
14 that employees feel in the current economic
15 conditions when they're worried about their jobs,
16 when there's uncertainty that that creates.

17 And then the article goes on to talk
18 about what transit management has been doing to help
19 its employees in this situation. If the employees
20 are faced with this, management wants to increase
21 the morale and make the employees feel better --
22 basically, it's how to help the employees deal with
23 it.

24 On the first page, it mentions a
25 couple of the major systems. For example, New York

1 City can face an elimination of 3,000 positions, and
2 lay off as many as 1,000 workers. It talks about
3 the Doomsday Budget. It talks about at Washington,
4 D.C., eliminated approximately 300 positions. St.
5 Louis, at the bottom of that first page, they're --

6 Q Now, Washington, D.C., it indicates
7 the board is considering service reductions for the
8 coming year that could result in more job losses.

9 These service cuts we've been talking
10 a lot about, is that typically a situation where
11 when you reach a certain level you're talking about
12 laying off workers --

13 A Oh, absolutely. If you have
14 significant cuts of service, and you are at full
15 employment basis, you have to get rid of operating
16 employees.

17 Orange County is mentioned on the
18 second page of this thing, where they've cut service
19 and eliminated 400 jobs. Orange County, California,
20 that's between LA County and San Diego County.

21 So there are major layoffs taking
22 place in this industry like nothing I've ever seen
23 before.

24 Q And that would include the 2003
25 situation, around 2003 -- 2002, 2003, nothing like

1 that?

2 A Nothing like that.

3 Q We have had some previous testimony
4 about hourly wages for operators that are not only
5 doing RTD brand service, represented by the exact
6 same union local, working under collective
7 bargaining agreements, collective bargaining
8 agreements that are now in its second iteration, and
9 that do work that's so closely equivalent to what
10 RTD does, that are effectively considered RTD
11 employees for certain legal purposes.

12 I want to ask you -- and we've also
13 had some testimony about charter operators. We've
14 had testimony with regard to average wages of bus
15 drivers in the Denver Metro area. And I want to ask
16 if you have some information relative to that?

17 A Yes. If you turn back to Tab 175,
18 Bureau of Labor Statistics of the United States
19 Department of Labor does publish information on
20 average hourly wages for bus drivers in the Denver
21 area. This is from what they call their
22 occupational employment statistic series.

23 They define -- if you look at the top
24 of Exhibit 175, they define what a bus driver, a bus
25 driver transit in intercity. They drive a bus for

1 Motor Coach, including regular route operations,
2 charter and private carriage, may assist passengers
3 with baggage, may collect fares or tickets.

4 This list -- these data are as of May
5 of 2008. And they indicate -- the Bureau of Labor
6 Statistics indicates that the mean, which is the
7 simple average -- the mean is \$14.51 per hour at
8 that point in time, and the median is \$14.63 per
9 hour.

10 Q If you'd turn to RTD Exhibit 104,
11 please. Do you have that?

12 A Yes, sir, I have it.

13 Q And if you'd look at the circled area
14 there, it's consistent with what you have, is it
15 not, it shows the mean is \$14.51. The median is
16 \$14.63. There's a category for experienced, \$16.17.

17 Those are all compared to the current
18 top rate for RTD of \$19.85, correct?

19 A Yes. That is -- well -- yes, that is
20 correct. That is the RTD top rate.

21 In fairness, when you're looking at
22 means and medians, you would probably -- to be
23 accurate, you would probably have to take an average
24 for all the operators of RTD, not just top rate.

25 You have a four-and-a-half year hiring progression

1 for new employees. But the majority of new
2 employees, my guess, is that the majority are at the
3 top rate of \$19.85.

4 Q Above that there's a line for bus
5 drivers, school. And they are a little bit higher.
6 Do you know whether there are distinctions with
7 regard to bus drivers who work for schools, in terms
8 of how -- whether they -- how much work they do, how
9 long they're employed?

10 A Typically, it's a part-time job.
11 Obviously, at least in my experience, they're not
12 working in the summer. They're also not working all
13 day during the day. They have -- they go to school,
14 rush, and they go home, maybe other activities in
15 the middle of the day. But typically, it's not a
16 full-time job.

17 Q Could you -- let's take a look at
18 what's been the practice at RTD. Now, if we could,
19 if you could turn to your Exhibit 173 and tell us
20 what that is?

21 A I'd like to -- may I comment on --

22 Q Yes, absolutely.

23 A On just 175 for a second.

24 Q Yes.

25 A Obviously, that has -- when you look

1 at those means and medians of \$14.51 and \$14.63,
2 that would include the First Transits and Veolia and
3 some of those charter outfits that there was
4 information on the record that was put in yesterday.
5 But I wanted to comment on First Transit and Veolia.

6 I don't think there's any information
7 on the record on what those organizations are, and I
8 think it's important that we understand that they're
9 not little mom-and-pop outfits. They're not run by
10 some little local family organization that bids for
11 the bus service locally.

12 If you go to their websites, they have
13 things like -- for example, First Transit itself is
14 a subsidiary of First Group America. First Group
15 America is the North American operating union of
16 First Group, which is a United Kingdom company,
17 which is listed on the New York Stock Exchange. It
18 has over 10 -- it's like the mother company.

19 First Group out of the UK, it has 10
20 billion in revenue. They have approximately 137,000
21 employees, which include the employees here in
22 Denver. It's the entire First Group organization,
23 137,000 employees throughout the UK and North
24 America.

25 It's broken down into several

1 organizations. It's broken down here in the United
2 States to First Student. They have a lot of student
3 transportation.

4 First Transit, which operates the
5 service here in Denver. They also have First
6 Services, which is a maintenance-type organization.
7 And they also operate Greyhound, which was acquired
8 by First Transit in October 2007. So First Transit
9 now also operates Greyhound.

10 On the Veolia side, Veolia is a --
11 based in France. It is -- Veolia Transportation has
12 about 17,000 employees in North America. It is a
13 subsidiary of Veolia Transport Worldwide, which
14 itself is a subsidiary of Veolia Environment, which
15 is based in France, which has approximately 320,000
16 employees in 68 countries on all seven continents.

17 They have a revenue of \$38 billion,
18 and it is the 34th largest employer in the world.
19 It is in the Fortune 200 companies. It's just an
20 amazing -- it's not a mom-and-pop outfit. I think
21 that's important.

22 Some of these management companies --
23 for example, I work up in Massachusetts -- and
24 Massachusetts, except for the Massachusetts Bay
25 Transportation Authority in Boston, by statute, all

1 of the RTA, regional transportation departments
2 throughout Massachusetts must subcontract. A lot of
3 the other cities in Massachusetts -- they are
4 mom-and-pop outfits. They are mom-and-pop, little
5 management companies that run service for RTA.

6 That's not true when you're looking at
7 Veolia and First Transit. They are huge
8 organizations. I think it's important that we
9 understand what the organizations are.

10 Q Thank you. Now, if you could turn
11 with us to Exhibit 173. And we'll focus on RTD.
12 And you have some exhibits that are referred to as
13 Denver bus driver, when you have those, you are
14 talking historically?

15 A Yes. RTD and its predecessor
16 organizations.

17 Q So when we see Denver bus drivers,
18 we're not looking at some sort of amalgam RTD
19 in-house of First Transit or Veolia? This is solely
20 RTD itself?

21 A Right. Probably in May of 1969, when
22 Exhibit 163, again, it was Denver Tramway. I think,
23 in '71, it got taken over by its first agency, and
24 was later switched to RTD. But it was actually a
25 private organization in May '69, when this Exhibit

1 173 begins.

2 And it might -- this is just the
3 history of the RTD bus operators' wage rate over the
4 period from 1969 to date.

5 Q I will interrupt you just briefly.
6 There is some information that will be in the record
7 for the Arbitrator as to history of the
8 organization, as well as the history of the ATU --

9 A There is on error on this exhibit I
10 would like to correct. If you look at page 3. It's
11 page 3 of 173. At the bottom, it's: No COLA in
12 contracts after this. Actually, that note should
13 have appeared at the bottom of page 2.

14 Obviously, there's no COLA on those
15 contracts on page 3.

16 Q I see. The column for cost of living
17 estimation is --

18 A Has been eliminated on page 3. Can I
19 take a minute just to structurally update this,
20 explain this, of how this thing is set up, so people
21 can -- is it okay if I look at the screen? Is that
22 okay?

23 ARBITRATOR VAUGHN: Speak up so the
24 court reporter can continue to hear you.

25 A The way this thing is set up, you have

1 the contract dates, the effective dates of the
2 operating -- this is a basic negotiated contract.
3 The COLA that was in effect. This is the sum of the
4 prior 2005. This is all the top rates. The top
5 rate, of course, is the key rate within the transit
6 industry.

7 The next contract came along in May of
8 1971. The pay rate had been \$18 -- \$3.83. It was
9 increased up to 4.13. So there was a 30 cent
10 increase, a negotiated increase. There was
11 subsequent negotiated increases of 10 cents, 10
12 cents, and 15 cents, as you go down that column in
13 the '71 to '73 contract. In addition, it paid the
14 COLA. It was a quarterly COLA. It paid August,
15 August, November, February, and May. So -- right,
16 there were quarterly payments throughout that
17 contract.

18 These are also cumulative. So it was
19 1 cent -- it was a 3 cent increase from 1 cent to 4
20 cents. These are cumulative, but they're not new
21 money, so they add up across the page.

22 It's important that we understand the
23 structure of that, because when we get back on the
24 second page, this thing -- well, if you look at the
25 bottom of the first page, there was a \$7 paid rate

1 as of 1977.

2 If you turn to page -- and you see
3 there were -- there were negotiated increases in
4 that contract, on the top of page 2, of 70 cents.
5 It went from \$7 to 7.70. But the COLA at that point
6 in time paid \$1.34. There was 70 cents of
7 negotiated increases, and a 1.34 in COLA increases.

8 This is when the COLA really started
9 paying off. The next contract, the '80 to '82
10 contract. Again, there was 70 cents of negotiated
11 increases, but 1.20 in COLA. And that's when COLA
12 ended.

13 Q (By Mr. Asphaug) And that's -- and
14 COLA ended because these parties bargained it out?

15 A The parties bargained it out, right,
16 and it was eliminated. As you turn over to page 3,
17 we see the COLA has gone away.

18 The '87 to '88 contract, we've had
19 some discussion about that. You see the rate of
20 \$12.60 was established in September of 1986, and
21 there was a freeze contract in there. So the 12.60
22 rate that was negotiated in September of 1986, did
23 not then change until April of 1989. There was a
24 significant freeze period in that contract.

25 Q So these parties, left to their own

1 devices, negotiated a wage freeze for that period of
2 time back in 1987 to 1989?

3 A Yes. And then the other freeze period
4 we've been looking at is on page 4 of this exhibit,
5 the March of 2003 to March of 2006 contract.

6 You can see the 2000 to 2003 contract
7 ended with a rate of \$18.05. That was in effect in
8 December of 2002. The \$18.05 rate did not change
9 then until March of 2006. 2002 to 2006 was a freeze
10 period of \$18.05 an hour.

11 We've tried to summarize that. If you
12 look at the next exhibit, 174, we've tried to
13 summarize that history by contract year. You take
14 the individual contract years and show the cents per
15 hour and percentage increase.

16 Again, looking at the freeze period
17 you can see the 3/1/87 contract year was a zero.
18 And also the beginning of the next contract, 3/1/88
19 and 3/1/91 contract, began with a first-year wage
20 freeze under that contract.

21 And then the three-year contract on
22 page 2 of Exhibit 174, the three-year period for '03
23 to '06.

24 Q Now, in the contract, from 2003 to
25 2006, with the wage freeze, in the contract that

1 followed that, the parties negotiated an increase
2 over the time of the contract from 18.05 up about
3 1.85; is that correct?

4 A That's correct.

5 Q And that's reflected in the -- in
6 Exhibit 174. You have increases in contract here of
7 3.8 percent, 3.5 percent and 3.4 percent in the
8 third year. That all was negotiated between the
9 parties?

10 A Yes, that was.

11 Q You're aware that in this contract
12 negotiation, which you have already characterized as
13 by far worse than the situation that was being faced
14 in 2003, you are aware that the Union's proposals go
15 as high as 4 percent in the three years of their
16 contract demand that they're asking this Arbitrator
17 to impose?

18 A In the last year of the contract, yes.

19 Q Going back to Exhibit 174, has there
20 ever, in the last 20 years, been a contract where
21 the Union has gained, through negotiations, an
22 increase of a 4 percent level?

23 A I think you have to go back. The
24 first 4 percent I see going backwards is the
25 contract year beginning in 3/1/84. The answer to

1 your question would be no, not in almost 25 years.

2 Q All right. Thank you. Continue,
3 please, with your presentation.

4 A Just a couple more pieces. Goes back
5 to the economy and the economic situation which we
6 find ourselves. District Exhibit 119. Really, all
7 you have to do is read the title on this one. It's
8 titled: Extraordinary Times. For the first time in
9 more than 52 years, the consumer price declined in
10 2008.

11 It's always been a given, for as long
12 as I've been in this business, and for as long as
13 most people's memory, that the CPI doesn't go down.
14 The CPI only goes in one direction; it goes up.
15 That's not true today.

16 We show the year-to-year change in the
17 consumer price index going back to 1954 in this
18 exhibit. In 2008, it was down a half percent. If
19 you measure the consumer price index from December
20 to December -- there's lots of consumer price
21 indexes, but the one which is typically used is the
22 Consumer Price Index for Urban Wage Earners and
23 Clerical Workers in U.S. City Average, All Items, a
24 1982, '84 base.

25 Q Now, these are -- I'm sorry, go ahead.

1 A I was going to say that if you
2 continue this forward, if you look at the last line
3 on this exhibit, it shows that from December of 2007
4 to December of 2008, the CPI was down half a
5 percent. If you continue that forward, the last CPI
6 published would be the CPI for May of 2009. While
7 the month-to-month increase in the CPI has been up,
8 the year-to-year increase from May of 2008 to May of
9 2009 is down, as I recall, in the neighborhood of
10 about one and a half percent.

11 Q One and a half percent?

12 A Yes.

13 Q Not a half percent?

14 A Not a half percent. That's December
15 to December, year to year. But you can keep that
16 going on a rolling 12-month basis forward up to May.

17 Q All right. Now, these are national
18 figures, of course?

19 A These are national figures.

20 Q Could you turn with me to Exhibit 196,
21 please. And that is the very latest Colorado
22 Legislative Council Staff memorandum to the Colorado
23 legislature. And we've previously heard testimony
24 as to their official status in Colorado.

25 And on page 28 of Exhibit 196, under

1 the heading Colorado Economy, the legislative
2 council states that Colorado's economy continues to
3 suffer through one of its worst downturns in over 50
4 years. The conditions fostering economic growth in
5 easy access to credit, rising wealth, and high
6 levels of consumer confidence have disappeared,
7 causing major declines in economic activity.

8 Is that consistent with what is going
9 on nationwide?

10 A Absolutely.

11 Q The Colorado Legislative Council
12 states that the recovery will be a slow, long
13 process as the economy searches for new sources of
14 growth. That's indicated for Colorado. Is that
15 consistent with your understanding of what is going
16 on nationwide and how it's affecting transit
17 industry?

18 A Absolutely. And I think that last
19 sentence really expresses a degree of uncertainty
20 too, that I think is felt by many people who are
21 trying to guess where the economy may go in the
22 future. It's a big question mark these days.

23 Q If you go to the next page of the
24 Colorado Legislative Council report, they have
25 advised the Colorado legislature that job losses

1 have flooded the market with job seekers who are
2 competing with larger numbers of applicants for each
3 job opening.

4 Now, that's for Colorado. Is that
5 consistent with what's going on nationwide?

6 A Absolutely, yes.

7 Q And the job losses have been spread
8 across most industries. I think you showed us an
9 exhibit --

10 A I tried to indicate that earlier, yes.

11 Q If you go on to page 30, the state's
12 unemployment rate currently is 7.6 percent as of
13 May, when there were 206,000 Coloradoans looking for
14 work. And the number of unemployed in May was 60
15 percent higher than in May 2008, and more than
16 double the number of May 2007.

17 A Staggering numbers.

18 Q Is the Colorado Legislative Council
19 predicting worse numbers for 2010? Can you take a
20 look at page 31, please.

21 A Yes.

22 Q The state's unemployment rate will go
23 higher in 2010, averaging 9.6 percent. That's
24 consistent with what is going on nationwide?

25 A Yes, it is.

1 Q Colorado -- also on page 31, the
2 Colorado Legislative Council indicates Colorado
3 consumers have cut spending dramatically in response
4 to diminished job prospects and loss of wealth and
5 lower confidence.

6 To your understanding, is -- sales
7 taxes are based on getting taxes based on purchases?

8 A Yes. We live in a consumer-driven
9 economy, obviously, and one of the things about the
10 world today is people are saving money because of
11 the uncertainty of the future, which becomes sort of
12 a snowball effect, people are saving more, not
13 spending.

14 It's an interesting environment. It
15 tends to make things worse.

16 Q And if you look at page 32 of this
17 official report, at the top of that is a graph that
18 shows monthly Colorado sales of durable goods, 2003
19 to March 2009.

20 A Almost falls off the chart.

21 Q And especially compared to if you look
22 at the period 2003, 2006, it's falling off the
23 chart, as you said, in comparison to the situation
24 then.

25 A Yes, significantly worse now than in

1 the '03 to '06 period.

2 Q The Colorado Legislative Council says
3 retail trade sales will drop 7.8 percent in 2009.
4 Retail sales is just one element of the overall
5 sales for purposes of sales and use taxes, right?

6 A Right.

7 Q Sales in 2010 will experience an
8 anemic rebound from 2009's depressed levels.

9 A Uh-huh. It's the uncertainty of the
10 recovery. People recognize that things will turn
11 around. When's the big question mark.

12 Q And in terms of -- you presented us
13 with some national information with regard to the
14 consumer price index. On page 33, the Colorado
15 Legislative Council estimates that overall inflation
16 is expected to remain flat, 0.4 percent in 2009
17 compared to 2008, due to the weak demand in housing
18 and retail markets.

19 A It is expected also to remain low in
20 2010.

21 Q They specifically mentioned housing;
22 did they not?

23 A Yes, they did.

24 Q Inflation will remain low in 2010, due
25 to slow and protracted economic recovery.

1 A Uh-huh.

2 Q And they've also taken a look at the
3 situation in the Denver metro area. If you'd turn
4 to page 37. They talk about the metro Denver
5 economy is struggling to pull out of the stagnant
6 economic situation. Retail sales have plummeted.

7 Is that consistent, first of all, with
8 what's going on in Colorado as a state as a whole
9 and nationwide?

10 A Absolutely.

11 Q And as far as the metro Denver region
12 is concerned, they point out on page 37 that the
13 region -- our metro Denver region's current
14 unemployment rate exceeds, already, the 7.1 previous
15 peak unemployment rate that was seen in June 2003,
16 which was the last time these parties negotiated a
17 wage freeze.

