

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 27, 2009, at 9:47 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, Denver, Colorado, and Amalgamated Transit Union Local 1001. We are convened on June 27, 2009. This is a continuation of the previous day's hearing, the most recent of which was June 26.

The parties are represented as in those previous days of hearings, and a court reporter is, again, present, her transcript continuing to constitute the official record.

When we recessed yesterday, Dr. McCarthy had completed her testimony on behalf of the Union. We will pick up the record from there.

Mr. Buescher.

MR. BUESCHER: Yes, Mr. Arbitrator, we would look to re-call Ms. McCarthy. During the cross-examination yesterday, RTD pointed out some potential errors in some of her exhibits, and she, in the evening and morning break, checked and has some corrections. It was certainly not intentional on the Union's part or Dr. McCarthy's part, and we

1 want the exhibits to reflect accurately the data.
2 And I would like to put her back on the witness
3 stand, present those exhibits, have her explain what
4 happened, and obviously be subject to further
5 cross-examination to the extent RTD chooses to do
6 so.

7 MR. ASPHAUG: RTD's response is that
8 RTD does not agree to have Dr. McCarthy get back on
9 the stand after cross-examination. She was asked
10 one question on redirect, and then that was it. In
11 cross-examination, she -- several points were
12 brought out. And several of these points not only
13 caused RTD to strongly, respectfully request that
14 she not be permitted to resume the stand and attempt
15 to rehabilitate herself, but also would cause RTD --
16 and RTD was fully intending to make a motion to
17 strike her testimony in its entirety, based on some,
18 but not all the -- I apologize, but I don't even
19 know if errors in testimony is sufficient.

20 There were some errors in her
21 testimony that we were prepared to talk about with
22 our rebuttal witnesses. But there were points where
23 Dr. McCarthy testified without equivocation, with
24 complete certainty. And the first one is Union
25 Exhibit 37, where she was asked whether the 25

1 properties from Kansas City at the top to Denver at
2 the bottom, constituted the entire property
3 available within the service area of population of
4 781,000 and 4,500,010, cut off.

5 And she confirmed that, I believe,
6 several times that these 25 properties -- I was
7 asking her whether these were somehow selected, you
8 know. Because, obviously, if they're selected, if
9 there's a pick-and-choose-type situation, then you
10 have to ask, well, who did the picking and who did
11 the choosing.

12 Dr. McCarthy had ample and repeated
13 opportunity to either say, I don't know how they
14 were picked, someone else picked them for me,
15 whatever. But she did not equivocate. She didn't
16 say, I don't know. She testified under oath that
17 these 25 properties were the 25 properties that fell
18 within these two service area population properties.
19 And she did so because, obviously, that created an
20 additional guise of scientific validity to this
21 study of hers.

22 In fact, RTD was prepared in its
23 rebuttal to demonstrate, using the National Transit
24 Database, which is easily accessible by anyone in
25 five minutes or less, ntdproject.org, that there are

1 33 properties, besides the 25 listed by
2 Dr. McCarthy, that fell within those service area
3 population figures, parameters that she testified
4 to.

5 And among those properties, there was
6 one that I specifically asked her about in
7 cross-examination, which was Detroit. She testified
8 to it -- and she could not have been misled by
9 anyone else, because the question had not been asked
10 until I asked it of her, and she answered under oath
11 that Detroit did not fall within these areas.

12 She did not say, I don't know. She
13 didn't say, I'm not sure. She was saying, Well, if
14 it's not in here, it's not within the service area
15 population areas. In fact, Detroit, as you can see
16 on the screen, is right in there. Detroit has a
17 service area population of 961,270.

18 We were prepared to have Mr. Dash
19 testify today that Detroit has an operator wage rate
20 of \$17.31, which obviously is below RTD's, and which
21 obviously would have skewed her study in RTD's
22 favor.

23 So is -- within this range is
24 Honolulu. Honolulu is a place where the National
25 Association of Realtors, in the first quarter of --

1 the U.S. median home price in the first quarter of
2 this year is \$570,000. That skews, again, in RTD's
3 favor, and destroys the validity of her attempt to
4 use those same 25 properties in her Exhibit 42, and
5 come up with RTD falling within a certain rank of
6 these median home prices.

7 Another thing, completely independent
8 of all that, those were all based on the National
9 Transit Database. Also based on the National
10 Transit Database, you heard her testify under oath,
11 repeatedly, she was asked whether the Denver figure
12 for buses, railcars, and heavy light -- buses and
13 railcars, parenthesis, heavy light available for
14 maximum service, a figure of 1,163, where that --
15 didn't that include our private contractors, so
16 shouldn't that be -- shouldn't you be subtracting
17 approximately 400 buses from that figure.

18 Again, of course, the point is that if
19 you add 1,163, Denver ranks under the study here,
20 Exhibit 37, No. 7, whereas her argument is that
21 there was a national statistical correlation between
22 that number and the operator wage rate, which,
23 according to this selected 25 properties, was No.
24 19.

25 Again, there was no equivocation. She

1 testified -- and I don't see how she could have been
2 misled -- that there was no way to separate that
3 out. And she even implied that it was RTD's fault
4 that this information was not provided.

5 In fact, if we can turn to another
6 part of the National Transit Database, easily
7 obtainable, and you'll see in the box there in
8 parenthesis, vehicles available for maximum service
9 transit operating statistics, 92 light rail
10 vehicles, 626 directly operated, 445 purchased
11 transportation.

12 It is not only in that database, but
13 when you pull up the Denver Regional Transportation
14 District -- the other National Transit Database, you
15 will see on the left-hand side, directly operated,
16 right in the middle in red, below it is bus, 533,
17 purchased transportation, 354.

18 And if this had been a situation where
19 someone has said, I don't know, I'm not sure, that's
20 what someone told me, maybe things would be
21 different. There was no equivocation. And that is
22 why RTD is moving to strike in its entirety her
23 testimony.

24 As a friend to the Court, in a court
25 of law, we would be doing that, I submit. That

1 would be the least thing we would do. This may not
2 be a court of law, but this is a situation where
3 opinions are being given that if they are wrong,
4 could lead to layoffs of working men and women.

5 They may not be the highest paid
6 working men and women, but they are working men and
7 women, nonetheless. Therefore, we must respectfully
8 move that she not be permitted to rehabilitate
9 herself at this time and not participate in this
10 hearing.

11 ARBITRATOR VAUGHN: Response from the
12 Union to the motion?

13 MR. BUESCHER: Yeah, in terms of the
14 motion to strike, this is not a court of law. This
15 is not a jury trial. This is a matter of this
16 Arbitrator trying to take all of the data provided
17 to him, and coming up with a decision about the
18 appropriate terms of the collective bargaining
19 agreement.

20 RTD has essentially admitted, the
21 Arbitrator has acknowledged, that there may be a
22 whole wealth of pieces of paper in the record before
23 him that is entitled to varying degrees, some of
24 which little or no weight. That is the nature of
25 this beast.

1 Dr. McCarthy's explanation of what
2 happened is relevant to this proceeding, and she
3 should be entitled to explain what happened. If RTD
4 provided rebuttal testimony, the Union would have
5 the right to call her for surrebuttal anyway.

6 So instead, an effort to allow RTD the
7 full opportunity to cross-examine her to the extent
8 it wants to, it was our request that she continue
9 her testimony now before RTD testifies.

10 And let me further comment about
11 layoffs. The choice of layoffs in this property or
12 any other property or any employer, is not a choice
13 that this Arbitrator is making. It is not a choice
14 that Dr. McCarthy is making. It is not a choice
15 that Local 1001 is making. It is a choice solely
16 and exclusively vested within the authority of RTD.

17 And if it chooses to lay off employees
18 as a way to deal with how it wants to deal with its
19 budget, that is its choice. And to try to blame
20 that choice on any other entity or person, is, quite
21 candidly, preposterous.

22 Budgets are a matter of option. They
23 are a matter of choices. And it is the employer
24 who, in this case, as in all others, sets those --
25 makes those choices and sets those options.

1 So to the extent that there's any
2 allegation going on here that any decision based
3 upon on any testimony or evidence in this record,
4 will force RTD to do layoffs, is simply erroneous.

5 We believe that in the context of this
6 arbitration, it is entirely appropriate for you to
7 allow Dr. McCarthy to continue her testimony to
8 correct the errors that she has made, which we admit
9 that she has made, to explain what she has done, and
10 then, to weigh that, along with all the other
11 evidence here, in making your decision.

12 MR. ASPHAUG: May I respond very
13 briefly?

14 ARBITRATOR VAUGHN: You may.

15 MR. ASPHAUG: The difference between
16 the testimony under oath and other information that
17 is provided to the Arbitrator is obvious. In court,
18 there is a standard, Daubert, that applies to expert
19 opinions. That standard has to do with reliability.
20 And that standard applies where the testimony is in
21 front of a jury or a judge.

22 Her testimony should not be part of
23 the record at this point. If you look at the
24 Union's reliance -- excuse me. If her testimony
25 becomes part of the record in this proceeding, it

1 can prejudice this District, not only in this
2 proceeding, but in years to come. Look at the
3 Union's reliance in this arbitration on the 1997
4 arbitration, and what was done in that proceeding.

5 Memories change. What happens at the
6 end is what the arbitrator's opinion is. If her
7 opinion is permitted -- if her opinions and her
8 testimony's permitted in this, the erroneousness of
9 those opinions and the -- will not be necessarily
10 evident in future situations years from now, when
11 this arbitration opinion is relied upon.

12 This is a very, very grave situation.
13 She testified -- it is easy, using no other
14 testimony, to show that in these areas that I talked
15 about -- and I'm not even talking about all of the
16 areas that I cross-examined her on where, she, I
17 assume, is going to come up and attempt to show she
18 made mistakes. I'm talking about specifics where
19 she said under oath this is what is contained,
20 essentially, in national databases. And that is not
21 what is contained in national databases. And there
22 was no equivocation to it.

23 So I would ask that our motion to
24 strike be granted. At a minimum, I would ask that
25 she not be permitted at this time to come up, after

1 her testimony has ended, after she's gone through
2 cross-examination, after redirect, after there was
3 one or two questions asked of her on redirect, after
4 the Union finished, that she be allowed to come up
5 here now and attempt to fix all the problems that
6 came up in her testimony when she was
7 cross-examined. There's absolutely no basis for
8 that.

9 ARBITRATOR VAUGHN: I appreciate the
10 thorough statements of the parties regarding this
11 issue. I will take the motion to strike under
12 advisement. I note that the witness could be called
13 subsequent to rebuttal as a surrebuttal witness, and
14 would be able to cover the same points that the
15 Union proposes to raise now.

16 I am prepared to allow Dr. McCarthy to
17 testify further for the limited purpose of
18 correcting any statements, correcting any documents
19 that she now understands were presented in error,
20 and to explain the circumstances under which those
21 errors occurred, if she wishes to do so.

22 Obviously, she's subject to further
23 cross-examination. And obviously the evidence and
24 argument related that she presents is subject to any
25 rebuttal that the District wishes to present.

1 The Union may re-call Dr. McCarthy.

2 The District's objection is noted on the record.

3 MR. ASPHAUG: May I then ask, Your
4 Honor, that she not be permitted to again appear in
5 rebuttal after our rebuttal witness testifies. We
6 anticipate calling Terry Howerter. She doesn't get
7 a third bite at the apple.

8 ARBITRATOR VAUGHN: We'll cross that
9 bridge when we come to it.

10 Ms. McCarthy, you were under oath
11 before, you remain under oath for the continuation
12 of this testimony.

13 MR. BUESCHER: Mr. Vaughn, we have two
14 exhibits that she testified to yesterday that, upon
15 further review, do contain errors. I don't know
16 whether you would prefer to substitute these or mark
17 them with an A or B or something like that in terms
18 of just how we keep the record clear.

19 ARBITRATOR VAUGHN: Let's make them
20 new free-standing exhibits. And the record then
21 will reflect that they relate to some prior exhibit.

22 MR. BUESCHER: This will be Exhibit
23 82.

24 ARBITRATOR VAUGHN: So marked.

25 MR. ASPHAUG: I would like the record

1 to reflect that this is the very first moment that
2 RTD has been presented with Exhibit 82.

3 ARBITRATOR VAUGHN: Noted. And before
4 the District presents any questions on cross, I'll
5 certainly afford it the opportunity to review this
6 and all other exhibits, and if additional time is
7 needed with respect to any rebuttal that the
8 District might otherwise be presenting, I'll afford
9 an opportunity for review in that respect as well.

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

13 FURTHER REDIRECT EXAMINATION

14 BY MR. BUESCHER:

15 Q Dr. McCarthy, I've handed you a
16 document marked Union Exhibit 82. Would you look in
17 the black notebook and look at Union Exhibit 48.