18 A Yes, it is. And things are expected
19 to get worse.

20 Q And finally, if you look at page 38 of
21 this official report. Employment growth, current
22 employment statistics for 2009 in the first quarter,
23 trade, transportation, and utilities, with reference
24 specifically to transportation, shows a 4.5 percent
25 drop in employment as of 2009 in the first quarter.

1 A Yes, it does.

2 Q All right. Given all this information
3 that you've seen, is it -- and the information you
4 had from transit agencies nationwide, are the
5 challenges facing the Denver transit agency at this
6 point significantly worse, better, same, than those
7 being faced by transit agencies nationwide?

8 A I don't know how to put it in terms
9 like that. I think the -- I -- the experience of
10 the RTD here in Denver is -- would be typical, I
11 think, of what is happening in the transit industry
12 generally. Things are bad.

13 Q Just a little bad or a lot bad?

14 A As bad as I've seen them. A lot bad.

15 MR. ASPHAUG: Thank you. Nothing
16 further.

17 A I have one other exhibit I wanted to
18 refer to, if I may, on the CPI.

19 Q (By Mr. Asphaug) Yes, thank you.

20 A I think it was Exhibit No. 77.

21 Q Yes, thank you.

22 A Which these are annual average CPIs,
23 rather than December-to-December CPIs. Exhibit 119
24 was a December-to-December change. Exhibit No. 77
25 is the annual average data. And it compares the

1 Denver area to the average -- generally, over this
2 period, we go back to the year 2000, so every year,
3 2000 to 2008. And then, say, using 2008 as a base
4 period which the increase to 2007, 2008, 2006, 2008,
5 so if you look out at the right-hand column up from
6 the bottom, it's a one-year increase, two-year
7 increase, three-year increase, four-year increase,
8 and so forth, as you work your way up that column.

9 Generally. The Denver area consumer
10 price index has been going at a slightly lesser pace
11 than the national consumer price index.

12 Q So you previously indicated --
13 provided us with an exhibit indicating that the
14 National Consumer Price Index had actually declined
15 in 2008. And you indicated -- your testimony was
16 taking a rolling 12-month period to May 2009, the
17 decline was an even larger amount, one and a half
18 percent.

19 Do these -- does this record indicate
20 that the growth in consumer prices in Denver tends
21 to be less than the growth of consumer prices in the
22 country as a whole?

23 A That's what Exhibit 177 -- or Exhibit
24 77 is trying to indicate.

25 Q Thank you.

1 MR. ASPHAUG: I have no further
2 questions.

3 ARBITRATOR VAUGHN: Questions on
4 cross?

5 MR. BUESCHER: I will have some. Let
6 me take a break.

7 (A recess was taken.)

8 ARBITRATOR VAUGHN: On the record.
9 Questions on cross?

10 CROSS-EXAMINATION

11 BY MR. BUESCHER:

12 Q Mr. Dash, just a few questions. You
13 talked about Exhibit 118, which was our list of
14 bankruptcies, correct? There are no public entities
15 on it?

16 A I would think that to be correct.

17 Q And Exhibit 63 was the layoffs. And
18 putting aside how one characterizes the U.S. Postal
19 Service, is it also correct that there would not be
20 any public entities on that exhibit, 63?

21 A We've covered transit separately, but
22 yes, I believe you are correct. Transit we covered
23 separately.

24 Q Okay. Now, I would like you to look
25 at Exhibit 72, please. This is a document you

1 prepared, correct?

2 A Yes, it is.

3 Q And paragraph 4 represents your
4 conclusion, based upon whatever else is in the
5 document, correct?

6 A That's correct.

7 Q And what does the term, "going rate,"
8 mean in that sentence about your conclusion?

9 A One could -- if you looked at the
10 documents which are appended to this, there are
11 settlements from Union exhibits in Washington in a
12 2004 interest arbitration. And one of them is 2001
13 settlements. One is 2002 settlements. One is 2003
14 settlements. And the last one is the fourth quarter
15 of 2004.

16 At the -- on the last page of each of
17 those exhibits, the Union has calculated an average,
18 a mean and medium for each of the years. I would
19 consider the going rates, if you will, to be the
20 average.

21 Q Okay. So then the purpose of this
22 exhibit is to show that in 2003, it does not appear,
23 based upon your information, that the parties were
24 talking about what other entities, public transit
25 entities, were getting in wages increases, right?

1 It's not based on the going wage?

2 A That's correct, or any individual
3 system, because we go further in to say that no
4 system that had a multi-year contract had a zero
5 wage increase. So while the average may have been 3
6 or 4 percent for each of those years, if -- you'll
7 want to look at any individual system, there will be
8 no individual system that would even come close to
9 being comparable to what the RTD and the Union did
10 in 2003.

11 Q Okay. Now, your exhibit -- you've
12 talked about both Exhibits 119 and 77, which are
13 both CPI calculations, although different ones,
14 correct?

15 A Yes.

16 Q And you said -- I believe your
17 testimony about 119, reading the title says it all,
18 or something like that?

19 A Extraordinary times, yes.

20 Q You wrote that title, didn't you?

21 A Yes, I did.

22 Q Now, 77, please, I want to make sure I
23 understand what it says.

24 A Yes, sir.

25 Q Okay. Now, the real difference

1 between 77 and 119 is that 119 takes May of '09 --
2 not May -- it takes December of '08 and compares it
3 to December '07, correct, and how much the cost of
4 living increased or decreased over that period of
5 time?

6 A I'm sorry, which one?

7 Q 119.

8 A 119 did what?

9 Q December '08 to -- bottom line --
10 December '08 to December '07, percent change month
11 compared to the previous month?

12 A Yes, year to year, December to
13 December.

14 Q And 77 looks at the average increase
15 during the course of the year, correct?

16 A Correct.

17 Q It is correct, isn't it, that reading
18 the 3.9 percent under Denver area, the last number
19 in the right-hand column for 2007, what that says is
20 that in 2008, the average increase in the Denver CPI
21 was 3.9 percent?

22 A No, it doesn't say that.

23 Q It doesn't?

24 A No. You cannot really get a
25 comparable -- let's go back and look at CPIs for a

1 second. You started with 119. 119 uses December to
2 December to identify. So basically, you can say
3 that is the increase of the year.

4 If you go from December of '07 to
5 December of '08, you can say the increase in '08 has
6 been minus 0.5 percent.

7 When you turn to Exhibit 77, you have
8 Denver information. Denver information is only
9 available on a semiannual basis. They don't publish
10 monthly CPIs for Denver. It's only available for
11 the first six months, second six months.

12 So you cannot get a
13 December-to-December change for Denver.

14 The most comparable thing, assuming an
15 even change in the CPI throughout the year, you
16 cannot say that the annual average in -- the annual
17 increase in 2008 for Denver was 3.9 percent any more
18 than you can say the U.S. average increase is 4.1
19 percent. Because we know from 119 that the U.S.
20 average increase was actually 0.5 percent. It
21 wasn't 4.1 percent, as shown on Exhibit 77. That's
22 using annual averages.

23 Assuming even increases throughout the
24 year, what you can comfortably say is it might be a
25 July-to-July increase.

1 ARBITRATOR VAUGHN: So why don't you
2 tell us what it does mean, then. What does 77 mean?

3 THE WITNESS: It means that the
4 increase in the CPI in Denver has been less than the
5 annual average. It doesn't matter where you start
6 from, going from any year from 2000 to 2007, and
7 looking at the most recent information for 2008,
8 that is most recent consumer price index that's
9 available for the Denver area. That 201.865, that's
10 an annual average for 2008. It is the most recent
11 information available.

12 What it shows in the two right-hand
13 columns of Exhibit 77 is that increase in the Denver
14 CPI has been less than the U.S. average. That's the
15 point of 77.

16 Q (By Mr. Buescher) Okay. Go to
17 Exhibit 104. Have you looked at it?

18 A Yes, sir.

19 Q 104 is not a document you prepared,
20 correct?

21 A That's correct.

22 Q I'm sorry, you didn't prepare 104, did
23 you?

24 A No, I did not prepare 104.

25 Q And you don't know how these numbers

1 were arrived at, do you?

2 A Are we talking about the highlighted
3 bar?

4 Q I'm talking about any of the numbers
5 on there.

6 A Yes, I do.

7 Q You do?

8 A Yes.

9 Q Even though you didn't prepare it, you
10 know what that means?

11 A Yes. The same information for the
12 Denver area is in Exhibit 175, which I prepared,
13 which is information from the Bureau of Labor
14 Statistics.

15 Q 175, is that what you said?

16 A Yes.

17 Q So then the people included in bus
18 drivers transit and intercity are people like RTD
19 drivers, correct?

20 A The definition is on the top of 175.

21 Q People like RTD drivers, correct?

22 A Correct.

23 Q People like charter drivers, correct?

24 A Correct.

25 Q All right. Go to the Exhibit 172,

1 please.

2 A I have it.

3 Q This is a document that you prepared,
4 correct?

5 A Correct.

6 Q And the title of it says, Chart of
7 Real Wage indices. Denver operators versus U.S.
8 workers, correct?

9 A Correct.

10 Q And this -- first of all, tell me what
11 real wage indices means in this document. It's a
12 chart with two lines on it.

13 MR. BUESCHER: Are you ready, Rolf?

14 MR. ASPHAUG: Yes. Thank you.

15 Q (By Mr. Buescher) What does real wage
16 indices mean?

17 A It may assist you if you were to look
18 at 176.

19 Q Can you just explain it to me.

20 A 176 has the data on it that's plotted
21 on 172.

22 Q Can you tell me what the phrase means.

23 A Yes. It is the nominal wage rate
24 deflated for changes in living costs, as measured by
25 the consumer price index for urban wage earners and

1 clerical workers.

2 For the Denver bus operators --

3 Q Thank you. You answered my question.

4 And that's using the U.S. CPI number,
5 all cities?

6 A Actually, I didn't answer your
7 question, because the -- yes, it is measured by all
8 cities, yes, consumer price index for both groups.

9 Q For both groups of employees?

10 A For both groups.

11 Q So the indices for the Denver drivers
12 in 1986, '87, it looks like, was somewhere in about
13 the 145 range. Does that look about right?

14 A I lost my place. Can you give me that
15 number again.

16 Q 1987 --

17 A Exhibit 172, I'm sorry.

18 Q It's like about 145?

19 A For 1987?

20 Q Yes.

21 A The Denver number which is plotted on
22 there as shown on Exhibit 176 is 141.6.

23 Q And the current number for 2008 for
24 Denver is what?

25 A It's shown on Exhibit 176 as 116.6.

1 Q So that is a decrease in the real wage
2 index of 25 points off of 141, correct?

3 A In round numbers?

4 Q Uh-huh.

5 A If the lines are going down on 172,
6 it's a decrease. If the line is going up on 172,
7 it's an increase.

8 Q And for the U.S. workers, it is from
9 that same period of time, happens to be going up, so
10 it's an increase, correct?

11 A From '87 to --

12 Q 2008?

13 A '87 to 2008, the U.S. workers, as
14 shown on 176 went from 100.2 to 105.6.

15 Q Going up?

16 A Yes. 100.2 to 105.6 is an increasing
17 number.

18 Q Now, look at Exhibit 70, please. Also
19 a document you prepared, correct?

20 A Yes, I did.

21 Q And this is examples of union
22 agreements with an operator top hourly wage rate of
23 19.85 or less, correct?

24 MR. ASPHAUG: Can I interrupt for a
25 second. Now, we're going beyond the scope of

1 direct. We're getting into the Union -- what I
2 presume, is going to be the Union's argument in
3 their case in chief.

4 We've had this witness testify in our
5 case in chief with regard to wage information, with
6 regard to economic situations. We have not
7 intentionally gotten into comparative-type stuff in
8 our case in chief because we don't think that that
9 is an accurate indicator.

10 He will be available for rebuttal. We
11 do intend to present him for rebuttal. I would ask
12 that testimony going to that be left until after the
13 Union has made their case, if they are going in the
14 range of comparables.

15 ARBITRATOR VAUGHN: Response?

16 MR. BUESCHER: This is a document that
17 RTD has introduced into evidence prepared by
18 Mr. Dash. I don't know why -- just because they
19 chose not to ask him any questions about it, it goes
20 to the economic issues that we're talking about.

21 MR. ASPHAUG: If I may respond to
22 that. You have indicated, obviously, that you will
23 take documents, give them weight, if they're
24 addressed. And if they're not addressed, you will
25 give -- if there's no discussion about them, you

1 won't give them weight.

2 Both sides have exchanged all their
3 exhibits ahead of time to get the flow of -- to make
4 things move in an expeditious manner, but we have
5 not presented a case in our case in chief with
6 regard to comparators. We don't believe it's an
7 appropriate way of doing it.

8 It's like saying, okay, RTD is paying
9 more or less per hour than what the County of
10 Lebanon Transit Authority is paying. That's going
11 to be the Union's argument for you.

12 We should wait, in all fairness, until
13 the Union makes their case in chief with regard to
14 comparators outside the Denver metro geographic
15 area, and then this witness will be available for
16 rebuttal and we'll proceed from there.

17 ARBITRATOR VAUGHN: A couple of notes
18 here. I don't believe that I've said that if
19 parties do not speak to a particular exhibit, that I
20 would afford it no weight.

21 MR. ASPHAUG: I didn't mean no weight.

22 ARBITRATOR VAUGHN: Okay. Let's do
23 this. I understand the position of the District
24 that these documents, which it has prepared and
25 submitted, are not relevant. I understand the

1 Union's position to be that they are, or at least
2 may be.

3 I will permit the Union, through its
4 witness -- witnesses, to comment on these documents
5 and where they fit in. If that prompts rebuttal, I
6 will be prepared to receive it and to allow
7 cross-examination on it.

8 MR. BUESCHER: All I was asking him is
9 what this represents. That's the only question, and
10 I've got the same question of the next exhibit.
11 That's all I want to know.

12 ARBITRATOR VAUGHN: Fair enough. I'm
13 going to let you do that. Okay.

14 Q (By Mr. Buescher) I believe the
15 question I asked you about Exhibit 70 is: This
16 represents examples of union contracts around the
17 country, the transit industry where the operators'
18 top hourly wage rate is 19.85 or less?

19 A Correct.

20 Q No more and no less than that,
21 correct?

22 A Correct.

23 Q Now, look at Exhibit 69. This is
24 examples of increases in bus operator top hourly
25 rate over the term of the last RTD ATU 1001

1 agreement, correct?

2 A Correct.

3 Q And I noticed that every number on
4 here is 10 percent or less, correct?

5 A Yes. These are examples of increases
6 at less than the Denver RTD increases.

7 Q Just like the prior exhibit is
8 examples of hourly rates below the RTD ATU rate,
9 this is examples of increases less than the RTD ATU
10 increases?

11 A That's correct.

12 Q Okay. That's all I wanted to know.

13 Okay. Now, go to Exhibit 113. Also a
14 document you prepared, correct?

15 A Yes, I did.

16 Q Make sure I understand what this
17 document represents. First of all, the second
18 column, Denver operator, that's the top hourly wage
19 rate in those years, correct?

20 A This may take a little bit of
21 explanation. It is -- see if I can find the right
22 page here. I want to try to explain it.

23 When we were talking about the chart
24 on 172, when you're looking at 113, and it says the
25 Denver operators' top hourly wage rate. When we use

1 this kind of information on an annual basis, we use
2 the annual average top rate. It is not the top --
3 you said top rate for the year. The answer is no.
4 It's not the top rate for the year. It's the annual
5 average top rate.

6 It basically assigns a top rate for
7 each month. What is the top rate for January,
8 March, April, May, so forth, throughout the year.
9 It takes them up and adds them by 12. It's an
10 annual average top rate.

11 It's the same information that was
12 used for the chart on 172, and the basic data for
13 that chart, which I was referring to in 176. It's
14 the annual average.

15 To that extent, it is the annual.
16 It's not the average for the bargaining union. It's
17 the annual average top rate.

18 Q Now, what is the next column?

19 A That's the column from the Department
20 of Labor for the industry that they identify as
21 transit and ground transportation industries.

22 Q Okay. And is that the average annual
23 top rate, or as the title of the exhibit says,
24 annual average hourly earnings?

25 A It is the annual average hourly

1 earnings.

2 Q And I think I understand enough to
3 know that's not the same as the annual average top
4 rate, correct?

5 A That's correct.

6 Q All right. You testified about
7 Exhibit 196. Go to that exhibit and go to page 38.
8 Got that?

9 A Yes.

10 Q I don't attribute the circle to you.
11 Let's be clear about that. I attribute it to RTD.

12 MR. ASPHAUG: Me?

13 MR. BUESCHER: Rolf, then,
14 specifically.

15 THE WITNESS: Are you addressing the
16 question to him?

17 MR. BUESCHER: No, not yet.

18 Q (By Mr. Buescher) This Figure 10, as
19 I understand it, shows that state government
20 employment has increased in the first quarter of
21 2009; is that correct?

22 A State, local, and federal, yes.

23 Q And then the trade transportation
24 utilities number has decreased, correct?

25 A Minus 4.5 percent, yes.

1 Q And do you understand that that is a
2 combination of the utilities industry, the
3 transportation industry, and whatever the State --
4 the BLS considers the trade industry?

5 A Trade would be also retail trade,
6 which there is a subset underneath it. But also
7 retail trade would be included in the trade, yes.

8 Q All right.

9 MR. BUESCHER: No additional follow-up
10 questions.

11 ARBITRATOR VAUGHN: Questions on
12 redirect?

13 MR. ASPHAUG: Yes, please.

14 REDIRECT EXAMINATION

15 BY MR. ASPHAUG:

16 Q First of all, turning to Exhibit 104,
17 you were asked some questions about it. This is not
18 a document that you prepared, but as you pointed
19 out, the figures for \$14.51 and \$14.63, for the mean
20 and medium hourly wages for bus drivers transit
21 intercity are identical to the figures you obtained
22 from the BLS, correct?

23 A Right, and are included in
24 Exhibit 175.

25 Q And do you know whether -- as you look

1 down at the bottom of that page, there's a reference
2 to a website, cworkforce.com,
3 c-o-w-o-r-k-f-o-r-c-e, dot, c-o-m?

4 A Yes, I see the reference.

5 Q Do you know yourself whether or not
6 cworkforce.com is, in fact, the website for the
7 Colorado Department of Labor and Employment?

8 A Actually, no, I don't.

9 MR. ASPHAUG: Okay. Well, I would ask
10 that the Arbitrator just take judicial notice of
11 that fact.

12 Q (By Mr. Asphaug) Let me ask you
13 another question. You were asked about "going
14 rate." Now, you were here, were you not, for Greg
15 Fisher's testimony, as RTD's labor relations manager
16 going back to 1986 -- excuse me, in RTD's labor
17 relations department, and as its manager, going back
18 to the '90s, that RTD -- and I'm paraphrasing,
19 obviously -- does not look at what other agencies
20 are paying in determining what amounts to negotiate
21 for?