18 A Okay.

19 Q And is Union Exhibit 82 the same
20 analysis looking at the same data as 48?

21 A Yes, it is.

22 Q And in looking over the data again,
23 since the ending yesterday, did you find any errors
24 in Union Exhibit 48?

25 A Yes. In 2008, for -- RTD had asked

1 about the obviously omitted accounting adjustments.
2 I went back and reviewed the documents. And for
3 some reason that I cannot explain, that accounting
4 adjustment was not there. And I have added it to
5 Exhibit 82.

6 Q Show us exactly where that is.

7 A It's on the second page, in the
8 section marked 2008 accounting adjustments. And the
9 long-term principal payment that's showing as a
10 positive number there in that same section, 2008,
11 was actually a part of the accounting adjustments.
12 So it should be showing as a negative 63,000,040.

13 And then the positive 64,000,020,
14 actually, is among the accounting adjustments. So
15 it all nets out in the end. And the net income for
16 the year then, was 113,993,234, rather than the 14
17 million I had in my earlier exhibit.

18 Q And in terms of looking at -- to the
19 extent that this document -- I believe you testified
20 yesterday that what this document showed was how RTD
21 has budgeted conservatively, and that kind of thing;
22 is that correct?

23 MR. ASPHAUG: I need to object. I
24 have no problem with Dr. McCarthy -- well, I do have
25 a problem, actually, that the motion has been

1 granted for her to correct her errors. I move
2 separately that she not be now permitted to, after
3 having corrected her errors, going in and explaining
4 how this makes the situation better or worse or how
5 this bolsters the Union's case or anything like
6 that.

7 MR. BUESCHER: The purpose of
8 correcting the error is for this Arbitrator to have
9 accurate information. And she has testified --

10 ARBITRATOR VAUGHN: You may inquire.

11 Q (By Mr. Buescher) That change in net
12 income, what does -- how does that -- what, if any,
13 influence does that have on testimony yesterday,
14 your opinion about what this document shows about
15 RTD?

16 A It doesn't change my opinion that RTD
17 has added -- has had positive net income each of
18 those years. It's just a slightly larger amount
19 than originally.

20 Q Now, I've handed you a document marked
21 Union Exhibit 83. Look at Union Exhibit 52, please.
22 Is this the same document, with corrections?

23 A Yes, it is.

24 Q All right. Would you point out for us
25 please, what corrections have been made in Union

1 Exhibit 83, from 52.

2 A Yes. The correction is in the line,
3 New Capital Expenditures. As RTD pointed out
4 yesterday, the number double counted the prior year
5 expenditures. I had picked up the wrong line out of
6 the budget document. And the new capital
7 expenditures figure should be 832,659,000, rather
8 than the one-billion-two figure. Capital
9 expenditures is 1,258,679,000.

10 Q So what you had picked up then is the
11 1.2 million, and put it in the new capital
12 expenditure row; is that what happened, essentially?

13 A I picked up the total number and put
14 it in under new, and then totaled everything. So it
15 double counted the prior year number.

16 Q Okay. I believe you testified
17 yesterday what it meant for RTD to have budget
18 capital expenditures in a negative number. What, if
19 any, change in your opinion does this corrected
20 exhibit have?

21 MR. ASPHAUG: Same objection.

22 ARBITRATOR VAUGHN: Noted. Allowed.

23 A I had said that a negative number
24 would have required the use of our reserves to cover
25 the expenditures. And now that the number is not

1 negative, it will not require using reserves to pay
2 the expenditures.

3 Q (By Mr. Buescher) All right. Now,
4 look at Exhibit 37. I want you to explain -- one of
5 the things you did mention on cross was that you got
6 data from my office, correct?

7 A Yes. I don't know if it was cross
8 or --

9 Q You mentioned you got data from my
10 office?

11 A Yes.

12 Q I would like for you to explain
13 exactly what you recall getting, what your
14 understanding of that was, what you then did with
15 that data as it relates to the preparation of
16 Exhibit 37.

17 A All right. I had an e-mail from
18 Mr. Buescher saying that his office was working on
19 getting together the data -- or the -- finding a
20 group of comparables that would work for this
21 arbitration; that they were using the national
22 database getting information. And at some point,
23 provided me with a list of these cities plus the
24 cities that the District had presented in its
25 earliest exhibit in the opening, and provided these

1 specific bits of data, the unlinked trips, weekday
2 unlinked trips in service areas, so forth.

3 I was under the impression that this
4 included all of the cities that fit within this
5 group of basically six criteria.

6 I checked those specific cities
7 against the database, against the national database,
8 to be sure that the data shown was correct. And I
9 confirmed by spot checking them that they were.

10 I used those cities, plus I added the
11 larger cities of New York and Los Angeles, and ran
12 my statistical tests on all of those, confirmed
13 that --

14 Q Did you also use the RTD?

15 A Yes, all of the cities which
16 Mr. Buescher's office provided me with, which did
17 include the RTD cities.

18 Q And when you say "RTD cities," you
19 mean the ones in the exhibit in the opening
20 statements, the smaller properties that are shown on
21 a separate exhibit?

22 A Yes. Missoula, Wichita, all those
23 cities, I included all of that. My reason for doing
24 that was to confirm -- once again, all I've done
25 is -- many times, and many other times estimates

1 that confirm that the larger employers --

2 MR. ASPHAUG: I apologize, but may I
3 have a standing objection again any attempt to
4 bolster the Union's case beyond simply explaining
5 errors that were made.

6 ARBITRATOR VAUGHN: Yeah. I'm
7 prepared to allow an explanation to this extent, to
8 the extent that the question is whether the errors
9 that were made alter the conclusions that were
10 previously stated.

11 I think going beyond that would be --
12 I won't say improper, but would be beyond the scope
13 of what I understood the Union was doing. And let's
14 try and keep it focused on --

15 MR. BUESCHER: Well, that's exactly
16 what she is doing. She is testifying, but
17 explaining why -- she's going to say whether it
18 changes. And I can have her say it now and then go
19 back and explain why, or I can have her explain why
20 and then have her say it in conclusion. That's --

21 ARBITRATOR VAUGHN: Continue.

22 MR. BUESCHER: Okay.

23 A Okay. So I was under the impression
24 that these were all of the cities within this
25 category. It was strictly a miscommunication. I

1 never asked the question and -- I just assumed.
2 Because that's -- when I select a sample, that's how
3 I do it, and I just assumed that that's what was
4 being done here.

5 I learned -- well, I was clued into
6 the issue through the cross-examination yesterday.
7 And I went back and looked at the data and found
8 that there are many properties that fit within the
9 single criterion of the population served. But as I
10 explained yesterday --

11 Q (By Mr. Buescher) What is your
12 understanding now of what lists you were provided by
13 my office?

14 A Oh, it was all of the cities --
15 properties that had been used in prior arbitrations
16 in one context or another by one party or the other,
17 including the ones that RTD had used in their
18 opening this time.

19 Q All right. Go ahead.

20 A So the service population area would
21 not have been the only criterion in my view for how
22 -- in my understanding of how Mr. Buescher's office
23 had selected these, since they had listed all these
24 other six total criteria. And I viewed those as
25 being sensible criterion, and I'd just assumed that

1 all the cities included fit into this criteria.

2 When I realized that there were more
3 properties that had the service area population
4 criterion alone, I went back and looked at those.
5 And some of them would not have fit in these other
6 criterion.

7 One example is Harrisburg,
8 Pennsylvania, which has a service population of 3.1
9 million, and has only trips of 2.5 million. So it
10 would not have made the cut. Harrisburg would not
11 have made the cut in any case, even though it fits
12 the service area population, because it wouldn't
13 have fit any of these other criterion.

14 I only checked the one -- but
15 generally speaking, I would never include
16 Harrisburg, Pennsylvania, as a comparable to Denver,
17 Colorado.

18 And there were a number of the other
19 ones among the -- now, RTD says there's 33 of them.
20 The only ones among those 33 that I would have
21 selected from scratch, if I were doing it myself,
22 would probably be Detroit. I would not use Honolulu
23 and San Juan, Puerto Rico, which were included in
24 that group, because I don't use property outside the
25 Continental United States. I just don't.

1 So the only ones that I would probably
2 add would be Detroit and Miami.

3 Q And do you have wage rate information
4 for Detroit and Miami?

5 A I do.

6 MR. ASPHAUG: Object -- well, never
7 mind. You already. . .

8 ARBITRATOR VAUGHN: Proceed.

9 A For Detroit, I have 20.14, and this is
10 from ATU's database. For Miami, I have 23.02.

11 Q (By Mr. Buescher) And one of those is
12 below, and one is below the mean that's on the chart
13 now, correct?

14 A Yes.

15 MR. ASPHAUG: I need to make clear
16 that my objections -- because I already requested a
17 standing objection to all of this stuff. I do
18 object to the attempting to bolster, again, the
19 Union's case after the fact.

20 ARBITRATOR VAUGHN: Noted.

21 Q (By Mr. Buescher) Now, from looking at
22 the -- now, with your understanding of what you were
23 provided by my office, proper understanding of that,
24 from looking at the additional data at which you
25 have looked since last night, do I understand you to

1 say that the only properties you believe would be
2 added to Exhibit 37 are Detroit and Miami?

3 A I believe so. But I didn't go back
4 and do it in as much detail as I would if I had
5 originally created this sample myself. But I
6 believe those are the two that I would add.

7 Q And on what basis would you add those
8 and not the others? Explain to the Arbitrator your
9 thought process to be able to do that.

10 A They would have the combination of
11 these six criterion that fit within the general
12 range of the others that -- on all those same
13 criterion, that is -- a lot of the ones that I would
14 not include are very small towns, small properties
15 that happen -- by the single criterion, service area
16 population, to meet that criterion, but not
17 necessarily the others, or not all of the others.

18 Q Now, you talked yesterday about an
19 analysis you did to determine a correlation of some
20 of these criteria to wage rates, correct?

21 A Yes.

22 ARBITRATOR VAUGHN: Just a second.
23 Off the record.

24 (A recess was taken.)

25 ARBITRATOR VAUGHN: Continue.

1 Q (By Mr. Buescher) I believe, right
2 before the break, I asked you -- I asked whether you
3 had done some sort of analysis to determine the
4 correlation between the criteria on Exhibit 37 and
5 wage rates, correct?

6 A Yes.

7 Q I want to be clear what group of
8 properties you used to do that correlation analysis?

9 A I used the properties on this list.

10 MR. ASPHAUG: Which list are you
11 talking about?

12 THE WITNESS: On Exhibit 37.

13 A I used the properties that the
14 District had used in its opening, which is
15 Exhibit --

16 Q (By Mr. Buescher) It's early on, it's
17 like 8 or something like that?

18 A That's right, Company Exhibit 8. And
19 I also used New York City and Los Angeles.

20 Q And did you use Newark, New Jersey, as
21 well? It shows on one of the exhibits you did
22 later.

23 A I don't believe I included that in the
24 progression analysis I edited later when I have
25 given another list of what -- to do. And I edited

1 at that point, but I don't believe I included it in
2 production.

3 Q Would you then describe to the
4 Arbitrator what Exhibit 37 -- what the properties
5 are. Can you give a description, your understanding
6 of what that list of properties is?

7 A What it is?

8 Q Yeah.

9 A It is, as I now understand it, the
10 properties that have been used by one party or the
11 other in past arbitrations for one purpose or
12 another. That is, some of them were exhibits having
13 to do with pension. Some had to do with the manager
14 search, I believe. Some had to do with wages. But
15 they're all properties that were proposed by one
16 party or the other.

17 According to the information I
18 received from Mr. Buescher's office, that these were
19 the properties were used in the recent years.

20 Q Now, look at Union Exhibit 40.

21 A Okay.

22 Q Which you described yesterday as the
23 list of the pension properties used by RTD in the
24 1997 arbitration, correct?

25 A Properties used for a pension issue.

1 Q Right, pension issue. And that list
2 includes Newark, New Jersey, at the bottom?

3 A It does.

4 Q Is Newark, New Jersey, on Exhibit 37?

5 A No.

6 Q Why not?

7 A Because its service area population is
8 hugely over all the others. So I eliminated it
9 based on that criterion.

10 Q Okay.

11 MR. BUESCHER: No additional
12 questions.

13 ARBITRATOR VAUGHN: Questions on
14 cross, if any. I don't know if you need a break
15 before proceeding.

16 MR. ASPHAUG: I would like a short
17 break, if I may.

18 ARBITRATOR VAUGHN: We will. Off the
19 record.

20 (A recess was taken.)

21 ARBITRATOR VAUGHN: On the record.

22 Questions on cross of Dr. McCarthy.

23 RECROSS-EXAMINATION

24 BY MR. ASPHAUG:

25 Q Dr. McCarthy, on exhibit -- Union

1 Exhibit 48 had a blank next to accounting
2 adjustments for 2008. Do you remember that?

3 A Yes.

4 Q Do you remember when I asked you about
5 that blank, and your prior testimony was that
6 accounting adjustments are perfectly normal on a
7 yearly basis?

8 A Yes.

9 Q And do you remember when I asked you
10 why -- or I asked about that blank, and what your
11 response was about that blank in there?