22 A Yes. I was here during that
23 testimony.

24 Q There are some transit agencies in the
25 country, are there not, where the unions have been

1 successful in collectively bargaining -- through
2 collective bargaining between the parties, some sort
3 of reference to a nationwide average to determine
4 what's going to be paid as wage rates for that
5 particular company?

6 Are there a few that do that, or at
7 least one that does that?

8 A What comes to mind when you mention
9 that is the San Francisco Municipal Railway.

10 Q Right. What do they do in
11 San Francisco?

12 A They have a provision in the city
13 charter where every year, as of July 1, they
14 determine the two highest wage rates in the country.
15 And they average -- top rates -- and they average
16 their two highest top rates, and that becomes the
17 rate which is paid by San Francisco to its bus
18 operators represented by the TWU.

19 Q So every time when the contract comes
20 up for renewal, essentially, there is a guarantee
21 that the wage rate that's going to be paid in San
22 Francisco is going to be no less than the average of
23 those others? No less than a certain floor, based
24 on some other agency that might be halfway across
25 the country or all the way across the country?

1 A Yes. But last year, there was a
2 charter amendment that went to the vote by the
3 people. It was on the ballot, and they made a few
4 changes to the city charter, including an amendment
5 to that clause, which basically provided for a wage
6 freeze for the period effective July 1, '09.

7 So as of next week, that calculation
8 will not be made for the first time of my memory.
9 And there will be a wage freeze until July 1, '10.

10 Q So it's actually a city charter
11 provision?

12 A Yes. It's not a negotiated clause.
13 It's part of the city charter.

14 Q You were asked about an exhibit you
15 prepared that focused on 2003 that the parties used
16 in negotiations. And 2003 was the time frame when
17 we ended up with -- through negotiations, a
18 three-year wage freeze, right?

19 A Right.

20 Q And now we're here, and the District
21 is, in essence, asking for a two-year wage freeze,
22 correct?

23 A Correct.

24 MR. ASPHAUG: Thank you. Nothing
25 further.

1 ARBITRATOR VAUGHN: Anything further?

2 MR. BUESCHER: No.

3 ARBITRATOR VAUGHN: Thank you,
4 Mr. Dash.

5 Let's go off the record.

6 (A recess was taken.)

7 ARBITRATOR VAUGHN: On the record.

8 The Union may announce its witness.

9 MR. BUESCHER: We call Bill Jones.

10 WILLIAM JONES,

11 having been previously duly sworn to state the
12 truth, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. ASPHAUG:

15 Q Bill, tell the Arbitrator a little bit
16 about your background with Local 1001.

17 A Certainly. I moved to Denver as an
18 oil and gas attorney right when the bottom fell out
19 of the oil and gas market. And I settled in with a
20 job with the Amalgamated Transit Union Local 1001
21 during the 1985 contract negotiations, and I became
22 permanent in 1986. So I have been continuously
23 employed by Amalgamated Transit Union Local 1001
24 since then.

25 In 1999, I assumed the duties of

1 in-house counsel for doing the arbitrations and the
2 like. And as is apparent, we still employ outside
3 counsel for other purposes.

4 I've been a ghost writer, advisor,
5 public relations person, lobbyist, an in-house
6 attorney, kind of a little of everything.

7 Q And so you were around in 1977 during
8 the interest arbitration, correct?

9 A I was.

10 Q But outside counsel actually presented
11 that case, correct?

12 A That is correct.

13 Q Did you sit in like you are here?

14 A I believe I was there briefly, but
15 not --

16 Q And have you, at my request, gone back
17 to the files from that arbitration?

18 A Right, from our files, I have.

19 Q Black notebook, go to Exhibit 30,
20 please, and the tell Arbitrator what this is.

21 A This is one of the Union exhibits from
22 that file, showing comparable wages in various
23 cities.

24 Q And now look at Exhibit 31. What's
25 that?

1 A 31 is an RTD exhibit from the 1977
2 proceedings that also shows some top bus operator
3 wages for five different cities, including Denver.

4 Q And that's CX 15, that's --

5 A In the lower right-hand corner, CX 15.

6 Q And Exhibit 32?

7 A 32 is also an RTD exhibit from the
8 1997 interest arbitration, and it is titled
9 Comparative Pension Benefits of Property Surveyed,
10 and it is marked CX -- looks like 17, but it could
11 be 11, in the lower right-hand corner.

12 Q So RTD was doing -- for some reason,
13 was presenting evidence, different comparables for
14 different issues?

15 MR. ASPHAUG: I'm going to question
16 this. May I voir dire on the issue?

17 ARBITRATOR VAUGHN: You may.

18 VOIR DIRE EXAMINATION

19 BY MR. ASPHAUG:

20 Q Mr. Jones, were you present at the
21 1997 negotiations?

22 A I was not present during introduction
23 of these exhibits.

24 Q So other than looking at the chicken
25 scratch CX 15 to CX 17 on these exhibits, you have

1 no idea whether, in fact, which party introduced
2 these exhibits, whether they were requested by the
3 Arbitrator, whether they were done by the parties
4 themselves, or whether they were introduced by
5 another party; is that correct?

6 A That is correct. I do not know, other
7 than they were in our file from the '97 interest
8 arbitration and marked as company exhibits.

9 Q They were in your file. Do you even
10 know whether they were actually introduced?

11 A I do not know for certain if they were
12 actually introduced.

13 MR. ASPHAUG: That's fine. We're not
14 objecting to the exhibits. I just wanted to voir
15 dire on that.

16 CONTINUED REDIRECT EXAMINATION

17 BY MR. BUESCHER:

18 Q All right. Go to RTD's Exhibit 54,
19 white notebook.

20 A All right.

21 Q Go to page 23.

22 A I am there.

23 Q And the third paragraph, under
24 article -- heading Roman numeral VI, beginning, The
25 parties presented.

1 A Yes.

2 Q Second sentence reads: Wage rates
3 from 16 comparable cities?

4 A That's correct. The Union presented
5 wage rates of 16 comparable cities.

6 Q And I'll represent to you, if you
7 count the cities on Exhibit 30, there are 16 of them
8 there. And the RTD then, a couple sentences later,
9 said: Four cities in the area; is that correct?

10 A That is correct.

11 Q And then turn onto the next page and
12 read the first sentence to yourself.

13 A Okay.

14 Q And the Arbitrator said that the Union
15 list made the most sense and are the most
16 comparable, correct?

17 A That is correct. And this is the 1997
18 arbitration.

19 Q Right. Okay. You can put that
20 notebook down.

21 Now, go to Exhibit 33 in the black
22 notebook, Union Exhibit 33. All right. And can you
23 identify what that document is.

24 A That is the general manager who
25 testified earlier, Clarence, "Cal," Marsella's

1 employment agreement dated December 15, 2004.

2 Q And there was some testimony about
3 cities listed there. Go to page 2 of that exhibit,
4 the first full paragraph in the middle, do you see a
5 list of cities?

6 A I do. It says that they will compare
7 his pay to the general managers of the five
8 comparable transit properties in the comparable
9 cities, Dallas, Houston, Atlanta, Washington, D.C.,
10 and Cleveland.

11 Q Okay. Now, look, at Union Exhibit 34,
12 please.

13 A 34 is, again, Clarence, "Cal,"
14 Marsella's employment agreement with RTD. This one
15 is dated June 19, 2007.

16 Q And second page of it, top paragraph,
17 same language?

18 A Same language.

19 Q All right. Now, look at Exhibit 35,
20 please, Union Exhibit 35. Take a moment to look at
21 that and tell the Arbitrator what that is.

22 A This is RTD's proposal from Article
23 II, Section 10, of the CBA, in their 2003 last,
24 best, and final offer that was presented to the
25 Union.

1 Q Now, can you, just generally, describe
2 what this proposal was. Not with all the details,
3 but structurally, what was it?

4 A They had a nominal wage increase
5 across the board on page 2 of this document. And
6 then starting on page 3 and into page 4, for each
7 calendar year around the contract, they had a chart
8 showing sales tax revenue -- sale tax collections,
9 rather, in one column, and how much of a bonus they
10 were willing to give employees, should any of those
11 targets be met.

12 And there's a different chart for
13 2003, 2004, and 2005.

14 Q Now, you said sales tax, and I think
15 all the other exhibits we've looked at so far talk
16 about, either expressly or implicitly, sales and use
17 taxes?

18 A Correct. And the RTD proposal, at
19 that time, if you look at page 3 of that exhibit in
20 the second paragraph, it ends with: These amounts
21 to be considered to include only sales tax
22 collections. Use tax collections are not included
23 in amounts used to calculate the basis for the
24 compensation adjustments.

25 Q Even though it's characterized as

1 their last, best, and final offer, it was not
2 ultimately accepted by Local 1001, correct?

3 A That's correct.

4 Q Now, at my request, did you get data
5 that would allow you to determine whether, if that
6 had been accepted, the -- any of those bonus targets
7 or bonuses would have been paid?

8 A Yes, I did.

9 Q Where did you get that data from?

10 A From the Colorado Department of
11 Revenue. I'm trying to think of the exact name.
12 It's the office of research, basically within that
13 department.

14 Q Look at Union Exhibit 36. What is
15 Union Exhibit 36?

16 A That is just a chart that shows on the
17 left-hand side what RTD's proposed target was to get
18 the least of the three potential bonuses in each of
19 those years.

20 Q And that comes right off of the prior
21 exhibit?

22 A Comes right off of the RTD last, best,
23 and final. And to the right of that are the sales
24 tax revenue figures that I got from the Department
25 of Revenue. And there is a note on here, the 2005

1 figure shown here, 202,000 and change, that figure
2 is actually 60 percent of what was collected,
3 because RTD -- at the time we negotiated in 2003,
4 RTD did not envision any plan for when FasTracks
5 would be on the ballot. That's the increase of
6 sales tax, the four-tenths of 1 percent we've heard
7 a lot about.

8 So based on what we knew and expected
9 in 2003, I did make an adjustment in that 2005 year.
10 We actually collected 337,000-plus that year.

11 Q Okay. Stay with 2003 for a moment.
12 There was testimony by RTD that there was, in 2003,
13 a salary freeze for its salaried employees. Did you
14 hear that testimony?

15 A Yes, I did.

16 Q Okay. And is that accurate for 2003?

17 A Yes. I mean, there was some minor
18 adjustments, but they did have to do with changes of
19 duties. But, yes, there was a freeze in 2003.

20 Q Now, the Union ultimately agreed to a
21 freeze in three years, '03, '04 and '05, correct?

22 A That is correct.

23 Q Did the RTD salaried employees have
24 their salaries frozen in 2004?

25 A No.

1 Q 2005?

2 A No.

3 Q All right. There's been some
4 testimony also about the private carriers that
5 operate within the RTD system, correct?

6 A Yes.

7 Q And you're familiar with them?

8 A Very.

9 Q To some extent?

10 A Yes.

11 Q First Transit, has -- there's been
12 testimony that there is a collective bargaining
13 agreement for First Transit, or at least part of it.
14 Tell the Arbitrator about those three entities, what
15 they cover, first of all.

16 A Certainly. RTD's fixed route services
17 were all done by three contractors. And you've
18 heard prior testimony that First Transit has
19 acquired Laidlaw over the last few years. So now we
20 just have two major contractors.

21 But we -- those were organized by the
22 ATU as three separate units. The First Transit
23 Denver operation -- and that's the one that does
24 have a collective bargaining -- that was organized
25 as ATU Local 1755, not part of 1001. I think their

1 current contract is in evidence.

2 Q Did 1001 take that over?

3 A 1001 did on July 1 of 2007, through a
4 process that the International has, both the
5 representative employees at First Transit and the
6 representative employees at RTD voted to approve a
7 merger, and International also approved that merger.

8 So effective July 1, 2007, we also
9 represent the First Transit Denver employees.

10 Q But until that time, it was a separate
11 local union?

12 A Yes, it was.

13 Q Now, go on with your explanation of
14 these various contractor units.

15 A The Laidlaw property, which we now
16 consider as First Transit Commerce City, was
17 organized by us as well. That was back -- the most
18 recent, about a year ago, but we still do not have a
19 first collective bargaining with them.

20 In fact, we were in mediation with the
21 Federal Mediation and Conciliation Service within
22 the last couple weeks, trying to get that contract
23 moving.

24 The other contractor -- I keep wanting
25 to say the third. It was the third when we

1 started -- is Veolia. And we organized them during
2 2007. But again, those contract talks drug out and
3 we do not have a contract with them. So there's no
4 collective bargaining agreement there.

5 Q And they were -- those, two, last two
6 you talked about were totally unorganized until you
7 organized -- Local 1001 organized within the last
8 couple of years?

9 A That is correct. When we started in
10 2007, we only represented the public employees at
11 RTD, the contract we're here on today. And by a
12 year later, in January '08, we organized and
13 represented everybody, or acquired by merger.

14 Q All right. Now, does -- let's talk
15 about numbers for a moment. How many people,
16 roughly, are there in the bargaining unit for which
17 we are here today?

18 A These fluctuate a bit, but I would say
19 between 1850 and 1900 union members at RTD proper.

20 Q Okay. What about First Transit
21 Denver, where we have another collective bargaining
22 unit?

23 A First Transit Denver is about 250.
24 Again, that could fluctuate up or down by 10 or so.

25 Q And are the mechanics there

1 represented?

2 A No. At all the private contractors,
3 we represent bus operators only.

4 Q And do any of those private
5 contractors operate the light rail system that RTD
6 operates?

7 A No. RTD runs a hundred percent of
8 that.

9 Q What about First Transit Commerce
10 City?

11 A That would be a comparable size. It's
12 also about 250 employees.

13 Q And Veolia?

14 A About 270.

15 Q Now, let's, while we're talking about
16 that, go to RTD Exhibit 18. And that is the current
17 First Transit Denver, Local 1001 contract, correct?

18 A That is. This is the first contract
19 that Local 1001 was directly involved in
20 negotiating.

21 Q Okay. And why don't you go to
22 page 28?

23 A Okay. I'm at 28.

24 Q And 28 has insurance on it, right?

25 A That's correct. Article 28, on that

1 page is insurance.

2 Q And paragraph A there, again, just
3 tell the Arbitrator for the employee-only insurance,
4 how does it work under that contract?

5 A Under the First Transit Denver
6 contract, the company pays 100 percent of the
7 employee-only plan, for their health insurance.

8 Q And then it looks like the next couple
9 of paragraphs talk about contributions towards
10 family over the next couple years; is that right?

11 A That is correct.

12 Q There was testimony, I think, from
13 Mr. Marsella about MCI bus fleet maintenance
14 yesterday?

15 A Yes. I believe Mr. Marsella mentioned
16 that as one of their cost-saving measures.

17 Q Was Local 1001 involved in that
18 cost-saving measure?

19 A Absolutely. RTD approached us about
20 wanting to refurbish the MCI-3 instead of having to
21 replace it. And normally, most all of that work
22 would be Local 1001 work, but understanding the
23 budget situation they were in, and the desire to get
24 that fully refurbished and save some money, we did
25 enter into an agreement with them that allowed them

1 to contract out virtually all, but not necessarily
2 all, of that work on refurbishing the MCI fleet.

3 MR. BUESCHER: No additional
4 questions. Thank you.

5 At least on these economic issues, you
6 are going to see Mr. Jones again later.

7 ARBITRATOR VAUGHN: Questions on
8 cross?

9 MR. ASPHAUG: Can we have just a few
10 minutes?

11 ARBITRATOR VAUGHN: Certainly.

12 (A recess was taken.)

13 ARBITRATOR VAUGHN: Back on the
14 record.

15 Questions on cross?

16 CROSS-EXAMINATION

17 BY MR. ASPHAUG:

18 Q Mr. Jones, towards the end of your
19 testimony you were talking about some MCI work. I
20 just want to make sure that I understand. The union
21 has agreed to RTD contracting out some work on MCI
22 buses?

23 A That is correct.

24 Q How many buses are we talking about?

25 A I don't know. I don't think it's a

1 huge fleet, but I just don't know.

2 Q But it's a significant amount of work?

3 A It is a significant amount of work.

4 Q And what you said -- let me back up
5 here.

6 I can't remember, Bill, usually we
7 oppose each other. Actually, we're on the other
8 side as being lawyers. Were you representing the
9 Union back when the Union grieved RTD's contracting
10 out some electrical work in a lunchroom?

11 A I was not. I'm familiar with the
12 case.

13 Q Familiar with the case?

14 A Yes.

15 Q The Union grieved our contracting out
16 some pretty minor work, wasn't it, in the lunchroom
17 district shops?

18 A Monetarily, I think that was a few
19 hundred dollars worth of work.

20 Q The Union zealously protects its not
21 contracting out work under normal circumstance, does
22 it not?

23 A We absolutely do.

24 Q Now, in this case, the Union has gone
25 along with RTD contracting out a substantial amount

1 of work for a fleet of buses, because, if I've got
2 your words correct, you said, quote, Understanding
3 the budget situation they were in, closed quote.

4 This is the current budget situation
5 that the District finds itself in, correct?

6 A That's correct.

7 Q And that is -- it's a crisis
8 situation; is it not?

9 A I don't know how I would characterize
10 it. You're asking for my personal opinion?

11 Q Well, I'm asking for the Union's
12 understanding of the budget situation that the
13 District was in that caused the Union, which has
14 previously grieved -- and actually won that
15 grievance, by the way -- contracting out some couple
16 hundred dollars of electrical work in a lunchroom
17 versus contracting out all of the work on a large --
18 on a substantial amount of work on a fleet of buses?

19 A We understood that the MCI coaches are
20 over-the-road type coaches, so they're pretty
21 expensive buses. I don't know exactly what they
22 cost, but we have buses that range from \$300,000 to
23 half a million dollars apiece.

24 And in terms of the capital budget for
25 buying buses, RTD came to us with a proposal saying

1 that they'd like to refurbish this existing fleet to
2 avoid having to buy additional buses.

3 And the key there is that RTD came to
4 us and asked. The Union has cooperated on many,
5 many things that would save RTD money, or hopefully
6 make the system work better.

7 Q That's absolutely appreciated, and
8 this was appreciated as well.

9 Let me back up here a second. I don't
10 think I was clear enough with my question.

11 First question I have here for you is:
12 We're not sure of the fleet of buses, but if it's 55
13 buses, would that sound about right?

14 A I really don't recall.

15 Q If the repair is estimated at about
16 \$1.5 million, would that sound about right?

17 A I don't recall the amount, but I know
18 it was a substantial amount of work.

19 Q And my question to you really was:
20 You said, understanding the budget situation that
21 the Direct was in, the Union was willing to allow
22 RTD to subcontract out this substantial amount of
23 work.

24 And my question to you was, simply:
25 What was the Union's understanding of the budget

1 situation that RTD was in?

2 A And I thought I answered that.
3 Specifically, those are very expensive buses to
4 replace, and what RTD approached us with was we'd
5 rather refurbish the existing fleet, to get a few
6 more years out of them, than to have to buy new
7 buses to replace those.

8 That's the financial situation that
9 the District was in when they came to us with the
10 MCI proposal.

11 Q Because the District was in a
12 situation where they needed the Union's assistance
13 to actually give back this amount of work that
14 normally would be the Union's work, in order to meet
15 their budget, right?