12 A I don't recall what my response was.

13 Q Your testimony today was that the
14 accounting adjustments in 2008 were, quote, unquote,
15 obviously omitted. When did it become obvious to
16 you that those accounting adjustments had been
17 omitted?

18 A When I went back and looked at the
19 documents.

20 Q You have testified today that you made
21 certain assumptions based on information given to
22 you, correct?

23 A Could you be more specific, please.

24 Q Well, have you made any assumptions
25 based on information that has been given to you by

1 the Amalgamated Transit Union in this case?

2 A I'm not sure what you mean by
3 "assumptions."

4 Q Well, I heard you testify a little
5 earlier today that you assumed certain things. Let
6 me put it to you this way: Should an expert ever
7 rely on information that a client gives them,
8 without doing independent research into whether that
9 information is accurate or not?

10 A In interest arbitration, it's not
11 uncommon to do that. I often look for additional
12 information. And in this case, I did, I checked the
13 data.

14 Q You testified here a moment ago that
15 you arrived at an amount -- still looking at Union
16 Exhibit 48. Union Exhibit 48, you had net income
17 for RTD of how much for 2008?

18 A On 48, this is the one that hasn't
19 been corrected?

20 Q Correct.

21 A 14,201,478.

22 Q 14,201,478. Do you remember yesterday
23 when I was asking you why that amount was exactly
24 the same as the excess deficit for that year?

25 A Yes.

1 Q And what was your testimony at the
2 time as to why those two were the same?

3 A That the function operates to add the
4 excess in the accounting adjustments, and therefore,
5 since there were no accounting adjustments showing,
6 that they would be the same.

7 Q Now, what is the correct amount for
8 net income, rather than the \$14,201,478 that your
9 Exhibit 48 had for 2008?

10 A It's the amount shown in Exhibit 82.

11 Q And what is that?

12 A 113, 993,234.

13 Q \$113,993,234. And it's your testimony
14 here today that that was a, quote, slightly larger
15 amount than the original that you came up with.
16 Isn't that an incredibly larger amount?

17 A It's a larger amount. It is a larger
18 amount than 14 million, yes.

19 Q You said slightly. What is slight, in
20 your opinion?

21 ARBITRATOR VAUGHN: We'll go off the
22 record for a minute.

23 (Pause in the proceedings.)

24 ARBITRATOR VAUGHN: On the record.

25 The District has indicated that it is

1 withdrawing the question pending when we went off
2 the record.

3 MR. ASPHAUG: I'm withdrawing the
4 question because we've been provided with an e-mail
5 dated May 15, 2009, from Tom Buescher to
6 maccarconsult@aol.com.

7 Q (By Mr. Asphaug) Dr. McCarthy, is that
8 your e-mail address?

9 A Yes.

10 MR. ASPHAUG: And it's cc'd to
11 bozod@aol.com. That's Bill Jones' e-mail address,
12 and the subject is Comparables Info.

13 I would ask that this e-mail be
14 printed out and made part of the record in this
15 case, along with the spreadsheets that are attached
16 and any other exhibits that are attached to this
17 e-mail. That e-mail's dated May 15, 2009.

18 Q (By Mr. Asphaug) Have you looked at
19 the e-mail recently?

20 A I just looked at it thi -- I'm not
21 sure which e-mail you're referring to actually. I
22 looked at one this morning that Mr. Buescher was
23 looking at, but I don't know if the one on the
24 screen now is the one I saw this morning.

25 Q And the e-mail -- I'll just read a

1 little bit. All right. It says: The attached
2 spreadsheet has lots of info that hopefully you can
3 help us refine. Here is an explanation, starting
4 with the sheet labeled comparables history. I went
5 back through the last two arbitration files, 1991
6 and 1997, and looked at what each side used as
7 comparables for wages, pension, and health
8 insurance.

9 The 1997 figures that have stars are
10 properties that Segal & Company used to survey for
11 nonrepresented employee pay.

12 ARBITRATOR VAUGHN: I need you to keep
13 your voice up.

14 MR. ASPHAUG: Okay.

15 Q (By Mr. Asphaug) Segal called them
16 comparable to RTD. Naomi then took on -- took all
17 in that list, except Newark, and went to the FTA
18 website, where there is a wealth of data on
19 properties. The link to that site is below.

20 So let me ask you first: Did you --
21 you were provided with a link to the website to give
22 your opinions here by the Union's counsel, correct?

23 A I don't know what link that is below,
24 but I have been on the website that has all the
25 data, yes.

1 Q Ntdprogram.gov, have you been on that
2 one?

3 A I don't know offhand. I've been on
4 the website.

5 Q But not before you received that
6 information from the Union counsel?

7 A I don't know when was the first time I
8 went on the website. I've been on it a number of
9 times.

10 Q She also -- reading further from the
11 e-mail, she also looked at the properties that RTD
12 intends to use this time, see attached file with RTD
13 exhibits. The results of this search are found on
14 the sheet labeled alphabetical. The top group are
15 properties that have been used before and that have
16 rail service.

17 The group below Denver has been used
18 before but does not have rail service. The last
19 group is the RTD comparables this year. The page
20 labeled Top 100 in 2006 ranks the biggest 100
21 properties using the same unlinked trip criteria on
22 Column B on the first sheet, and shows where RTD is
23 on that list, in parenthesis, pretty damn high.

24 There is only 2006 data available for
25 this listing. We could compile our own from the

1 2007 data, but it may not be worth the effort. The
2 wage data on the first sheet comes from ATU, and it
3 is attached as well.

4 So what I need from you is a rational
5 list of comparables based on all this information.
6 I do not feel wed to what has been done
7 historically, but I do not want to ignore it,
8 because I want to point out how the RTD list has no
9 historical basis. Of course, I want to use, even if
10 separate, the properties used to get a GM salary.

11 So was that -- let me stop quoting for
12 a second. So was that a factor in your analysis as
13 to what properties were used to get the RTD general
14 manager?

15 A There were a few cities on that list,
16 and if they are within that list, then, yes. That
17 wasn't a criterion for selecting the cities. That
18 was a separate exhibit that I prepared, and I don't
19 believe we used it.

20 Q I am willing to go off -- quoting
21 again. I am willing to go off a pure size-based
22 list. Let me repeat that.

23 I am willing to go off of a pure sized
24 based list, because no more than one or two on the
25 RTD list will make it on any rational list based on

1 size. There are clearly some outliers at the top of
2 the list, but I will leave to you how to synthesize
3 this data. Then I want to use the same criteria to
4 show how RTD is not using truly comparable
5 properties.

6 Let me ask you: You testified under
7 oath here yesterday that the 25 transit properties
8 that you had listed in your Exhibit 37 were all of
9 the transit properties in the United States within
10 the service area population of 781,159, to
11 4,510,400.

12 What, in that e-mail from May 15 of
13 2009, or any other communication you received from
14 the Amalgamated Transit Union, could have caused you
15 to reasonably reach that conclusion?

16 A I've not received anything from the
17 ATU on this subject.

18 Q Or its counsel?

19 A The information that I relied upon was
20 Mr. Buescher telling me that his office was
21 reviewing the data on properties to try to get -- to
22 try to determine an appropriate sample.

23 Q With all due respect, that's not what
24 I'm asking you. What I'm asking you is -- let me
25 put it another way.

1 In fact, even though you testified
2 yesterday that those 25 transit properties
3 represented all of the transit properties within the
4 U.S. within those two areas, in fact, there was
5 nothing that you received from ATU or counsel or
6 from any other source that justified your providing
7 that testimony under oath; isn't that correct?

8 A As I said, there was a
9 misunderstanding. I misunderstood what they had
10 done. I misunderstood how they had chosen the
11 properties to send to me. It is my
12 misunderstanding. I misunderstood what they were
13 doing.

14 Q You were aware, once you received that
15 e-mail, that what you had been provided were
16 information that were properties that the parties
17 had used in 1991 and 1997; isn't that right?

18 A Yes.

19 Q And you have a separate exhibit -- you
20 had a separate exhibit for 1997 union wages used for
21 comparable properties, correct?

22 A Which number is it?

23 Q Exhibit 38.

24 A Yes.

25 Q And you had a separate exhibit for

1 1997 employer pension examples, Exhibit 40, correct?

2 A Yes.

3 Q And your testimony under oath
4 yesterday that the 25 properties that were in
5 Exhibit 38 represented all of the properties between
6 781,000 and 4,510,000 was based on what?

7 A It was my understanding that
8 Mr. Buescher's office -- when Mr. Buescher's office
9 evaluated the properties to use as comparables, that
10 they would have evaluated all the properties and
11 determined which ones were appropriately included in
12 the list.

13 Q What you testified to today was you
14 received comparables, quote, that would work, closed
15 quote. Work for who?

16 A I don't recall that statement.

17 Q Did you receive comparables from the
18 Amalgamated Transit Union that would work?

19 ARBITRATOR VAUGHN: I'm not sure I
20 understand the question. I'm not sure I'm going to
21 understand the answer.

22 MR. ASPHAUG: I'll withdraw the
23 question.

24 Q (By Mr. Asphaug) You testified today
25 here that you used -- you testified today to a wage

1 rate for Detroit, correct?

2 A Yes.

3 Q Which Detroit?

4 A The Detroit that's listed on the ATU
5 list of wage rates that we have.

6 Q Are you aware that there's another
7 Detroit?

8 A I really don't know very much about
9 the Detroit system. This morning was my first
10 introduction to it.

11 Q When you say Detroit -- and I'm
12 talking about the Detroit properties that are listed
13 in the National Transit Database. So if, in fact,
14 there is a Detroit called SMART that actually is a
15 suburban property, and there's another Detroit that
16 represents the city of Detroit, you are not aware of
17 that?

18 A I'm not. I looked at it quickly this
19 morning to try to understand what problems we had.

20 Q What do you mean "what problems we
21 had"?

22 A The obvious problem of my having
23 misunderstood what the -- what Mr. Buescher's office
24 had sent me. I was attempting to find out what the
25 issues were and what needed to be done about it.

1 Q Now, the Detroit rate that you
2 testified to today was how much?

3 A The rate that was on the ATU sheet of
4 wages was \$20.14.

5 Q And that was something that was just
6 provided to you by ATU this morning?

7 A No. It's a list I've had all along.

8 Q Did you do any independent
9 verification of that amount on the National Transit
10 Database?

11 A No.

12 Q Did it say anything more than just the
13 word Detroit?

14 A I don't recall at this point.

15 Q In fact, there is a Detroit that has a
16 wage rate, top hourly wage rate for bus operators
17 well below \$20.14. It's actually more like \$17.31.
18 Are you even aware of that?

19 A No. As I said, this morning was
20 really the first time I've looked at Detroit at all,
21 and I didn't have very much time to do it.

22 Q Obviously, a wage rate of \$20.14, that
23 would bolster the Union's position that RTD's top
24 hourly wage rate of \$19.85 is too low. Is that why
25 you mentioned the \$20.14?

1 A The reason I mentioned \$20.14 is I
2 looked at the ATU list wage rates, and I saw
3 Detroit, and I thought that was it.

4 Q In analyzing the District's accounts,
5 you double counted a \$426,020,000 expenditure,
6 correct?

7 A Yes, I did.

8 Q In analyzing the District's accounts
9 for 2008 -- and I'm referring to your Exhibit 48 --
10 you gave an amount of \$63,040,000 as a positive
11 number that should have been a negative number,
12 correct?

13 A Yes.

14 Q And analyzing the District's accounts
15 for 2008, and then providing sworn testimony in this
16 case, you gave an amount of \$63,020,000 as a
17 positive number that should have been a negative
18 number, correct?

19 A Yes, that's right.

20 Q In analyzing the District's accounts
21 in this case -- and I'm referring again to Union
22 Exhibit 48 -- under accounting adjustments, you had
23 a blank. And yesterday, you indicated that that
24 might be zero; did you not?

25 A I don't recall if I said it might be

1 zero. If it's blank, it might have been zero; it
2 might having something else. As it turned out, I
3 found out what the number was and put it in there.

4 Q The number that should have been in
5 there, according to this sheet, was 113,000,000 --
6 according to you now, today, should have been
7 \$113,993,234, correct?

8 A Not in that spot. I don't know where
9 it went. The amount that went in the blank --

10 Q Oh, I'm sorry.

11 A -- would be 225,831,756.

12 Q So in analyzing the District's
13 accounts for 2008, and your Union Exhibit 48, you
14 should have had accounting adjustments of
15 \$225,831,756, and instead, you had nothing, correct?

16 A There was a blank. There was some
17 sort of data error, yes.

18 Q It wasn't just a blank. You treated
19 it as a zero; did you not?

20 A No. The system -- the program treats
21 it as a zero.

22 Q You treated it as a zero. And you
23 testified, the net income for the District was
24 \$14,201,478, correct?

25 A Yes, I did, because that's what

1 appeared on the page. And I have since discovered
2 that was an error, and I've corrected it.