16 A I just know that it's cheaper to
17 refurbish them than to buy new.

18 Q Were you -- you were not present
19 during the 1997 interest arbitration, right?

20 A For the substantive things we are here
21 on now, I think I was in and out briefly. I was not
22 a witness or there on a regular basis.

23 Q And you referenced the arbitrator's
24 decision. And that RTD Exhibit 54, on page 23.

25 A Okay.

1 Q And you were asked to read a couple
2 sentences. You were directed to one sentence that
3 says, the RTD, on the other hand, simply compared
4 the Denver wage rate with four cities in the area.

5 First of all, do you know at whose
6 behest that was done, whether RTD voluntarily did
7 that or whether RTD was asked by anyone, the
8 Arbitrator, or anyone else, to do that? Do you have
9 any idea?

10 A I do not know.

11 Q And in addition, the RTD presented
12 wage comparisons from several local transit
13 companies. Can you read aloud the sentence that
14 starts with, "It is not."

15 A It is not known if any of those local
16 bus companies have union-represented employees. The
17 RTD contended that those local --

18 Q All right. Just that sentence. It is
19 not known. It was not known by this Arbitrator --
20 and the Arbitrator made a point of putting that in
21 his opinion -- if any of those local bus employees
22 have union-represented employees.

23 Now, in this case, 12 years later, we
24 do know that we have three local bus companies doing
25 the exact same work as RTD bus-only operators that

1 have union-represented employees, correct?

2 A That is correct.

3 Q And they're all represented by you
4 folks?

5 A They -- all of the ones I was talking
6 about are represented by ATU 1001.

7 Q And in total, you mentioned First
8 Transit Denver, which already has a contract, has
9 250 people?

10 A Yes.

11 Q All 250 of those are bus operators?

12 A Yes.

13 Q First Transit Commerce City has 250
14 employees represented by you all?

15 A Approximately, yes.

16 Q And all of them are bus operators?

17 A That's correct, yes.

18 Q And First Transit Denver -- excuse
19 me -- Veolia as 270 employees, right?
20 Approximately?

21 A Approximately, yes.

22 Q And all of those are bus operators?

23 A That is correct.

24 Q So adding those all up, we've got
25 about 770 bus operators in total represented by ATU

1 1001. And how many bus operators, total, are there
2 working in-house for RTD represented by ATU 1001?

3 A Off the top of my head, I would guess
4 around 900, and I don't know if that's full-time or
5 if that includes part-timers. I'm not sure.

6 Q If, in fact, the number of full-time
7 operators is 850, would that sound about right?

8 A That would sound pretty close to my
9 guess.

10 Q Okay. You talked about the contracts
11 that Laidlaw and Veolia are in the process of
12 negotiating with ATU 1001, right?

13 A Yes.

14 Q Does the Union have any current wage
15 demands on Laidlaw?

16 A I believe the answer would be yes,
17 with regard to both Laidlaw and Veolia, but I don't
18 know exactly what they are.

19 Q What are the current wage demands by
20 the Union for the top hourly rate for bus operators
21 for each of those entities?

22 A I do not know.

23 Q Can you even give us an estimate, best
24 guess?

25 A I'm not the best witness to ask that

1 of. The answer is no.

2 Q You have no idea -- as the Union's
3 counsel, you have no idea what the Union's current
4 wage demands are in their contract negotiations with
5 Laidlaw and Veolia?

6 A I do not know what numbers are out
7 there, no.

8 Q Can you tell me what any of the
9 Union's wage demands, whether they're current or
10 not, have been for Laidlaw and Veolia?

11 A Not with any degree of certainty, I
12 can't.

13 Q Well, you can have a little bit of
14 guessing room. I'd just like to have even your best
15 guess.

16 A I don't know. I know that at one
17 point in the Veolia negotiations, we had had an 18
18 percent raise over three years. I don't know where
19 they stand right now.

20 Q All right. And that would be an 18
21 percent raise over three years from Veolia's current
22 hourly wages?

23 A From whatever they were last fall,
24 yes.

25 Q And if whatever they were last fall

1 for Veolia was \$15.03 an hour, the Union's demand,
2 not what is finally negotiated, but the Union's
3 demand, some demand, somewhere along there, has been
4 an 18 percent raise over three years; is that right?

5 A I think it was actually a little
6 higher than that.

7 Q Okay. A little higher than that.

8 Let's switch gears for a second. If
9 you could turn with me to Union Exhibit 35. That is
10 RTD's last, best, and final offer in 2003?

11 A That's correct.

12 Q And that was before the Union went on
13 strike -- excuse me. That was 2006 the Union went
14 on strike. This is the last, best and final in
15 2003. And then there was some additional
16 last-minute, down-to-the-wire discussion, and there
17 was some changes that finally resulted in the Union
18 actually accepting zero wage increases for all three
19 years?

20 A That is what happened in the 2003
21 contract.

22 Q All right. This proposal that RTD had
23 back then on sales taxes was not accepted by the
24 Union, correct?

25 A That's correct.

1 Q And RTD's proposal back in 2003, you
2 were present or involved in contract negotiations
3 back in 2003; is that right?

4 A I was not there all the time, but I
5 was in and out of there.

6 Q Do you recall whether one of the
7 problems that the Union had with the proposal by RTD
8 back then was that it was not based on actual
9 collections, but was based on forecasts?

10 I mean, I'm sure there were other
11 problems, too, but was one problem a problem about
12 it being forecasts?

13 A I don't recall specifically.

14 Q It was based on increases in annual
15 sales tax collections over and beyond forecast
16 increases, is the first sentence in that proposal?

17 A That is correct.

18 Q And you don't recall whether one of
19 the problems the Union might have had was, hey,
20 somebody could be doctoring up or, you know, coming
21 up with forecasts that could influence the results?

22 A I don't recall specifically whether
23 the degree which the forecasts and that -- its
24 wording in here had to do with our rejection. I do
25 know that the Union felt that these were not likely

1 to be attainable goals, and they wouldn't likely
2 result in a bonus being awarded.

3 I think Larry Sorget probably put it a
4 little more colorful.

5 Q You mentioned Larry Sorget. Larry
6 Sorget was very involved in the 2003 contract
7 negotiations, correct?

8 A Yes. He was the president at that
9 time.

10 Q Now, if you'd turn to Union Exhibit
11 36. That's where -- it says -- styled reality
12 check. Well, that has to be your writing, right?

13 A I didn't write it, but I chuckled when
14 I read it.

15 Q Okay. You appreciated it --
16 MR. BUESCHER: It's kind of like
17 extraordinary circumstances.

18 Q (By Mr. Asphaug) And you've done an
19 analysis as to RTD's proposed target and then the
20 actual sales tax revenue. So were the 2003 -- let
21 me ask you: First, on the 2003 proposed targets,
22 were they forecasts or were they actual? Because
23 they were supposed to be compared between forecasts.

24 A That number represents the number RTD
25 would have to hit in its contract proposal in order

1 for us to get the lowest level of bonus back in
2 Exhibit 35.

3 Q Okay. Well, I'm just a little
4 confused, because if I'm looking at Union Exhibit 35
5 on page 4?

6 A If you're on page 4, you're in 2004 or
7 '05?

8 ARBITRATOR VAUGHN: I'm sorry, what
9 exhibit are you looking at?

10 MR. ASPHAUG: It's Union Exhibit 35,
11 and then page 4 of that exhibit.

12 A Okay.

13 Q (By Mr. Asphaug) And it has on the top
14 of it, the RTD sales tax -- and this page 4 is part
15 of the actual proposal that RTD was making, correct?

16 A Yes, it is.

17 Q Okay. And it has at the top of it --
18 RTD's proposal actually did lay out a sales tax
19 forecast for 2004 of 208,019,000?

20 A Yes, it did.

21 Q And for 2005, it laid out a forecast
22 of 219,668,000?

23 A Yes, it did.

24 Q Now, it didn't change the results, but
25 it looks as if, on your Union Exhibit 36, where

1 you've got RTD's proposed target, you must be using
2 some other figures for 2004 and 2005, as opposed to
3 the 2004 sales tax forecast and the 2005 sales tax
4 forecast that were actually in RTD's proposal,
5 correct?

6 A I'm using the figures out of the box
7 right below there that specifically say -- if you
8 read the whole thing -- if RTD collected between
9 210,019,000 and that next number, each full-time
10 employee would get \$400 as a bonus, and so forth.

11 So that's the minimum number to get
12 the smallest bonus.

13 Q So that's the proposed target that RTD
14 had to reach?

15 A That's what that number is.

16 Q Thank you. Now, let's focus on the
17 2005 figure. You say in Union Exhibit 36, that the
18 2005 actual was \$337,443,808?

19 A That is correct.

20 Q But that included the added
21 four-tenths for FasTracks that was unknown and not
22 contemplated in 2003 when the parties negotiated
23 their bargaining agreement?

24 A That's correct.

25 Q Now, have you heard Larry Sorget say

1 that because of that increase, if the Union had
2 accepted RTD's proposal, they would have gotten that
3 bonus in the third year?

4 A I don't think I've heard Larry Sorget
5 say that.

6 Q Okay. But you're not telling me, are
7 you, that if the Union had accepted this proposal in
8 2003, and then FasTracks came into effect, the Union
9 wouldn't be sitting across the table from us saying,
10 hey, a deal's a deal, we should get our bonus?

11 A I would have seen you in a proceeding,
12 had that happened.

13 Q But I appreciate that in this -- that
14 didn't happen. But in this situation, the Union has
15 recognized that -- and you have recognized in Union
16 Exhibit 36 -- that there is a fundamental
17 distinction between the four-tenths FasTracks
18 revenue and the six-tenths base non-FasTracks
19 revenue that goes to fund the base operations of the
20 District, correct?

21 A At least in terms of these results,
22 yes, because that four-tenths of a penny wasn't
23 anticipated, I think, by either side in early 2003.

24 Q It's important to keep those two
25 separate.

1 A In order to show what was anticipated
2 sales tax-wise in 2003, yes.

3 Q You talked a little bit about First
4 Transit Denver, and how, under the contract, First
5 Transit Denver has, their employees are -- a hundred
6 percent of the employee-only plan is paid for by the
7 company, right?

8 A That's correct.

9 Q And the Union maintains that that is a
10 better result that the Union maintain -- that Local
11 1001 obtained for First Transit than has been
12 obtained so far by the Union in negotiations with
13 RTD?

14 A It would also -- on the RTD side, it
15 would also include whatever actions the health and
16 welfare trustees were to take. But we do not have
17 free coverage for employee only at RTD.

18 Q What is the medical plan that's
19 actually being funded in First Transit, and how does
20 that compare to the health and welfare plan that was
21 offered to RTD employees?

22 A I do not know all the details of their
23 plan. I believe that's the group plan that the
24 company has negotiated with an outside insurance
25 company.

1 Q Is there anything in the -- if you
2 look at RTD Exhibit 18, pages 18 and 29.

3 ARBITRATOR VAUGHN: What exhibit
4 number?

5 MR. ASPHAUG: Exhibit 18.

6 Q (By Mr. Asphaug) Pages 28 and 29.
7 Does First Transit have a family plan?

8 A They do, and I don't know -- there are
9 contributions that they make towards that. It's in
10 the same paragraph A on page 28. If you go with
11 that employee plus one, they'll throw in \$50 per
12 month towards that, and a larger family, \$110 per
13 month.

14 Q Okay. Is it fair to say that the
15 First Transit medical plan is a stripped-down
16 major-medical-only type of plan?

17 A I don't know.

18 Q Do they offer vision at all?

19 A I do not know.

20 Q Do they offer chiropractic?

21 A I don't know.

22 Q Do they offer legal expenses?

23 A I do not know.

24 Q So we really don't know what sort of
25 plan the company is paying one hundred percent

1 towards on First Transit, do we?

2 A Other than it's group medical
3 insurance, I don't know.

4 Q But we do know there can be radical
5 differences between the kinds of plans that are all
6 out there in terms of the amount of coverage?

7 A I don't know much about insurance, but
8 that might well be true.

9 Q There are catastrophic coverage plans
10 and plans that have a whole lot more coverage; is
11 that right?

12 A Not my area of expertise, but I'd
13 agree with you.

14 Q So we know that First Transit Denver
15 is paying 100 percent of the employee-only plan, and
16 \$50 a month for the employee-plus-one benefit level,
17 and \$100 towards the family benefit level, but we
18 have no idea what they're actually paying for, other
19 than it's something called medical insurance?

20 A That's correct.

21 Q Okay.

22 MR. ASPHAUG: Thank you. I have
23 nothing further.

24 ARBITRATOR VAUGHN: Any direct for
25 Mr. Jones?

1 MR. BUESCHER: No questions.

2 ARBITRATOR VAUGHN: Thank you,

3 Mr. Jones.

4 Is the Union prepared to call its next
5 witness? Do you need a break before doing so?

6 MR. BUESCHER: I don't. Figure an
7 hour to an hour and a half.

8 ARBITRATOR VAUGHN: Short break. Off
9 the record.

10 (A recess was taken.)

11 ARBITRATOR VAUGHN: On the record.

12 The Union may announce its next witness.

13 MR. BUESCHER: Dr. Amy McCarthy.

14 AMY MCCARTHY,
15 having been previously duly sworn to state the
16 truth, and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. BUESCHER:

19 Q Dr. McCarthy, look at the blue
20 notebook in front of you. Is that your resume?

21 A Yes, it is.

22 Q Why don't you give us a 30-second or
23 so, or one-minute description of your background.

24 A My educational background, I have a BA
25 in international studies and economics from American

1 University in Washington, D.C., and a PhD in
2 economics also from American University.

3 I had a stint as a college assistant
4 professor and chair of the economics department at
5 Trinity College in Washington, D.C., and in 1984,
6 went with Ruttenberg, Kilgallon & Associates,
7 economic consultant firm, specializing in labor
8 issues.

9 In 1998, that firm dissolved and I
10 started my own practice, McCarthy Consulting, and
11 I've been doing the same type of work ever since.

12 Q And does that work involve, for
13 example, doing wage comparison for employees?

14 A Yes, it does.

15 Q And does it involve analyzing
16 financial statements for governmental entities?

17 A Yes.

18 Q Okay. Enough of that. Go to Exhibit
19 37 in the book, please. All right. Would you
20 please explain to the Arbitrator, first of all, what
21 is this.

22 A This is an analysis of the operator
23 wage rate for certain large properties nationwide.
24 It's the current wage rates at the top step for the
25 operator.

1 Q Now, I notice there's some other
2 columns in there, correct?

3 A Yes.

4 Q What are those columns?

5 A These are six pieces of data
6 pertaining to each of the systems. The annual
7 unlinked trips, the average weekday unlinked trips,
8 the service area population. That's the --
9 obviously, the area that the system -- the
10 population served by the system, the service area's
11 square miles, and then the number of buses and
12 railcars available at maximum service.

13 Now -- and the last column is the
14 total operating expenses. I did some statistical
15 testing on --

16 Q First of all, where does that data
17 come from?

18 A It comes from the National Transit
19 database.

20 Q And do they have that data for almost
21 all properties?

22 A They have it for -- I don't know if
23 it's almost all. It's a huge number of properties.

24 Q Okay. All right. So tell the
25 Arbitrator, then, how you came up with this

1 particular list of cities?

2 A I took --

3 Q Properties, I'm sorry.

4 A I took the largest -- starting with
5 the largest property -- New York and Los Angeles are
6 really the largest. I took a large number of the
7 largest properties, and I ran some statistical
8 analyses on these different data elements to see
9 which, if any, correlated with wage rates for
10 operators.

11 And what I found was that the first
12 two, the unlinked trips and weekday unlinked trips
13 did not correlate with wages at all. But what did
14 correlate with wages was the service area
15 population, the number of buses and railcars, and
16 the total operating expenses. Those items, the
17 larger group than what you see here, correlated very
18 strongly with wages.

19 Q And so having determined those
20 correlations, what next did you do to get this group
21 of cities -- properties?

22 A The next thing I did was I looked at
23 the service area population of one of the city's
24 strong correlations, and I took properties
25 nationwide that were as low as 750,000 in the

1 service area population; there wasn't any exactly,
2 but Kansas City was 781. I went all the way up to
3 Boston at 4.5 million service population, service
4 area population.

5 So that captures both smaller and
6 larger properties than what Denver is. And then I
7 looked at the operator wage for each of those
8 properties that fit into that selection criteria.

9 Q So let's make sure we understand here.
10 Denver shows down below the categories that say mean
11 and median, correct?

12 A Yes.

13 Q Now, we've got the rank here, Denver
14 of 25, at the very bottom, right?

15 A Yes.

16 Q So tell us, then, how Denver ranks in
17 that service area population of this group that you
18 selected.

19 A In terms of service area population,
20 Denver is the fourth largest out of the 25. So we
21 have a real large number of smaller properties, and
22 only a couple that are large. As I said,
23 nationwide, the only one that's larger -- I think
24 the main ones are New York and Los Angeles.

25 Q You just eliminated those from the

1 analysis altogether?

2 A I did.

3 ARBITRATOR VAUGHN: I'm sorry, you
4 eliminated New York and Los Angeles?

5 THE WITNESS: Yes.

6 ARBITRATOR VAUGHN: And why?

7 THE WITNESS: Just -- they were really
8 large. I eliminated Newark, New Jersey, I guess --
9 they may go into New York. I eliminated that as
10 being excessively large for this particular
11 analysis.

12 Q (By Mr. Buescher) And then you said
13 another one that was highly correlated was the
14 number of buses and railcars?

15 A Yes.

16 Q And Denver ranks where on that?

17 A 7th out of the 25.

18 Q And the operating expenses was the
19 next one?

20 A Yes. Denver is 8 out of the 25 in
21 terms of the total operating expenses.

22 Q And tell us what the last column says
23 as how Denver compares then with this group of
24 properties?

25 A I've compared Denver to both the mean

1 of the other 24 and the median, and Denver is 13
2 percent below the mean of the other properties, and
3 11 percent below the median of the other properties,
4 and ranks 19 out of the 25, overall.

5 Q Anything else of significance in this
6 exhibit that you want to point out to the
7 Arbitrator?

8 A No, I don't think so.

9 Q All right. Look at the next, Union
10 Exhibit 38, please. This is a different list of
11 properties, correct?

12 A This is -- this is a subset of the
13 other list. And these are the properties that the
14 Union used in its wage analysis in its 1997
15 arbitration exhibit.

16 Q So the exhibit that Mr. Jones
17 testified to is the exhibit that was the Union
18 exhibit of comparable properties in 1997, which I
19 believe was Exhibit 30. That's what this list
20 corresponds to?

21 A Yes.

22 Q And why did you do that?

23 A I wanted to -- I thought it would be a
24 more complete analysis if I would come back and
25 review what the Union had done before, and see how

1 those numbers worked out, see whether there was any
2 difference.

3 Q Okay. And then this chart is
4 structured the same way in terms of ranking and
5 things, only now we're dealing with 17 properties
6 rather than 25?