3 Q So, in effect, you were treating the
4 accounting adjustments for 2008, in your Union
5 Exhibit 48, as a zero?

6 A The program would treat it as a zero
7 if it's blank, yes.

8 Q And you looked at this result from
9 the, quote, unquote, program, and testified
10 yesterday that assuming that that program was giving
11 accounting adjustments of zero, the net income for
12 the District for 2008 should have been \$14,201,478,
13 correct?

14 A I have to look at the exhibit again.
15 The one that we've corrected, which number was it?
16 14,201,478 was the erroneous number, yes.

17 Q All I'm saying, Dr. McCarthy, is you
18 looked at this blank, and you treated it as a zero?

19 A The computer program would treat a
20 blank as a zero.

21 Q Right. And you looked at what was
22 being printed out by this computer program. And
23 looking at it, you treated it as zero as well?

24 A It was an error.

25 Q I'm just saying, you treated it as a

1 zero?

2 MR. BUESCHER: I'm going to have to
3 object at this point. He's asked the question
4 numerous times. It's obvious what happened. This
5 is getting beyond appropriate cross-examination.

6 MR. ASPHAUG: I'll withdraw the
7 question.

8 Q (By Mr. Asphaug) Now, you have -- I'll
9 withdraw that part of the question.

10 MR. ASPHAUG: I'm done with my
11 cross-examination, but at this point, I want to make
12 two motions.

13 MR. BUESCHER: I have no redirect.

14 MR. ASPHAUG: The first motion is that
15 I, again, want to renew the motion that based on the
16 e-mail that's going to be printed out and the
17 information that's attached to that, there simply
18 could have been no reasonable basis for
19 Dr. McCarther [sic] to testify under oath, as she
20 did yesterday, that 25 transit properties that were
21 in her Exhibit 37 were properties fall -- all of the
22 properties falling within these two service areas,
23 populations and -- excuse me.

24 I'll apologize for Dr. McCarther. I'm
25 sorry, Dr. McCarthy. I apologize. A name like

1 mine.

2 I'm resuming my motion that her
3 testimony be stricken from the record in its
4 entirety for the basis that was previously given.

5 I also -- RTD is making a separate
6 motion. And that motion is -- essentially, it's a
7 motion under the Daubert case that indicates that
8 evidence customarily -- that goes into the evidence
9 that is customarily relied on by experts and
10 prejudice to opposing parties. And I would ask that
11 the parties be briefed in this matter, when we have
12 a briefing in this matter.

13 In short, the motion is based on
14 numerous points of testimony by this witness. One
15 is, she was asked whether she included Honolulu and
16 other nonproperties within the United States in her
17 analysis. And her answer was, quote, I just don't,
18 closed quote.

19 In her Exhibit 42, she uses -- she
20 testified that she was using median home prices as,
21 quote, something of a proxy, closed quote, for the
22 cost of living, because it was, quote, better than
23 nothing, closed quote. I respectfully submit that
24 better than nothing is not good enough for a court
25 or arbitrator. Does not meet the standard for

1 scientific validity.

2 Union Exhibit 42 just only refers to
3 median sales prices of existing family homes. It
4 doesn't even get into new homes. It refers to
5 median sales prices of existing family homes for one
6 single quarter of 2009, in a market that obviously
7 has had tremendous fluctuations recently.

8 And there's no explanation by this
9 witness as to any sort of scientific validity to
10 have -- for drawing this particular quarter for any
11 reason.

12 There's been no testimony --
13 essentially, if this witness is expressing any
14 opinion as to what RTD's hourly wages should be, we
15 ask that it be totally disregarded.

16 We ask that any lines in her exhibits
17 that give Denver ranks for anything, be totally
18 disregarded.

19 We ask what the exhibits about meeting
20 median home prices be totally disregarded and
21 rejected.

22 And that's the basis for the motion
23 that we're presenting.

24 We appreciate that the Arbitrator has
25 indicated that he will take the previous motion we

1 had under advisement. We, essentially, are asking
2 also that he also take under advisement that parties
3 brief this Daubert motion.

4 ARBITRATOR VAUGHN: What's the Union's
5 response to the motions, in addition to what it made
6 previously?

7 MR. BUESCHER: Having now heard the
8 basis for that, a Daubert motion is generally made
9 in the context of lots of evidence from experts
10 about what is the norm. I did not, obviously
11 anticipate, any of that. In this context, I have
12 not asked Dr. McCarthy questions about that,
13 particularly as it relates to the comment that RTD
14 just made.

15 And so if the Arbitrator -- and this
16 is going to be a strange way to say this, I will
17 admit -- if the Arbitrator is going to do more than
18 consider all of the evidence that is going to be in
19 this record, and determining the weight to be given
20 to Dr. McCarthy's testimony about any single exhibit
21 or opinion or in total, then I would like the
22 opportunity to ask some questions related to the
23 so-called Daubert criteria.

24 If the Arbitrator is going to simply
25 evaluate all the evidence and determine what weight,

1 if any, to give to that testimony, I will worry
2 about it later.

3 ARBITRATOR VAUGHN: Let me respond in
4 this way: This interest arbitration proceeding is a
5 mix of evidence and argument, and the conventions in
6 interest arbitration on both sides, both management
7 and Union presentations, frequently include opinions
8 from people with backgrounds in economics and in
9 this industry which are mixes of evidence and
10 opinion and interpretation. And there was no formal
11 request for certification of either of the economic
12 outside witnesses as experts, as would be required
13 in a court proceeding, and no ruling by me accepting
14 them as experts.

15 I don't want the parties to spend time
16 and resources converting this or treating it as an
17 informal court proceeding; the proceeding is lengthy
18 and complicated enough, in the absence of that.

19 The evidence will be evaluated as part
20 of the totality of the record, and consideration
21 given to the fact the evidence presented does
22 include a certain amount of editorializing.

23 That having been said, I am -- the
24 motion is made. I will respond to the motion in due
25 course. I would think, in light of the nature of

1 the motion, that it would be appropriate for the
2 parties to address the subject in your closing
3 briefs. You have a right to protect the record in
4 the interest of your clients, and I am not going to
5 deprive the parties of that opportunity.

6 So I would ask that whatever briefing
7 we do -- and that hasn't yet been determined, but if
8 there are briefs filed, I would ask that that
9 subject be covered.

10 Ultimately, the questions that I need
11 to answer with regard to any of the particular
12 evidence that is presented, and with regard to the
13 entire record, is whether, on an issue-by-issue
14 basis, the evidence is persuasive. Does it persuade
15 me that one party's proposal should be accepted over
16 that of another.

17 And so the reward for persuasive
18 evidence, presumably, will be reflected in my
19 determination on a particular issue. And the
20 penalty for evidence that turns out not to be
21 persuasive, would be that the position of that party
22 would not be adopted.