7 A That's right.

8 Q So Denver is still the -- now the
9 second biggest in service area population, right?

10 A Yes.

11 Q And is up to the fifth biggest in
12 operating expenses?

13 A Yes.

14 Q But still shows 13th in terms of
15 operator top wage rate?

16 A Out of 17.

17 Q Out of 17?

18 A Yes.

19 Q Look at Exhibit 39. And this is yet a
20 different list of properties?

21 A It is -- these are the properties that
22 the employer used in their wage exhibits, in the
23 1997 arbitration. And there were only four cities,
24 and these are they.

25 Q Okay. And then those same rankings

1 there. How do they -- and still below both the mean
2 and median, correct?

3 A Yes. And overall third out of the
4 total five cities.

5 Q Okay. Go to Exhibit 40. And what
6 group of properties is this?

7 A These are the properties that the
8 employers used in the 1997 arbitration dealing with
9 pension issues. So it's a different group of
10 cities. And this does have at least one city that
11 was not in the early group and that was Newark, New
12 Jersey Transit. You'll see that the service
13 population area, 18 million, but RTD did use this in
14 the early arbitrations.

15 Q And that same chart showing Denver's
16 rank this time of 19 properties?

17 A Yes.

18 Q Denver coming out 14 out of 19 here?

19 A That's right.

20 Q Now, what's the next exhibit, Union
21 Exhibit 41.

22 A These are the properties that RTD is
23 proposing as being comparable, and RTD's Exhibit 8
24 from this current arbitration.

25 MR. ASPHAUG: I object to that

1 characterization, but with that -- because that's
2 not at all what I said in the opening.

3 Q (By Mr. Buescher) They come off of
4 Exhibit 8, for whatever reason, RTD may have
5 introduced that exhibit?

6 A Yes. They are -- these are the
7 exhibits shown on Exhibit 8.

8 Q Okay. And first of all, looking at,
9 then, the -- put aside the wage data for a moment.
10 Look at the other things. How do those properties
11 compare in these same indicators as the ones that
12 you had looked at in the earlier exhibits?

13 A Well, in terms of service area
14 population, the mean of the others is approximately
15 82,000, and the median, 402,000. So Denver is about
16 250 percent more than that. Denver is number one in
17 all those categories in terms of size, and by
18 extremely large margins.

19 Q Now, let me ask you, in terms of
20 trying to -- I mean, is part of your job trying to
21 determine comparable properties or cities or
22 employers? Is this something that you've done for
23 all these years?

24 A Yes.

25 Q And have you ever seen a list

1 presented that was so far off of factors that
2 correlate to wages before?

3 A I don't know that I've never seen such
4 a thing, but it's not, in my view, an appropriate
5 group for the -- for one to be such an outlier
6 compared to the majority of the others.

7 Q In this case, Denver is the outlier,
8 correct?

9 A Yes. There are a couple in this group
10 that I have also included; Los Angeles, Las Vegas,
11 Phoenix, and Salt Lake. But all the others, I
12 think, are substantially too small to be comparable
13 to Denver.

14 Q Okay. And those three, you think,
15 actually show up on some of -- the exhibit that you
16 put together, the very first one, is based on that
17 statistical analysis you did?

18 A Yes.

19 Q All right, now. Let's look at
20 Exhibit 42. Tell us what that is.

21 A This is an analysis of the median home
22 price in Denver and the properties that I'm using as
23 comparables, the 24 other properties. And it's data
24 provided by the National Association of Realtors.
25 It reflects the median sales price of existing homes

1 in the first quarter of 2009.

2 And I use this as something of a proxy
3 for cost of living in the area. The cost of housing
4 is the largest single component of the cost of
5 living. So comparing home prices is one way to get
6 at -- in a not-totally-exact, but
7 better-than-nothing kind of way, at what cost of
8 living are in different areas.

9 Q So the CPI numbers themselves don't
10 tell you anything about how one city or area
11 compares in cost of living; is that correct?

12 A That's right. CPI measures price
13 changes. And there are actually no public data that
14 measure relative cost of living. The federal
15 government used to do it, but they quit. They don't
16 do it anymore. It's just too hard and expensive to
17 do, I guess. But they don't.

18 There's some private operations that
19 do. Some are better; some are worse. But basically
20 there isn't a real good and applicable comparison of
21 relative living cost. So I'm using this at somewhat
22 of a proxy.

23 Q And based upon your training and
24 experience, is this about as good a proxy as you can
25 get for that kind of thing?

1 A It's probably the best direct proxy.
2 There are other ways, kind of indirectly, of getting
3 at it, but this is readily available and pretty good
4 data.

5 Q And tell us how Denver compares, then,
6 in this group?

7 A Denver is a little bit below the mean
8 of the other cities and a little bit above the
9 median of the other cities, kind of right in the
10 middle, 11th out of the 25.

11 Q And so of that 25 -- back to wage
12 rates -- Denver ranked 19, but in this one, this
13 proxy indicator we're looking at, they're 11?

14 A Yes. And these are -- these are the
15 home prices in the metropolitan areas. It's not
16 just the city, it's the metropolitan area. And it
17 may not correspond one to one with the service area
18 in some of the cities, but it's the metro area.

19 Q Okay. All right. Exhibit 43, Union
20 Exhibit 43.

21 A This is -- I won't say RTD proposed
22 comparable cities. This is the properties on RTD's
23 Exhibit 8, and it's their median home prices, also.
24 The bottom line is that Denver is 28 percent higher
25 than the mean of these cities, and 43 percent higher

1 than the median of the cities, third overall of all
2 of these cities.

3 And the note mentions that I did not
4 have data for Missoula, Billings, and Pueblo, but I
5 looked at the median home values from the census
6 data for those areas -- cities, and they are all
7 below the value for the city of Denver. So I feel
8 fairly secure that if I did have numbers for them,
9 they likely would be lower than Denver's as well.

10 Q Okay. Now, look at Exhibit 44,
11 please. Union Exhibit 44. Tell us what this is.

12 A This is the mechanics' wage rate for
13 all of these cities, those that have it. There are
14 a couple that don't have mechanics in their
15 bargaining unit.

16 Q So this is a subset of the 25 that you
17 used in your first exhibit?

18 A It shows all 25, but three of them
19 don't have a mechanic's wage. There are 22
20 mechanics' wages shown, but it's all the same
21 cities.

22 Q And in this case, the difference from
23 mean and median shows they're 10.7 and 5.9. Is that
24 more or less than the difference between mean and
25 median of the operator wage rates that you did in

1 your first Exhibit 37?

2 A It is less than the differential
3 between -- for the operators. And the rank is 15
4 out of 22, versus 19 out of 25.

5 Q So in this group of comparables, the
6 mechanics in the RTD system are better off than the
7 operators, comparatively speaking?

8 A Yes. They're still disadvantaged
9 compared to the rest, but they are not as far below
10 as the operators.

11 Q All right. Did you prepare one more
12 exhibit for me last night?

13 A Yes, I did.

14 MR. ASPHAUG: To this moment, have we
15 ever seen it?

16 MR. BUESCHER: No, you have not. I
17 didn't see it until this morning. So you will have
18 time to look at it. This will be exhibit --

19 If you look in your notebook,
20 Mr. Arbitrator, there is either a reserved or blank
21 for 80, because I had a different 80 that I didn't
22 need. So it will be -- I can make this Exhibit 80,
23 and it will fit right into the notebook.

24 ARBITRATOR VAUGHN: So marked.

25 MR. ASPHAUG: What's the exhibit

1 number, 80?

2 MR. BUESCHER: 80, right.

3 Q (By Mr. Buescher) And, Dr. McCarthy,
4 would you please explain to us what this is.

5 A Yes. The federal government produces
6 several indexes that measure, basically, price
7 changes over a certain period of time. Consumer
8 price index, we've already heard about, and I'm
9 showing that in the final column, consumer price
10 index for all cities.

11 But the federal government also
12 produces an index for employment costs, and it's
13 done mathematically the same way as the CPIW is
14 done. It's a fixed rate. It's based on a
15 particular year. It's a fixed rate. It moves
16 forward, and it represents actual increases in the
17 cost to employers of employing people.

18 Q So it's kind of the total cost to an
19 employer?

20 A Well, I've used the index that relates
21 only to wages and salaries. There is a separate one
22 for benefits, and there's a separate one for salary
23 plus benefits. But I've just used the salary one
24 here.

25 So this measures in a consistent way

1 the increases that employers have experienced in
2 employing their workers. And I've compared that to
3 CPI, and I've compared that to the RTD operators'
4 rate.

5 I've gone back to 1982 because that
6 was when the ECI data are available, at least on the
7 internet, on the BLS website. So that's as far back
8 as I've gone.

9 In addition, there's minimum use in
10 going back 25 or 40 years on wage changes, so -- but
11 to be as thorough as I possibly could, this is where
12 it started.

13 What you see is that the employment
14 cost index for all private industry nationwide
15 increased between 2001 and 2009 by 25.3 percent,
16 when the RTD operators' rate increased 13 percent,
17 and consumer prices 20 percent.

18 So what that tells us is that the
19 typical employer is paying 25 percent more for a
20 unit of labor, if you want to call it that, while
21 the CPI has only gone up 20 percent, which means
22 that those employees have actually had an
23 increase -- you know, real increase in fair wages,
24 and that compares to RTD, that has not.

25 And the longer period, '82 to '90, the

1 same pattern, employees generally have had an
2 increase of 154 percent; CPI, 118; and the RTD
3 operators 81 percent.

4 Q Okay. And I believe Mr. Dash looked
5 at an exhibit that showed real wages from the data
6 he was reporting for RTD drivers, and real wages
7 U.S., and it showed a drop. Remember him talking
8 about that in his testimony?

9 A Yes, I remember that.

10 Q And this document, that is consistent
11 with that?

12 A Yes, it is.

13 Q All right. So taking now these
14 exhibits, 37 through 44, and then Exhibit 80, that
15 you've just testified about, what kind of
16 conclusions do you draw about the wages paid to
17 operators at RTD?

18 A I would say that compared to
19 properties of similar size that serve a similar
20 population, have similar operating budgets, that
21 RTD's wages are below what would be indicated, based
22 on its characteristics compared to these other
23 cities.

24 Q Okay. Now, I'm going to have you
25 bounce around between some of the white notebooks.

1 I think. Why don't you get the one that would have
2 RTD Exhibit 64 in it. So it's got 64 in it. This
3 is an exhibit that RTD had about some memorandum of
4 agreement in Montgomery County -- now I can't
5 remember. I think there was actual testimony about
6 this. Have you had a chance to look at this
7 exhibit?

8 A I have, yes.

9 Q What does this exhibit represent,
10 first of all?

11 A This is some give-backs that a union
12 called MCGEO, and Montgomery County Airlines agreed
13 to with the county government.

14 Q This includes transit workers?

15 A They're bus drivers out of the union,
16 yes.

17 Q And are you actually familiar with
18 what -- the comprehensive changes that were made
19 from reading this and other sources?

20 A Yes.

21 Q Would you explain to the Arbitrator
22 the whole picture?

23 A This was a collective bargaining
24 agreement that had been reached several years ago.
25 It included the wage increase of 4.4 percent,

1 something like that, for the upcoming fiscal year.

2 And the county was coming in with
3 budget projections of a gap in their budget between
4 their revenues and expenditures of \$500 million, and
5 the county went to their employees and asked for
6 help.

7 And all of the employees in the county
8 kicked back their wage increases and other various
9 things they did to try to help the county with this
10 problem. And although the wages will not be paid,
11 the employees will receive credit in their pensions,
12 as those wages have been paid, and the wages are not
13 being reduced on paper. They're just not going to
14 be paid.

15 Then when they go into bargaining the
16 next time, they will start from the level that they
17 would be at. It's a one-year give-back to the
18 county to help them overcome a 500,000 deficit.

19 Q 500 million?

20 A 500 million, I'm sorry.

21 Q Now, look at RTD Exhibit 66. Have you
22 had a chance to review this document?

23 A Yes.

24 Q Tell us what this document represents.
25 Where did the data come from?

1 A This is -- I mentioned earlier that
2 the federal government no longer does a cost of
3 living -- relative cost-of-living index, but there's
4 an organization that does do one for their own
5 members, and it's -- it was the American Chamber of
6 Commerce Research Association. They've contracted
7 it out to another organization. It's noted in the
8 footnote, Council for Community Research.

9 What it's intended to be is it's
10 supposed to help mid-level managers and professions
11 decide, if they're going to move from one city to
12 another, how much of a raise they would need in the
13 new city to live in the same standard that they
14 lived in the old city. That's, in broad strokes,
15 what the purpose of this thing is.

16 But it's intended for mid-managers and
17 professionals. And the costs that are measured by
18 this index are costs that would be appropriate for
19 people at that level of income. The income cutoff
20 is 80,000 a year.

21 Q Below that, they are not measured?

22 A Right. They measure the cost of
23 living for someone making 80,000 a year. That is
24 the type of house that person would buy, the type of
25 car that person would buy, and so forth.

1 So the house, for example, is supposed
2 to be a 2400 square foot house with four bedrooms, a
3 nice lot in a nice suburban community. So it's a
4 standard of living that's not attainable by
5 everybody, let's say.

6 Q Okay. Now look at Exhibit 67?

7 A 67?

8 Q Yes.

9 A Okay, got it.

10 Q RTD Exhibit 67. Can you explain to us
11 what this exhibit is.

12 A It appears to be an index of the bus
13 operators' wage rate in San Diego and Denver,
14 starting in 1950. So an index, of course, each of
15 these is set to 100. Whatever it was that year, it
16 was said to be 100. Then it measures the change
17 over time, so that at the end, Denver's -- the red
18 line representing Denver is higher than San Diego,
19 which means that Denver has had a higher percent
20 increase over this time period.

21 That's not to say that Denver's wage
22 is higher, because it's not. From 1950 until now,
23 Denver has caught up a bit to San Diego.

24 Q Okay. So over that period of time,
25 Denver has gotten closer to San Diego's wage, once

1 you forget that they started at the same index
2 number, right?

3 A Right, since 1950.

4 Q Okay. Now, look at RTD Exhibit 68,
5 and tell us what this document purports to show.

6 A It's increases in hourly earnings of
7 U.S. workers in trade, transportation, and utilities
8 since 1964. This simply expresses, in percentage
9 terms, compared to RTD's top hourly ray.

10 Q It says annual average top hourly
11 rate. You heard Mr. Dash talk about that, didn't
12 you, about how he defined that term?

13 A Yes.

14 Q Now, is that the same as the hourly
15 earnings as reported by -- it doesn't say who it's
16 reported by. Do you know who reports that?

17 A Bureau of Labor Statistics.

18 Q Is it the same thing?

19 A No, it's not.

20 Q Explain the difference to us.

21 A The hourly earnings for the U.S.
22 workers is computed by going to employers and asking
23 them what they paid all of their employees this
24 month and how many hours all of those employees
25 worked, and dividing one into the other. So it's

1 the actual average earnings of the employees each
2 month.

3 So if employees are working fewer
4 hours, say, one company is working a 40-hour week,
5 and another company is working a 30-hour week, you
6 could -- say, one is working a 42-hour week, and a
7 one 32-hour week, the 42-hour week would be paying
8 two hours of overtime in their calculation, which
9 would make the wage they were paying appear to be
10 higher than what it really was because it would have
11 an hour of time and a half of overtime in it.

12 So the difference between hours
13 factors into this includes part-time workers and
14 full-time workers.

15 And so for this time period, 1965
16 until now, would include a lot of demographic
17 shifts; you know, workers who used to work in the
18 northeast are now working in Texas, and Arizona,
19 with results in wage changes.

20 All of that would be included in these
21 numbers, making it not at all comparable to analysis
22 of the wage increase of a particular collective
23 bargaining agreement.

24 Q Would the hourly earnings for U.S.
25 workers, this collective bargaining agreement,

1 workers start at a level, and over time, progress up
2 to the top, right? You are familiar with that,
3 right?

4 A Yes.

5 Q Would an employer with some sort of
6 step system like that, who had more employees at the
7 lower end than the higher end, would that impact
8 this?

9 A Yes. Distribution within the
10 workforce, over senior, less senior people would
11 definitely affect this.

12 Q Now, look at RTD Exhibit 71, please.
13 We're staying in the same notebook. Does this
14 document, on its face, make the same comparison?

15 A Yes.

16 Q Now, look at RTD Exhibit 73.

17 A Okay.

18 Q Got that one?

19 A Yes.

20 Q It talks about percentage of labor
21 contract settlements with lump-sum payments?

22 A Yes.

23 Q This shows various percentages between
24 2000 and first quarter 2009, right?

25 A Yes.

1 Q Is there any trend, pattern, anything
2 in these numbers?

3 A There doesn't appear to be. What's
4 meant by first quarter 2009 is not clear, but that
5 doesn't necessarily appear to be much of a pattern.

6 Q Sometimes more, sometimes less, all
7 within a fairly small range?

8 A Yes.

9 Q All right. Now, I want you to go to
10 Exhibit 172, probably in Exhibit Notebook 3.

11 A 172.

12 Q 172, correct. Mr. Dash testified
13 about this, and you testified about your Exhibit 80,
14 Union Exhibit 80. Using different numbers, does
15 this show the same kind of thing, in terms of the
16 decrease in real wages?

17 A Just for the Denver operators?

18 Q Yes.

19 A Yes. The U.S. workers' number has the
20 same defect I was talking about earlier, but the
21 Denver operators' numbers, yes.

22 Q We got some testimony from Mr. Dash
23 about the annual average CPI increase. And we
24 talked about how Denver actually doesn't do a
25 month-to-month, what's reported isn't month to

1 month, it's some sort of an average. Are you aware
2 of that?

3 A Yes.

4 Q And are you familiar with how the
5 Bureau of Labor Statistics calculates what it
6 reports for the Denver CPI?

7 A Yes.

8 Q Would you explain, somewhat
9 technically, but keep it so I can understand it, how
10 CPI is calculated in Denver by the Bureau of Labor
11 Statistics.

12 A Well, the way Mr. Dash described it is
13 correct. They take cost figures for every month in
14 a six-month period, and then take the average over
15 that six-month period. So when you see what the
16 number is, what the average is, it might be the same
17 for the second half of the year, as the October
18 number or the November number, or September number
19 or somewhere in between. And the same for the
20 spring, it could be the March number or the April
21 number or something in between.

22 So when you say the change from the
23 first half to the second half, you might be talking
24 about March to October, or April to November, or
25 some combination. You might not know what.

1 Q So at any given time, these numbers
2 don't tell you the actual increase in the cost of
3 living compared to the same period of time, prior,
4 whatever?

5 A That's correct.

6 Q Now, as a consumer, what do those
7 reported numbers mean?

8 A Well, as a consumer, basically it
9 means that you're paying the last year -- last
10 year's figures, showing 3.9 percent increase for the
11 Denver area. You are paying more over that time
12 period. You're just not -- it may not be the exact
13 number to the second decimal point, that you're
14 paying more, but you are definitely paying more over
15 that time -- period of time than you were a year
16 ago.

17 Q Okay. All right. Now, I want to
18 shift focus to RTD and the evidence we've --

19 MR. BUESCHER: Did you have a
20 question. I saw you hold up your hand?

21 ARBITRATOR VAUGHN: No.

22 MR. BUESCHER: I'm sorry. I thought I
23 saw that out of the corner of my eye.

24 Q (By Mr. Buescher) The evidence that
25 has been presented so far by RTD, which relates to

1 its financial condition, did you do an analysis of
2 RTD's financial condition?

3 A I reviewed the financial statements
4 for a couple years, including the end of 2008, and I
5 reviewed the budget for 2009 and a number of the
6 interim reports that have come out from both the
7 State and from RTD.

8 Q Look at Union Exhibit 45, please.

9 A Okay.

10 Q Tell the Arbitrator what the exhibit
11 shows. What are the numbers, and what does it mean?

12 A This exhibit comes from the
13 comprehensive annual financial report from 2008, and
14 it shows the unrestricted current assets compared to
15 the current liabilities. Unrestricted current
16 assets are the financial assets, cash investments,
17 whatever financial types of instruments RTD has.

18 Current liabilities are liabilities
19 within the next -- within the current period, within
20 the next -- need to be paid immediately, basically,
21 or soon.

22 So the unrestricted net assets is the
23 difference between the current assets and the
24 current liabilities. So it's -- the first column is
25 what you have, and the second column is what you

1 owe, and the third column is the net of those
2 things. And the last column is the assets to
3 liabilities ratio.

4 You want to have that be more than 1.
5 You want your assets to, at least, cover your
6 liabilities. That is the case here. As of the end
7 of 2008, assets are more than sufficient to cover
8 liabilities.

9 Q And so your general goal is to make
10 sure that number is higher than 1?

11 A Yes.

12 Q Look at Union Exhibit 46. Tell us
13 what that is.

14 A This is an analysis of the
15 unrestricted net assets that compare to the
16 operating expenses of RTD. And the last column is
17 the net assets as a percentage of the operating
18 expenses. And in 2007, that was 38.8 percent, and
19 in 2008, 27.7 percent.

20 The general rule of thumb for
21 government entities is to have that figure, that
22 percentage figure be in the 5 to 15 percent range.
23 That's thought to be sufficient to cover emergencies
24 under normal circumstances.

25 Q Okay. And so RTD's numbers are

1 significantly higher?

2 A As of the end of 2008, they were, yes.

3 Q And does that indicate -- never mind.
4 We'll go back to that.

5 Go to Union Exhibit 47.

6 A This is the entire operation, so this
7 includes the FasTracks. The earlier one dealt with
8 operations. This includes the FasTracks. The first
9 row is invested in capital assets, and that is debt.
10 That's basically the net value of capital assets,
11 the buses, the train lines, called the
12 infrastructure, the tracks, the land, the terminals.

13 ARBITRATOR VAUGHN: How does this
14 treat depreciation, either accrued or nonaccrued?

15 THE WITNESS: I think depreciation is
16 out of this, but I'd have to check. I'm trying to
17 think.

18 Q (By Mr. Buescher) Would it help to
19 look at their 2008 CAFR?

20 A Yeah, definitely. I can't think of
21 the answer to that. I know it's taken the debt out,
22 but whether it's depreciated --

23 Q Well, that 2008 CAFR is an exhibit, so
24 let's find what number it is. Look at RTD Exhibit
25 42, first notebook there.

1 A There's no answer. It doesn't say.

2 ARBITRATOR VAUGHN: All right.

3 Invested in suggests that perhaps it doesn't include
4 assets, but -- I'm sorry, include depreciation. But
5 if you can find that, or if we can get the figures
6 from the District to answer that question, I'd
7 appreciate it.

8 Go ahead. Proceed.

9 THE WITNESS: It doesn't say.

10 Q (By Mr. Buescher) And what page are
11 you looking at?

12 A I'm on page 86. And it doesn't say,
13 so I don't know the answer.

14 Q Okay. Go on with your explanation of
15 Union Exhibit 47.

16 A So that first row is the capital
17 assets. And then the next sections are the
18 financial assets. The first is the Tabor Reserve.
19 That's money that's set aside by Colorado law for
20 emergency reserve, and it's 3 percent of operations.

21 And then the FaTracks reserve, that's
22 the money that's been received and set aside for
23 Fast-Tracks' development and so forth. And the last
24 one is unrestricted. That's the same one I showed
25 you, first couple exhibits. And that is financial

1 assets available for use and future use.

2 And the total assets of the District
3 are shown along the bottom, and they increased
4 overall, quite rapidly, as you can see from 2002 to
5 2008 to just under \$1 billion to almost \$2 billion
6 in 2008.

7 Q And if you look from '05 to '08, that
8 includes, then, FasTracks money, right?

9 A It does.

10 Q So this -- what does this exhibit say,
11 then, overall?

12 A The District has taken upon itself an
13 extremely ambitious capital development project, and
14 the fruits of that project are easily seen here
15 where the numbers have gone from \$758 million and
16 assets in 2002, up to 1.3 billion in 2008. So a
17 six-year period of time, they've nearly doubled
18 their capital assets. It's a remarkable run.

19 They've also developed large reserves
20 to further develop the system, and it's just been
21 growing very, very rapidly. And up until this time,
22 very sound, astoundingly sound, strong rate of
23 development.

24 Q Union Exhibit 48, what's that?

25 A This exhibit looks at the budgets for

1 RTD's budget -- or RTD's operations. We have 2007
2 and 2008 here. This shows the budget and actual
3 performance for these two years.

4 I'll explain just how the analysis
5 works. The operating revenues in the original
6 budget were budgeted to be \$72 million in 2007, and
7 the actual was \$81 million, for a variance in the
8 last column of \$9 million.

9 Operating expenses were budgeted to be
10 \$364 million, came in actually at \$346 million, for
11 a variance to the good, again, of \$17.8 million.

12 Net operating -- or nonoperating
13 revenues, this is where the sales and use tax was
14 budgeted. Nonoperating revenues was budgeted to
15 \$440 million, and was \$475 million, a variance of
16 \$34 million.

17 They did not budget to issue any
18 long-term debt in 2007, but did \$471 million worth
19 of long-term debt. Long-term principal payments
20 came in exactly at budget. And then there was a
21 budget for capital outlay net of grants at \$342
22 million, but only 41 million was actually spent that
23 year, for a variance of \$300 million.

24 ARBITRATOR VAUGHN: When you say that
25 year -- oh, I'm sorry, you're talking about 2007.

1 A So if you take all of those things
2 together, the revenues, the expenditures, grants,
3 all of it, the District budgeted to spend about --
4 well, \$249 million more than they had that year. So
5 that money would have come out of reserve, or some
6 solution would have been found to the problem.

7 In fact, they took in \$584 million
8 more than was spent.

9 Then there was some accounting
10 adjustments in the next-to-the-last row, \$361,000,
11 just accounting things that have to be done to
12 reconcile the year, and it's perfectly normal. But
13 the net income for the year, then, was \$222 million
14 that year.

15 And I've done the same thing for 2008,
16 and the net income that year was \$14 million.

17 Q (By Mr. Buescher) Okay. Now, let's
18 look at Union Exhibit 49.

19 ARBITRATOR VAUGHN: Let me make sure I
20 understand. Perhaps you can explain the term "net
21 income" in this context, because I'm not sure I
22 understand what that actually means.

23 Does that mean that on December 31,
24 2007, when the clock strikes midnight, there was
25 \$222 million sitting around somewhere in the vault

1 or in the fare box or wherever?

2 THE WITNESS: That is the amount that
3 was added to whatever assets they already had.

4 ARBITRATOR VAUGHN: So it's simply the
5 difference between what they had and what they spent
6 during the course of the year?

7 THE WITNESS: No. It's -- it's the
8 difference between what they had and what they spent
9 during the course of the year, and it would be added
10 to whatever balances they had coming in, yes.

11 ARBITRATOR VAUGHN: Okay.

12 Q (By Mr. Buescher) Okay. Now, let's
13 look at Union Exhibit 49, then we'll talk about both
14 of them together. What's this one?

15 A Okay. This one is -- I've taken out
16 from the previous analysis all of the -- everything
17 below net operating and nonoperating income. So if
18 you look back at 48, all the things having to do
19 with principal payments and capital, and all that.
20 This is just operations. It excludes all the
21 investments and that sort of thing.

22 This goes all the way back to 2004.
23 The -- I suppose the thing to look at is the net
24 operating, nonoperating income, the fourth row in
25 each of those years. And that shows what the

1 District budgeted to have as earnings and what they
2 actually did have, and the difference between.

3 So in 2004, the budget showed net
4 income of 28 -- almost \$29 million. It was actually
5 almost \$46 million, a difference of about \$17
6 million.

7 If you look at that row for each year,
8 you'll see that the District did better than its
9 budget every year by 25 million, 31 million, 61
10 million, 20 million.

11 Q And taken together, Union Exhibits 48
12 and 49, what conclusions do you draw?

13 A Let me say one thing, first. I don't
14 know what's in your book, but in my book, the first
15 page of 48 is -- they're following 49. So I don't
16 know if you had that.

17 Q Oh, okay.

18 A This page should be in front. This is
19 the first page of 48.

20 Q I'm sorry. That is my mistake.

21 A The second page of 49 should be the
22 first page -- the first page of 48.

23 Q So they both go back to 2004?

24 A I thought you just edited me.

25 Q I would never do that, Dr. McCarthy.

1 A On 48, the explanation of how it's
2 laid out is exactly the same, and I won't go back
3 through it, unless you want me to.

4 Q No, I don't.

5 A So 49 is operating revenue
6 expenditures.

7 Q So taken together, what do these two
8 documents -- what do they say about RTD?

9 A Through this time period, RTD has
10 budgeted very conservatively for operations. They
11 budget so that income revenues -- the budget revenue
12 is low enough that when the revenues come in, they
13 can have a little cushion.

14 They budget expenditures high so that
15 with some care, they save money. The result of that
16 is a cushion for emergencies, for if anything goes
17 wrong.

18 And that's a very sound, very
19 respectable way of doing budgeting. There's nothing
20 whatsoever wrong with it. They've been very
21 successful up to this point of doing it.

22 The capital spending on Exhibit 48,
23 between issuing debt and making expenditures and
24 taking money out of reserves and doing this and
25 that, it's fine. Nothing's wrong with that. It's a

1 little harder to characterize the budget as being as
2 cautiously planned. It looks more like plans are
3 changing rapidly throughout the year, as the capital
4 development goes on.

5 That's fine, too, but it does make an
6 analysis of what's really going to happen in the
7 overall budget a bit problematic, because all these
8 large expenditures for capital may or may not
9 happen. And debt may not be issued, and debt that
10 wasn't planned, may be issued. So the capital
11 aspect of the budget is not as clear.

12 The operating side of it is very well
13 controlled, very well done.

14 Q Now, I notice that if you compare --
15 just go to Union Exhibit 49, the operating budget,
16 that the net operating and nonoperating income
17 variances were, in 2006, almost \$32 million; in
18 2007, almost \$62 million; and in 2008, only about
19 \$20 million.

20 Now, you've heard testimony about the
21 decrease in the sales and use tax that began in late
22 2008, correct?

23 A Yes.

24 Q And you've actually looked at
25 documents that RTD provided that shows that -- that

1 shows numbers that shows those kind of decreases,
2 correct?

3 A Yes.

4 Q Okay. Talk to us about how these
5 Exhibits 48 and 49 relate, then, to that
6 information. What -- how do you put that all
7 together?

8 A Well, if you look at the 2008, towards
9 the end of the year is when the sales and use tax
10 revenues began to decline. You'll see that the
11 overage, the positive variance in 2008 was lower
12 than it had been in earlier years. Although, in
13 2004, it was not as high as the other years, either.

14 But obviously, that's -- they didn't
15 have the same type of overages that they had in the
16 other years. And that's consistent with the
17 slowdown in the economy.

18 Q Okay. All right. Now, let's look at
19 Union Exhibit No. 50.

20 A This was prepared before we saw the
21 most recent report. That deals with these same
22 kinds of information. But based on Mr. Howerter's
23 statement earlier -- and I'm trying to think what --
24 it would have been the April statement, I think --
25 they were suggesting that sales tax revenues would

1 be down -- or collections would be down 6.9 percent,
2 below 2008.

3 So I took the 2009 budget, compared to
4 the 2008 numbers, also from the budget document, and
5 I reduced the sales tax numbers by the 6.9 percent
6 that Mr. Howerter was mentioning, to see what the
7 overall effect on the budget would be. There were
8 comments a number of times that the sales tax
9 receipts was 67 percent and 70 percent of the
10 budget, but by these numbers, it's not that high.

11 If I take the 2009 budget, 241 million
12 out of 410 million -- I'm just doing some rough
13 numbers -- it's less than 59 percent. So it's
14 not -- I mean, it's the majority of the budget, but
15 it's not an overwhelming majority of the budget, as
16 if it was 70 percent.

17 So a 6.9 percent reduction in sales
18 tax, and not making any of the other adjustments
19 that have shown up in more recent figures, just that
20 one only, would have operating revenues coming in
21 2.2 percent below the actual 2008.

22 Now, this doesn't include the
23 additional federal money that's coming in. From the
24 testimony yesterday, apparently, 10 percent of the
25 federal money could go into operations. I'm not

1 showing that possibility. But it's just on the
2 change in sales tax from that earlier letter, what
3 the effect would be.

4 Q And when you say "earlier,"
5 Mr. Howerter testified to a little more recent data
6 about those sales tax numbers, correct?

7 A Yes.

8 Q But then the point of this exhibit is
9 that whatever the most recent number is, change in
10 sales tax does not translate the same percentage to
11 change in their total operating revenues?

12 A That's correct.

13 Q Okay. Now, look at Union Exhibit 51
14 and tell us about that.

15 A Okay. This shows the 2007 actual
16 numbers compared to the 2009 budget for operations.
17 It shows the total received in 2007 in the different
18 categories, and the percent of the totals
19 represented by each category. Sales tax, almost
20 62 percent in 2007.

21 The next largest category is fare box
22 revenues, was 20 percent. Federal grants for
23 maintenance, 11 percent. And then all the others
24 are small, small numbers. And in the 2009 budget,
25 sales tax was to be 59 percent of the total fare

1 box, almost 25 percent, and federal grants, 12
2 percent, an increase between 2007's and 2009's
3 budget of 7.7 percent per operations.

4 Q Okay. So this actually gives them the
5 actual percentages, both in '07 actual and '09
6 budget?

7 A Yes.

8 Q Union Exhibit 52, what's that?

9 A This is the capital revenues and
10 expenditures, and this is in addition to the
11 operations, in addition to the operating money. And
12 it shows the actuals for 2007, the projected for
13 2008, and the adopted for 2009.

14 The interesting thing about this is
15 the enormous increase in capital revenues and
16 expenditures in 2009, going from 212 million
17 expenditures in '07 to 274 million in '08, and then
18 the adopted budget of 1.64 billion in 2009.

19 And that money is available both by
20 using reserves and by the revenue sources that are
21 shown here.

22 Q Okay. And Union Exhibit 53.

23 A This shows the portion that salaries,
24 wages, and fringe benefits represent out of the
25 entire operating expenses for the years of 2004

1 though 2008.

2 Q So is this all RTD employees?

3 A It's all employees. It's the -- this
4 is salaries, wages, and fringe benefits for
5 everybody.

6 Q Not just the bargaining group?

7 A Right.

8 ARBITRATOR VAUGHN: But would it or
9 would it not include the salary cost for the
10 contract employees?

11 THE WITNESS: That is shown in a
12 separate category called purchased transportation.

13 ARBITRATOR VAUGHN: Thanks.

14 THE WITNESS: So this is just the
15 actual RTD employees.

16 A And the final column shows the percent
17 that salaries, wages, and fringe benefits are of the
18 total. In 2004, they represented 47.3 percent, and
19 by 2008, that had declined to 41.3 percent.

20 Salaries, wages and fringe benefits rose by
21 22.4 percent over that period, and operating
22 expenses generally by 40 percent.

23 Q (By Mr. Buescher) Help me understand
24 what the significance of that is.

25 A Payroll expenses, roughly speaking,

1 have not kept up, not kept their same share of
2 overall operations. That -- it's consistent with
3 the Union having taken a pay freeze during this
4 period, for one thing, that they've lost a
5 portion -- they've lost a share of what they used to
6 have of the total operation.

7 Q Okay. Now, you talked about a lot of
8 different things in these Exhibits 45 through 53.
9 Would you put that all together for the Arbitrator.
10 Based upon your training and experience, what does
11 the combination of this information say about RTD's
12 financial condition?

13 A Well, up to -- and I haven't touched
14 much on the current economic situation -- but up
15 through 2008, you see a rapidly developing and
16 growing organization that is focusing its attention
17 on capital development. The reserves that are being
18 set aside are being, apparently, transferred into
19 capital development where they can be -- the exhibit
20 yesterday --

21 Q We'll talk about that.

22 A All right. And there have been
23 substantial reserves saved in the past. The budget
24 shows a fair amount of play in a typical year. And
25 the overall assets, both financial and capital, make

1 it hard for me to imagine that it would be
2 impossible to find \$1.2 million in this for a wage
3 increase.

4 Q Now, you mentioned one of the exhibits
5 from yesterday. Look at RTD Exhibit 31. Go to page
6 12.

7 A Okay.

8 Q You were talking about -- is this the
9 exhibit you were talking about in terms of capital
10 and transfers to capital and things?

11 A Yes.

12 Q Looking at this exhibit, explain to
13 the Arbitrator what you see here and how it is
14 consistent, or not, with the exhibits that you've
15 just described.

16 ARBITRATOR VAUGHN: Hold on a second.

17 MR. ASPHAUG: Give us a moment, too.

18 MR. BUESCHER: Sorry.

19 ARBITRATOR VAUGHN: What page?

20 MR. BUESCHER: 12.

21 MR. ASPHAUG: Can we still have a
22 moment?

23 Q (By Mr. Buescher) This is
24 Mr. Howerter's report, correct?

25 A Yes.

1 MR. BUESCHER: I'm sorry, Rolf. Are
2 you ready?

3 MR. ASPHAUG: Yes.

4 Q (By Mr. Buescher) My question is in
5 terms of the capital comments -- the comments you
6 made about capital expenditures and moving reserves,
7 and that kind of thing, how does this exhibit either
8 demonstrate or not demonstrate that, and how does it
9 compare with the information and exhibits that
10 you've just described for me?

11 A If you look at the third bolded row,
12 capital expenditures, it's -- \$162 million will
13 be -- I'm -- yeah, \$162 million for capital
14 expenditures in this year. In the regular system,
15 that is not the FaTracks, but just in the regular
16 system.

17 And then if you look to the next
18 category, use of increases to reserves, that
19 \$54 million is additional money put into reserves
20 for these particular categories.

21 Down about an inch more, beginning
22 unrestricted net assets, 132.9 million, that is the
23 same number as in my Exhibit 45, the 132.9
24 unrestricted net assets at the end of the year.

25 So what RTD is going to do is take

1 that 132.9 million in unrestricted assets from the
2 prior year, transfer 54 million of it into different
3 types of reserves, and basically use it all up, so
4 there will be \$600,000 left at the end.

5 Q Is that consistent with your statement
6 earlier about how they've been investing in capital
7 and things?

8 A Yes. There's \$162 million that is
9 going to be used for capital, and in a year
10 that's -- where they're having difficulty balancing
11 their operating budget. And the transferring money
12 out of unrestricted balances into reserves for more
13 capital that year, like that, it's hard to reconcile
14 that to me.

15 Q All right. One more exhibit I would
16 like for you to look at, and that's RTD Exhibit 112.

17 A Okay.

18 ARBITRATOR VAUGHN: Off the record.

19 (Pause in the proceedings.)

20 ARBITRATOR VAUGHN: On the record.

21 Continue.

22 Q (By Mr. Buescher) This is a document
23 captioned RTD Board of Directors Report, correct?

24 A Yes.

25 Q And this is dated in June for the

1 April financials, correct?

2 A April 2009 financial status report.

3 Q Go to page 2 of that.

4 A Okay.

5 Q And look at the box down at the
6 bottom.

7 A Okay.

8 Q Particularly the first row of that
9 with numbers in it, the total sales tax numbers.

10 A Uh-huh.

11 Q What's your understanding -- describe
12 what that reflects.

13 A The first -- well, the second and
14 third box show the anticipated sales tax through
15 April compared to the actual sales tax through
16 April. It's a difference of \$25 million, or 19.6
17 percent, in terms of what was anticipated.

18 Q Okay. And so -- and what does that
19 say about that -- so then, do I understand that
20 they -- it's the April year-to-date plan? Is that
21 the budget?

22 A Typically, the budget, as it's stated,
23 is for the whole year. But revenues don't come in
24 1/12, every month, necessarily, so the plan will
25 show what's anticipated through a given month, based

1 on the known way cash flows in.

2 So that would represent what was
3 anticipated to be received through April versus what
4 actually was. And the next part is April 2008 to
5 2009.

6 Q This says that they budgeted more --
7 to get more in April of 2009 than they had actually
8 received year to date in April 2008?

9 A Yes. They budgeted a substantial
10 increase in sales tax for 2009.

11 Q Now, go to page 3 of that exhibit.
12 And look at the charts there about fare revenue and
13 total operating revenues and various numbers. Tell
14 us what that reflects?

15 A It's the same thing. The fare
16 revenues compared to the plan are off by
17 \$2.7 million. If you compare 2009 to 2008, they're
18 up by \$3 million. So comparing the 2009 plan to the
19 2008 actual, they anticipate a \$6 million increase
20 through April over -- in 2009 over 2008.

21 Q Okay. Then go to page 6. This is a
22 summary income statement, excluding depreciation,
23 correct?

24 A Yes.

25 Q And the year-to-date numbers, actual

1 and budget, down -- the bottom line of that, what
2 does that reflect?

3 A The bottom line is the net revenue for
4 the system for operating, it's operating and
5 nonoperating revenues, but it's not the FaTracks.
6 It's just the regular operation. And the bottom
7 line is revenues greater than expenses for the
8 period through April 30.

9 Q By almost \$40 million?

10 A Yes. The budget was to be \$52 million
11 revenues greater than expenditures by this point,
12 and they're at \$40 million. So there is a
13 difference of \$12.5 million.

14 Q So it appears when they budgeted in
15 2009, that -- for 2009, rather, in 2008, that they
16 were predicting a lot more revenue than has actually
17 turned out, right, first of all?

18 A Well, operating revenue is off by
19 \$2.5, and nonoperating revenue is off by almost \$22
20 million. That's where the sales tax -- the sales
21 tax is off 27 million, and that's a big piece.

22 But overall, the system is off \$12.5
23 million from where they anticipated being right now,
24 through April.

25 MR. BUESCHER: Okay. I -- Rolf knows

1 this. I had asked Dr. McCarthy to just prepare some
2 charts on an entirely different issue, since she's
3 not going to be here when we do that issue. I'd
4 like to have her just identify those so Rolf has the
5 opportunity to --

6 MR. ASPHAUG: Which charts are these?

7 MR. BUESCHER: These are Union
8 Exhibit 70. These relate to the part-time TIC
9 people.

10 ARBITRATOR VAUGHN: Before we start
11 that, why don't we take a short break. Off the
12 record.

13 (A recess was taken.)

14 ARBITRATOR VAUGHN: Back on the
15 record.

16 Continue.

17 Q (By Mr. Buescher) Dr. McCarthy, I want
18 to totally shift gears. Go to Union Exhibit 70 in
19 the blue notebook, the one -- you're going to be in
20 191, RTD Exhibit 191. I want you to look at that as
21 well, just briefly, but you're really going to be
22 talking about Union Exhibit 70.

23 Now, explain to the Arbitrator what
24 data you had to prepare these charts that are Union
25 Exhibit 70.

1 A I had the number of operators at each
2 hour of the day, and I had the number of calls at
3 each hour of the day. And then from that, I created
4 the calls per operator, by simple division.

5 Q And now look at RTD Exhibit 191.

6 A Would that be 3?

7 Q It would be No. 3, yeah.

8 A Okay.

9 Q And is that -- in terms of the call
10 data that you just referred to, is this what you
11 had?

12 A This is the call data.

13 Q This is the call data. Then you also
14 had, from RTD, operators per hour?

15 A Yes.

16 Q So then -- now, go back to Union
17 Exhibit 70. And is this day by day? Is that what
18 it is?

19 A Yes. The data show -- I think it's
20 nine different Mondays, Tuesdays, Wednesdays, and so
21 forth, eight or nine, and I just totaled them up.
22 So this is a series of Mondays, an average of a
23 bunch of Mondays, Tuesdays.

24 Q And the red line represents?

25 A The total calls.

1 Q And it shows how they vary over time?

2 A They go up in the middle of the day
3 and trail off at different times.

4 Q And the blue line is?

5 A The number of operators who are
6 working at each half hour.

7 Q And then the green line represents?

8 A Number of calls per operator.

9 Q By time, by half hour or hour --

10 A By half hour increments.

11 Q Green line is fairly level, correct?

12 ARBITRATOR VAUGHN: I'm sorry. Are
13 these people calling in for fare and route
14 information? Are they calling in for pickups and
15 service. When you say "calls," what are you talking
16 about?

17 THE WITNESS: I actually don't know
18 the details. I was just given the data.

19 MR. BUESCHER: RTD has a proposal to
20 create part-time, these people, and this document
21 will ultimately relate to that proposal. You'll get
22 a lot more information, but this was one step beyond
23 even my mathematical abilities, so I had
24 Dr. McCarthy do it for you.

25 ARBITRATOR VAUGHN: Working out there

1 at the ragged edge of long division, aren't you?

2 MR. BUESCHER: Oh, that hurt.

3 THE WITNESS: I'm thinking it was
4 Excel that gave me a lot more trouble than actual
5 dividing.

6 MR. BUESCHER: With that comment,
7 though, I have no additional comments of
8 Dr. McCarthy.

9 MR. ASPHAUG: I will need a few
10 minutes.

11 ARBITRATOR VAUGHN: Off the record.

12 (A recess was taken.)

13 ARBITRATOR VAUGHN: On the record.

14 Questions on cross?

15 MR. BLACK: My name is Derrick Black
16 with the Union -- not with the Union. I'm sorry.

17 CROSS-EXAMINATION

18 BY MR. BLACK:

19 Q I just have a few brief questions for
20 you on the graphs you created for the Union
21 regarding the part-time TIC positions. If I could
22 direct you quickly to Union Exhibit 70.

23 A Okay.

24 Q Now, in creating these graphs, did you
25 use the information that was provided to RTD -- that

1 RTD provided to you?

2 A Provided to Mr. Buescher, and that he
3 provided to me.

4 Q And you created these graphs in Excel,
5 right, kind of used the formula and the graph came
6 up.

7 A Yes, I did.

8 Q In Excel, there are multiple graphs
9 that you can use in creating or computing the data,
10 correct?

11 A Yes.

12 Q Now, if I could direct you to RTD
13 Exhibit 191, page 2, 4, and 6.

14 A Okay. I have page 2.

15 Q They all kind of show, 2, 4, 6, just
16 the days of the week. Now, you don't have any
17 reason to believe that these graphs were created
18 using the same information that you were given,
19 correct?

20 A I have no opinion about this graph at
21 all.

22 Q But you don't have any reason to
23 believe that it's different information?

24 A No.

25 MR. BLACK: Thank you.

1 CROSS-EXAMINATION

2 BY MR. ASPHAUG:

3 Q Dr. McCarthy, have you ever
4 represented a union in a transit agency proceeding
5 before?

6 A Yes, I have.

7 Q You have. You have an online list of
8 your clients, do you not?

9 A It's a partial list. It's not all my
10 clients, by any means.

11 Q And your list of clients does not
12 include any transit agencies, does it?

13 A It might not. I haven't updated it in
14 years.

15 Q You represent police officers,
16 correct?

17 A We don't call it represent.

18 Q I understand that. You have been
19 retained to work with unions representing police
20 officers?

21 A I have.

22 Q Including Denver?

23 A No. Well, I've done some work for
24 them, but I've never testified for them. I've done
25 some analysis for them, I think.

1 Q In your online resume, you state a
2 selection of public and private sector clients that
3 appear below, and you list police officers, and then
4 Denver. So you've worked with Denver and done some
5 analyses for them?

6 A Many years ago, I did some things
7 having to do with Denver, yes.

8 Q So have you done anything with Denver
9 in connection with the recent decision by the Denver
10 police officers to ratify a new contract that would
11 reduce their pay and benefits by 2 percent?

12 A No.

13 Q You haven't worked with the Denver
14 police union in connection with them approving
15 contract concessions that will suspend premium
16 holiday pay and cause them to lose compensation they
17 receive for equipment and uniforms, and to do
18 without the day off they receive on their birthday
19 or extra pay they get for working on a birthday?

20 A No, I have not.

21 Q Do you keep track, Dr. McCarthy, of
22 general economic trends in the country?

23 A I do.

24 Q And would you agree, Dr. McCarthy,
25 that the economic status in this country now is the

1 worst that it has been since the Great Depression?

2 A Yes.

3 Q Would you agree that the economic
4 situation in the Denver, Colorado, area -- in
5 Colorado is the worst that it has been in 50 years?

6 A Probably so.

7 Q You have represented the FOP -- what
8 is FOP?

9 A Fraternal Order of Police.

10 Q All right. -- in a matter before
11 Arbitrator Vaughn, have you not?

12 A Yes.

13 Q And in that arbitration, you focused
14 on comparing -- who were you retained by in that
15 matter?

16 A Fraternal Order of Police, Lodge 4 in
17 Baltimore County, Maryland.

18 Q And you did a comparison study in that
19 proceeding; did you not?

20 A Yes.

21 Q And you focused on some other
22 comparative police agencies?

23 A Yes.

24 Q Did you focus on police agencies in --
25 when you were representing Baltimore, on police

1 agencies in, say, Kansas City, Milwaukee, San Diego,
2 Boston, Chicago, whatever?

3 A No. I focused on the ones that were
4 agreed to by the parties.

5 Q The parties agreed to them as being
6 geographic in locality?

7 A The ones they considered comparable.

8 Q In the general geographical area?

9 A Yes, they were in the general area.

10 Q And that made sense to you?

11 A Yes. They were all largely of similar
12 size, similar -- sort of similar populations.

13 Q You have talked a little bit today
14 about home prices. And what you have been saying
15 about home prices is, if I could quote you --
16 paraphrase it -- actually, I think this is a quote.
17 You said, Looking at median home prices -- and I'm
18 looking at Union Exhibit 42 -- is quote, unquote,
19 better than nothing; is that right?

20 A I don't recall, but it's not that I
21 would agree with that statement in that particular
22 context.

23 Q It's really hardly worth anything at
24 all, is it?

25 A Oh, no, no, no. That's not what I

1 meant at all.

2 Q But that isn't my question to you. My
3 question to you is, looking at median home prices to
4 determine -- to get any sort of idea as to how much
5 to pay operators in a particular area, is totally
6 worthless, isn't it?

7 A Number one, no; and number two, that's
8 not the point I was making with this exhibit.

9 Q Exhibit 42, how did you arrive at the
10 cities that are in this exhibit?

11 A These are the cities that I've used
12 for comparisons, based on the Union's proposed
13 comparables.

14 Q Ah. Thank you. The Union's proposed
15 comparables. And so they were not your proposed
16 comparables; is that right?

17 A I'm differentiating that from the
18 comparables that include Wichita and Missoula and
19 the other. . .

20 Q Well, Exhibit 42 has the same
21 comparables, quote, unquote, as your Exhibit 37; is
22 that right?

23 A Yes.

24 Q And when you were testifying on
25 direct, you said you were analyzing wage rates for

1 certain properties. What did you mean by "certain
2 properties"?

3 Let me make this a little clearer.

4 You said there was a certain cutoff -- top and
5 bottom cutoff for the properties you are looking at;
6 correct?

7 A Yes.

8 Q Within this category, these are not
9 all of the cities that fall within -- what were you
10 using, population?

11 A Yes.

12 Q Okay. These are not all the cities in
13 the U.S. that have transit agencies that fall within
14 the category of service area population 4,510,000
15 and 781,159, are they?

16 A I believe so.

17 Q You believe they are?

18 A I believe so.

19 Q And what do you base that belief on?

20 A The information is compiled by
21 Mr. Buescher's office, and I checked it against the
22 database, against the transportation database.

23 Q And the information compiled by
24 Mr. Buescher's office, and what you checked,
25 represents in sum total all -- your testimony here

1 is that this is all of the transit agencies in the
2 United States for all localities falling within the
3 population range of 4,510,000 and 781,000?

4 A I believe so.

5 Q And if that is not, in fact, the case,
6 would you agree that it is unscientific to base any
7 determination on this analysis using these
8 properties?

9 A Unscientific?

10 Q Yes.

11 A Could you explain what you mean by
12 "unscientific."

13 Q Unreliable.

14 A No.

15 Q It's unreliable to reach a conclusion
16 as to where Denver lies within these areas, if there
17 are, in fact, other localities that are not listed
18 in this list, isn't it?

19 A No.

20 Q It's not? How many of these
21 properties that are on this Exhibit 37 are
22 negotiating contracts right now?

23 A I don't know.

24 Q Do you know how many of these
25 properties are one year, or two years, or three

1 years into their contract?

2 A I don't know.

3 Q Do you know how many, if any, of these
4 properties, besides Denver, have purchased service?

5 A I don't know.

6 Q Do you know what purchased service
7 means?

8 A Yes.

9 Q Denver has purchased service; is that
10 correct?

11 A Yes.

12 Q Do you know whether any of these other
13 properties have a situation such as Denver's, where
14 nearly one-half of their bus operators constitute
15 purchased service represented by the exact, same
16 union local, doing the exact same work, exact same
17 types of equipment, in the exact same geographic
18 area?

19 A I do not know.

20 Q Would your best guess be that there's
21 none?

22 A Probably my guess would be none.

23 Q Probably none? All right.

24 Where did you get these operator wage
25 rates from?

1 A From the ATU research department.

2 Q ATU research department. And when did
3 you obtain them?

4 A The most recent update was just a few
5 days ago.

6 Q Just a few days ago?

7 A Just before we had to exchange the
8 exhibits.

9 Q So the San Antonio rate that you have
10 there of \$19.76 for the operator wage rate, you're
11 representing to us, based on what you received from
12 the ATU research department, that that represents
13 the current what?

14 A Current what?

15 Q Yeah. What is it?

16 A Top operator rate. That's the
17 information that the ATU research department
18 provided to me.

19 Q Are you familiar with the concept of a
20 tiered rate, t-i-e-r-e-d?

21 A Generally speaking, yeah.

22 Q What does that mean to you?

23 A That -- either that different people
24 are in different -- people with the same tenure --
25 people with different tenure are at different tiers.

1 Q If you look at -- if you take the
2 San Antonio operator wage rate, and in fact, there's
3 a tiered rate where, currently, the top rate that
4 operators can get is \$16.42, if they hired on after
5 a certain time. Is that of any interest to you in
6 preparing this analysis?

7 A Not since this represents the highest
8 rate possible. There was employees in each
9 instance.

10 Q You wouldn't even be interested to
11 know what this tier comprises, and whether, in fact
12 there may just be a handful of people who qualify
13 for this top wage rate?

14 A Not especially. If that's the top
15 wage rate that's paid, I would show that.

16 Q Likewise, in Houston Metro, in fact,
17 the current tiered wage rate is not \$19.23, but is
18 actually, for current operators signing on after a
19 certain time, \$17.49. That wouldn't be of interest
20 to you?

21 A I'm showing the top wage rate. That's
22 what the exhibit shows.

23 Q All right. Do you know what the
24 population of Detroit is?

25 A The city population?

1 Q Yes.

2 A It's under a million -- it's around a
3 million, I guess.

4 Q Around a million? Okay. So it's
5 somewhere between 781,159 and 4,510,400?

6 A That's not what that number is on my
7 exhibit.

8 Q Buses and railcars, your category for
9 buses and railcars for Denver, you have 1,163 buses
10 and railcars; is that correct?

11 A Could you tell me what exhibit?

12 Q Sorry. Union Exhibit 37. Actually,
13 it's in several of your exhibits. It's in many of
14 your exhibits.

15 A This is information that is in the
16 national transit database. I don't know -- it's
17 reported by the districts themselves -- by the
18 properties themselves. And it's reported in turn by
19 the national transit database. So I certainly
20 cannot check this data.

21 Q You cannot check this data?

22 A I mean, this is the data that's
23 provided to the federal government by the
24 properties.

25 Q Is it your testimony that it is

1 impossible for you to check anywhere to see if, in
2 fact, the 1,163 figure that you've given for buses
3 and railcars is accurate or not?

4 A It would not be impossible for me to
5 do, but it would not be an effective use of time. I
6 am reporting what the systems report to the federal
7 government. I'm reporting that.

8 Q To your knowledge, does the national
9 transit database distinguish between buses and
10 railcars that are actually operated by the
11 properties themselves versus buses and railcars that
12 are operated by purchased services?

13 A I don't know. They're reporting
14 whatever's been reported to them, and I don't know
15 the answer to that.

16 Q If, in fact, the 1,163 figure that you
17 have for buses and railcars includes RTD's private
18 contractors and their 400 buses, that's just
19 something you were not privy to when you were
20 comparing these charts?

21 A It's not reported in the data that
22 way.

23 Q It's not reported in the data that
24 way; is that your testimony?

25 A The data show the numbers that I have

1 here.

2 Q All right. Now, you have a couple
3 different lines in all of your charts here that
4 reference annual unlinked trips, average weekday
5 unlinked trips. Did I understand from your
6 testimony that there's no correlation of any of
7 these?

8 A Those don't correlate to operator wage
9 rate, and service area square miles.

10 Q And yet you have included them all as
11 lines in all of these various charts?

12 A It's just additional information about
13 the properties.

14 Q Are you advocating an opinion that
15 there should be a mathematical correlation between
16 total operating expenses of the property and the
17 operator wage rates?

18 A I'm saying that in the data, a
19 relationship exists such that higher total operating
20 expenses correlates to higher operating wage rates,
21 and that that is a statistically significant
22 relationship.

23 Q But you are not advocating that that
24 methodology be used in this proceeding, are you?

25 A I'm not sure what methodology you

1 mean.

2 Q You're not advocating that there
3 should be -- that there should be something done by
4 this Arbitrator in this proceeding to have a
5 lockstep, essentially, between operating expenses
6 and the operator wage rate?

7 A I never said anything about lockstep.
8 I said there's a correlation between the two,
9 positive correlation.

10 Q My question is, simply, are you
11 advocating an opinion that there should always be a
12 correlation between -- well, let's take, for
13 example, operating expenses and the operator wage
14 rate?

15 A I -- I don't understand your question.
16 I guess if -- it's a statistically valid
17 relationship that exists. That's all I'm saying.
18 If you run the statistical test on these numbers,
19 you will find they relate to each other.

20 Q Would you agree that the purpose of
21 this proceeding is a substitute for collective
22 bargaining?

23 A It's an impasse resolution that
24 substitutes for strike, basically, I guess.

25 Q Strike is part of the whole collective

1 bargaining process?

2 A Yes.

3 Q After the strike ends, the parties get
4 back to the table, and one way or the other,
5 something is done based on the bargaining position
6 of the parties, correct?

7 A Sure.

8 Q Take a look at your Exhibit 38.

9 A Okay.

10 Q We can strike out annual unlinked
11 trips, correct, for all of these trips? We can just
12 forget about it, because there's just no
13 correlation, using your methodology?

14 A If you want to strike it out, you can
15 strike it out. It's information that I'm providing.
16 It's part of the information that I looked at. It
17 turned out in a statistical test not to be
18 correlated.

19 Q Okay. That's what I mean. Thank you.
20 I'm sorry. So annual unlinked trips is not
21 statistically correlated. Average weekday unlinked
22 trips is not statistically correlated. Service area
23 square miles is not statistically correlated,
24 correct?

25 A Correct.

1 Q Service area population, you maintain,
2 is statistically correlated?

3 A It is.

4 Q Buses and railcars, you maintain, is
5 statistically correlated?

6 A Yes.

7 Q And buses and railcars, you don't know
8 whether the 1,163 for Denver includes 400 buses that
9 are actually operated by private carriers? You
10 don't know if any are operated by private carriers;
11 is that correct?

12 A I don't know. It's whatever -- it's
13 whatever the district reported to the federal
14 government as being that number.

15 Q Exhibit 39, same thing, you've got the
16 1,163 buses and railcars for Denver?

17 A I have it on all of the exhibits.
18 It's all the same data.

19 Q You have it on all the exhibits, okay.

20 Exhibit 40, you testified that the
21 parties, back in 1997, were using these properties
22 as comparable for pensions. Isn't it actually true
23 that the parties -- that there was an attempt to
24 show examples, pensions, and other properties, not
25 some attempt to say properties were comparable in

1 terms of wages?

2 A I didn't say the parties -- this was
3 an employer's -- these were properties used by the
4 employer.

5 Q As examples of the pension situation,
6 correct?

7 A My understanding was that it had to do
8 with the pension issue. I don't know how it's
9 characterized, other than it had to do with the
10 pension issue.

11 Q Exhibit 42 is where you're analyzing
12 median home prices. The median home price in
13 Oakland is \$402,000?

14 A It's the median sales price of
15 existing homes in the fourth quarter of 2009.

16 Q Okay. And current operator wage rate
17 in Oakland is \$25.30?

18 A Yes.

19 Q Okay. Median sale price of existing
20 family homes right above that, in Cleveland, what's
21 the median sales price of existing family homes in
22 the first quarter of 2009?

23 A 69,900.

24 Q \$69,900?

25 A Uh-huh.

1 Q Can you give me a rough idea of what
2 factor of magnitude below \$402,000 that is.

3 A Well, it's less than a sixth.

4 Q Less than a sixth? Are Cleveland bus
5 operators earning less than a sixth of what bus
6 operators in Oakland are earning?

7 A They're earning 24.02 in Cleveland.

8 Q Have you consulted with the
9 Amalgamated Transit Union in connection with its
10 wage demands, currently pending for Veolia?

11 A No.

12 Q If you could, I want to reference
13 Union Exhibit 80, which is your comparison of
14 increases in RTD operators' rate to ECI and CPI.
15 All right?

16 A Okay.

17 Q If you look down at increases '01 to
18 '09. Do you see that category?

19 A Yes.

20 Q And then if you'll look at the ECI.
21 Now, first of all, '01 to '09 is 2001 to 2009,
22 correct?

23 A Yes, it is.

24 Q And the parties have twice negotiated
25 contracts during that, encompassed by that time

1 frame, 2003 and 2006, correct?

2 A I think that's right.

3 Q So is it safe to say that these two
4 parties, when left to their own devices, in
5 negotiating their own contracts, have not had a
6 correlation between RTD operators' rate and the ECI
7 of all private industry?

8 A They have fallen substantially behind
9 what other employers have.

10 Q The answer to my question is yes, they
11 have not had a correlation, when left to their own
12 devices bargaining amongst themselves, correct?

13 A No, I think you are misusing the term
14 correlation. They've fallen behind, I think.

15 Q Based upon the bargaining that these
16 two parties have engaged in, correct?

17 A Yes.

18 Q And factors that can come into play
19 when two parties are bargaining across the table
20 from each other can include factors such as -- well,
21 all kinds of factors, right?

22 A Sure.

23 Q And one factor might be, for example,
24 if there are comparable properties within the same
25 geographic area doing the exact same work, doing the

1 exact same -- and the exact same types of equipment;
2 isn't that right?

3 A I don't believe the ATU subscribes to
4 that position.

5 Q Currently?

6 A I don't -- I don't know what they
7 believed in the past. I know they don't believe in
8 that now.

9 Q Okay. That's good enough for me.

10 Now, you are a Ph.D economist, right?

11 A Yes.

12 Q You went over -- I want to switch to
13 the calculations that you've done, the analysis that
14 you've done of RTD. You went over your figures very
15 carefully; did you not?

16 A I try. There's always a possibility
17 of clerical error.

18 Q You have checked and double-checked
19 them now?

20 A I try.

21 Q Have you done all your own work in
22 this analysis?

23 A Yes, except for gathering the data, as
24 explained earlier.

25 Q You were retained specifically to do

1 this analysis?

2 A Yes.

3 Q And what is your fee arrangement to do
4 this analysis?

5 A My fee arrangement?

6 Q Yes.

7 A I charge by the hour.

8 Q What do you charge by the hour?

9 A \$150, for this type of thing.

10 Q And is that paid for by the Local
11 Union 1001?

12 A Yes.

13 Q Anytime you do an analysis like this,
14 you're staking your professional reputation on it,
15 right?

16 A I suppose so.

17 Q Would you agree that if you saw an
18 opposing forensic economist who made an error on the
19 magnitude of double counting a number, that you, in
20 opposing that -- providing an opposing opinion from
21 that economist, might suggest that anything that
22 economist said should be viewed with some healthy
23 skepticism?

24 A No, I wouldn't.

25 Q No?

1 A People make mistakes all the time.

2 Q People make mistakes. And instead, we
3 should look at the total picture and see if what is
4 being said is reasonable, right?

5 A I suppose it depends upon what your
6 issue is, but typographical errors occur, clerical
7 errors occur.

8 Q You pointed out, when you were talking
9 about your Exhibit 47 -- what you specifically said
10 was: This is the entire operation. It includes
11 FaTracks. Earlier ones did not include FaTracks.

12 Is that what you said?

13 A I don't know what the context was.
14 The earlier of these exhibits?

15 Q The earlier of the exhibits, yes.

16 A I think I was referring to this
17 specific FaTracks reserve. It starts in 2005. I
18 think I was referring to this specific FaTracks
19 reserves that, specifically, in the earlier
20 exhibits, as a separate reserve.

21 Q Do any of the earlier exhibits, and by
22 that, I mean, Exhibits 45, 46 -- 45 and 46, do they
23 include FaTracks money?

24 A I don't believe it's separated out in
25 this exhibit, the FaTracks money is issued

1 separately. I think this is one where they're
2 merged together.

3 MR. BUESCHER: Which one are you
4 referring to?

5 THE WITNESS: 45.

6 Q (By Mr. Asphaug) In all three
7 categories, unrestricted current assets, current
8 liabilities, and unrestricted net assets?

9 A I think they're not distinguished in
10 this exhibit.

11 Q For all three categories?

12 A Yeah. It would be the same for all of
13 them.

14 Q Same thing with Exhibit 46, to your
15 knowledge, both of these categories in Exhibit 46
16 include FasTracks money, the unrestricted net assets
17 and the operating expenses?

18 A I think so, yes.

19 Q What we do know is that FasTracks is a
20 four-tenths of a cent tax that is separately
21 required to be used for this new -- as you referred
22 it, an extremely ambitious capital improvement
23 program, and not to be used for ongoing -- prior to
24 FasTracks operating expenses, correct?

25 A Yes.

1 Q Exhibit 47, you have a -- in 2008,
2 according to this chart you've prepared, there's an
3 unrestricted net asset of \$132,885,000 in 2008?

4 A Yes.

5 Q Now, looking back at 2002 and 2003,
6 there were unrestricted net assets, gosh, about
7 twice as high as that, were there not, in 2003?

8 A Yes.

9 Q And in 2004, there were unrestricted
10 net assets of nearly three times as high -- not
11 three times as high, but almost, 296,945,000, right?

12 A Yes.

13 Q And also, in 2002, the unrestricted
14 net assets were far higher than what they were in
15 2008?

16 A Yes.

17 Q And in 2002 -- at the end of 2002 and
18 at the beginning of 2003, when these parties, left
19 to their own devices, negotiated a three-year,
20 zero-wage contract; is that correct?

21 A I believe that's right.

22 Q Now, you've testified, when you were
23 talking about this exhibit, that the District has,
24 quote, taken upon itself an extremely ambitious
25 capital improvement project. Do I take that to mean

1 that you're saying that the District made the choice
2 of taking on this capital improvement project?

3 A Not necessarily.

4 Q In fact, this extremely ambitious
5 capital improvement project we're talking about,
6 that's FasTracks, right?

7 A Yes.

8 Q And FasTracks was voted on by the
9 voters. RTD is required to do this; are they not?

10 A I don't know all the details of it.

11 Q And the funds that are required to do
12 this extremely ambitious capital improvement project
13 are separate from the funds that fund RTD's base
14 operations?

15 A Yes, that's right.

16 ARBITRATOR VAUGHN: Let's go off the
17 record for a minute.

18 (Pause in the proceeding.)

19 ARBITRATOR VAUGHN: On the record.

20 Continue.

21 Q (By Mr. Asphaug) Let's go to your
22 Exhibit 50, please.

23 A Okay.

24 Q And this analysis you've been doing is
25 based upon information suggesting that RTD tax

1 collections for all of 2009 could be down 6.9
2 percent, right?

3 A Yes.

4 Q In fact, you were here when Terry,
5 yesterday, Terry Howerter was saying that based on
6 information from the state of Colorado, it now
7 appears that the tax collections for all of 2009
8 will be down 9.7 percent?

9 A I don't recall the exact number. I
10 know he did give a number, yes.

11 Q On Exhibit 49, you went through this
12 analysis, and you said in your conclusion that
13 through this time period, there's been a cushion for
14 emergencies, and that RTD was very successful up
15 until this point.

16 What is this point that you were
17 referring to in Exhibit 49?

18 A Well, the analysis goes through the
19 end of 2008, so after 2008.

20 Q After 2008. Now, it is June 26 of
21 2009.

22 A I have no analysis to put on this page
23 for 2009.

24 Q Turn to your Exhibit 52, please. Now,
25 you testified that the interesting thing about this

1 exhibit is the enormous increase in capital revenues
2 in 2009. And what were the figures you were
3 referring to when you were talking about an enormous
4 increase in capital revenues?

5 A Well, that capital revenues went from
6 309,000 in 2008 to 1,000,350,000 in 2009. That's an
7 increase by \$1 billion.

8 Q Now, I'm looking at the last line of
9 this, and in the 2009, adopted budgets, you have
10 revenues over and under expenditures. And you have,
11 in parentheses, \$334 million, \$506,000 --
12 \$334,506,000. And that is in parentheses, which
13 indicates that RTD's revenues are \$334,506,000 under
14 its expenditures, correct?

15 A That means that capital expenditures
16 that are planned exceed the revenues planned for the
17 year by that much money. It's capital, it's not
18 operating.

19 Q The \$426,020,000 that's on this chart,
20 it appears nowhere else. It's not included in any
21 of these other figures?

22 A It's included in the total capital
23 expenditures figure.

24 Q But it is not included in new capital
25 expenditures of 1,258,679,000?

1 A Not as far as I know.

2 Q If, in fact, there's a \$426 million
3 mistake on your Union Exhibit 52, that would be a
4 pretty substantial mistake; would it not be?

5 A Not necessarily. If you're talking
6 about that this 426 million is already included in
7 new capital expenditures, that would just make the
8 revenues over expenditures a positive number.

9 Q Look at your Union Exhibit 48, please.

10 A Okay.

11 Q You testified that accounting
12 adjustments are perfectly normal. And for example,
13 if you look at 2007, there's an accounting
14 adjustment, \$361,973,904?

15 A Yes.

16 Q There's an accounting adjustment of
17 445 million in 2006, 156 million in 2005, 62 --
18 almost 63 million in 2004. What was the accounting
19 adjustment for 2008, according to your chart here?

20 A There's not one there.

21 Q Should there be one there?

22 A I don't know. I'd have to look back
23 on the document.

24 Q Would you expect there to be one
25 there?

1 A I really don't know.

2 Q Are you comfortable with the fact that
3 this Exhibit No. 38 is accurate, as it currently
4 stands?

5 A I was. You've raised a question that
6 could easily be checked.

7 Q Let me ask you something, also. And
8 I'm just curious. I'm not a Ph.D accountant. I
9 just don't know -- maybe there's a perfectly logical
10 answer to this.

11 In looking at the 2008 figures, I was
12 struck by the fact that the excess deficit in 2008
13 is \$14,201,478, and the net income in 2008 was
14 \$14,201,478, the exact same amount.

15 A That's because there's no accounting
16 adjustment shown there. That number is the sum of
17 excess deficit, plus accounting adjustment. So it
18 would be that number if there's no accounting
19 adjustment shown.

20 Q Have you ever analyzed a situation
21 involving any sort of public entity, looking at the
22 revenues and expenses, budget and actual, where
23 there's not at least some accounting adjustments
24 that occur at the end of every year?

25 A Yes.

1 Q And looking at RTD, the fact that
2 there were accounting adjustments of a minimum of
3 62 million, to a maximum of 455 million in each of
4 the prior years you were looking at until 2008, it
5 did not strike you as unusual that there were
6 accounting adjustments for 2008 listed in your
7 exhibit?

8 A I don't know. I don't think I
9 probably thought about it at the time.

10 MR. ASPHAUG: May I have one more
11 moment, please?

12 ARBITRATOR VAUGHN: Off the record.
13 (Pause in the proceedings.)

14 ARBITRATOR VAUGHN: Back on the
15 record.

16 Q (By Mr. Asphaug) Union Exhibit 42,
17 your median home prices analysis, do you know what
18 the median sales price of existing family homes for
19 the first quarter of 2009 was for the city of
20 Detroit?

21 A No.

22 Q Can anyone find that out pretty easily
23 by getting online through the National Association
24 of Realtors?

25 A Sure. It's very easy.

1 Q I'll represent to you that the median
2 home price in Detroit is \$11,500. Do you know what
3 the operators' top hourly wage in Detroit is
4 currently?

5 A I do not.

6 Q Can you tell us what -- getting back
7 to your Union Exhibit 48, can you tell us what the
8 accounting adjustments in prior years, where there
9 were some accounting adjustments anywhere from
10 62 million to over 400 million, what those
11 accounting adjustments consisted of?

12 A I'd have to look back at the
13 statements, but they're just regular things that
14 adjust at the end of the year. There's nothing
15 unusual about them. They're just adjustments that
16 accountants make to make the budget and the actual
17 correspond to each other. There's nothing nefarious
18 about it whatsoever.

19 Q I'm not suggesting there is.

20 Can you look at the 2000 -- on Union
21 Exhibit 48 for 2007, there was a long-term principal
22 payment of 55,695,000, and that's in parentheses.
23 And why is it in parentheses?

24 A Because it's a negative number.

25 Q It's a negative number. If you look

1 at 2008, long-term principal payment, \$63,040,000
2 and \$63,020,000, those are not negative numbers,
3 because there's no parentheses around them?

4 A No, they're not shown as negative
5 numbers. I can look back at the document and see
6 why that is.

7 Q Are payments made by an entity
8 typically shown as negative numbers?

9 A Typically, but sometimes there will be
10 a refund of some sort, and then they will be shown
11 as a positive. I just don't recall what this
12 particular one is.

13 Q So you think it's possible that for
14 2008, RTD had a refund of \$63,040,000 for a
15 long-term principal payment?

16 A I'm not saying that. You asked me if
17 there was a reason that it could be, and I gave you
18 a reason it could be. I don't know the answer. I'd
19 have to check.

20 Q What do you think the most reasonable
21 answer would be to the fact that in 2007, they're in
22 parentheses, indicating a negative number payment,
23 and in 2008, there are no parentheses, indicating a
24 positive number?

25 A I would have to look back at the

1 document to see.

2 MR. ASPHAUG: Thank you. I have
3 nothing further.

4 ARBITRATOR VAUGHN: Anything further?

5 REDIRECT EXAMINATION

6 BY MR. BUESCHER:

7 Q Your exhibits related to median home
8 sales price, were you holding those out as having
9 any correlation to wage rates?

10 A No.

11 MR. BUESCHER: No additional
12 questions.

13 ARBITRATOR VAUGHN: Thank you,
14 Dr. McCarthy.

15 We will go off the record at this
16 point.

17 (WHEREUPON, the proceeding was
18 adjourned at 5:18 p.m.)

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CERTIFICATE

STATE OF COLORADO)
)ss.
CITY AND COUNTY OF DENVER)

I, Angela Smith, Professional Reporter and Notary Public for the State of Colorado, do hereby certify that the above-mentioned hearing was taken in shorthand by me and was reduced to typewritten form by computer-aided transcription, that the foregoing is a true transcript of the proceedings had; that I am not attorney nor counsel nor in any way connected with any attorney or counsel for any of the parties to said action or otherwise interested in its event.

IN WITNESS WHEREOF, I have hereunto affixed my hand and notarial seal this 6th day of June, 2009.

My commission expires January 22, 2011.

Angela Smith
Professional Reporter, Notary Public
Calderwood-Mackelprang, Inc.