23 I'm not convinced that formal motions
24 to strike are necessary, and perhaps not even
25 appropriate to that kind of resolution.

1 That having been said, as I indicated,
2 the parties are obviously free to protect the
3 record. There is abundant guidance in the Daubert
4 decision and in other decisions as to how expert
5 testimony should be considered and whether it should
6 be accepted as such. To the extent that that case
7 and other cases may provide guidance by analogy, I'm
8 prepared to have the parties present evidence in
9 that regard.

10 How we do that, what form and format,
11 that is something that counsel and I can discuss at
12 the time we make whatever closing arrangement we
13 make. In the meantime, I am noting the District's
14 two motions for the record and taking them under
15 advisement pending my further deliberations and
16 pending whatever guidance the parties may provide me
17 with.

18 Is there anything else for
19 Dr. McCarthy?

20 MR. BUESCHER: Well, with that
21 explanation, I would like to ask Dr. McCarthy a
22 couple of questions about Honolulu, the comments
23 that she made, because that goes directly to the
24 Daubert argument that the District is making.

25 ARBITRATOR VAUGHN: I'll permit the

1 questions.

2 CONTINUED REDIRECT EXAMINATION

3 BY MR. BUESCHER:

4 Q Dr. McCarthy, you said that you do not
5 consider properties off the Continental United
6 States. Why?

7 A In the 20-some years that I've been
8 doing this work, it's been my experience that both
9 labor and management confine their analysis to the
10 Continental United States.

11 There was a time, more than 20 years
12 ago, when, in the public sector, there was a
13 tradition of using groups like the top 30 cities by
14 population in the United States, and that would
15 include Honolulu in one of the top 30. And I've
16 even seen it excised from that group of top 30 in
17 that instance.

18 Although, I couldn't say with
19 certainty no one has ever used it, I have never seen
20 at all in recent years, and I don't recall seeing it
21 at all, ever. So it's the -- sufficiently obvious
22 that the economy in Hawaii is so different in many
23 respects. Although wage rates tend to be higher,
24 cost of living also tends to be higher.

25 It's just not something that

1 economists, in my experience, view as a reasonable
2 comparison.

3 Q And when you say economists, in your
4 experience, and what you have not seen, does that
5 include economists and other experts who've
6 testified about the subject matter on both the
7 management and Union side?

8 A Yes. And I'm not speaking to transit
9 in particular, because I haven't been involved in
10 very many transit cases, only a few. But generally
11 speaking, I just don't see Hawaii in a mix of
12 cities, at least in the public sector.

13 MR. BUESCHER: No further questions.

14 ARBITRATOR VAUGHN: Anything further
15 for Dr. McCarthy?

16 MR. ASPHAUG: Yes, just brief.

17 RECROSS-EXAMINATION

18 BY MR. ASPHAUG:

19 Q When you testified yesterday with
20 regard to your Exhibit 37, did you mention anything
21 about excluding Honolulu, Hawaii, on that basis?

22 A No, I did not.

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

25 ARBITRATOR VAUGHN: Thank you,

1 Dr. McCarthy.

2 Off the record.

3 (Pause in the proceedings.)

4 ARBITRATOR VAUGHN: On the record.

5 The District may announce its next
6 witness.

7 MR. ASPHAUG: Terry Howerter back to
8 the stand.

9 ARBITRATOR VAUGHN: Mr. Howerter, you
10 were under oath before and remain under oath for the
11 continuation of your testimony.

12 TERRY HOWERTER,
13 having been previously sworn to state the truth,
14 testified as follows:

15 DIRECT EXAMINATION

16 BY MR. ASPHAUG:

17 Q Mr. Howerter, you've been present both
18 yesterday and today during Dr. McCarthy's testimony,
19 correct?

20 A I have.

21 Q As well as through the entire
22 proceedings; is that right?

23 A That's correct.

24 Q All right. Can you -- keeping in mind
25 again that we're able to do kind of a narrative-type

1 process here, can you respond to what you have heard
2 with regard to Dr. McCarthy's testimony regarding
3 the District's financial condition and her analysis
4 of the District's financial condition.

5 A I can. I'd like to talk briefly about
6 several of the schedules here. If you don't mind,
7 we'll just delve through starting with Exhibit 45.

8 Q These are RTD's exhibits?

9 A These are RTD's -- pardon me. These
10 would be the Union's exhibits, Exhibit 45.

11 Q Very good.

12 A I would start and say there seems to
13 be a lack of due diligence in looking at the CAFR
14 and the balance sheet of RTD. We have discussed
15 several times where FaTracks and the base operating
16 systems are both in these documents. And you have
17 to be very careful with what information you pull
18 and how you present it.

19 If we look at statement 45, on that
20 particular statement, the unrestricted net assets
21 are the base system only, and that would be the
22 six-tenths that --

23 Q Six-tenths percent income -- sales and
24 use tax?

25 A Sales and use tax, that's correct.

1 The current liabilities on this
2 statement include both FasTracks and the base
3 system. So it would include debt that was due
4 within one year for the FasTracks system. That
5 would be interest, principal, et cetera.

6 Q Now, is FasTracks revenues and
7 expenditures, are those separate from revenue
8 expenditures for the base system of RTD? How does
9 that work?

10 A They are separate. But in the
11 documents, you do not see separate presentations for
12 them. You'd have to read the MD&A, the footnotes,
13 and the financial statements all as one piece to
14 understand how the CAFRs run together.

15 Q But is that in accordance with
16 generally accepted accounting principles?

17 A It is. We apply both GAP and the
18 governmental accountant standards or principles.

19 To go back to the statements here, the
20 unrestricted net assets, of course, we've already
21 talked about those being base only. And this would
22 change your current ratio slightly.

23 I would say that I agree with
24 Dr. McCarthy, though, in that the current ratio, or
25 the assets over liabilities for RTD in past years

1 have been higher than 1, and would probably continue
2 to be after the adjustment.

3 But these are historical figures, and
4 the intent of our discussions here are what we're
5 looking at for 2009 and future periods.

6 If you go to Union Exhibit No. 46, the
7 unrestricted net assets in this column, again, are
8 the base system only. The operating expenses
9 include part of the FasTracks expenses, as well.
10 That would be for planning, and for salary wages,
11 administrative expenses, that we're not allowed to
12 capitalize under GAP.

13 These numbers, again, are slightly
14 skewed. And, again, I would agree with
15 Dr. McCarthy's statement, that the general rule of
16 15 percent or higher would still apply for this
17 ratio, and that RTD management has done a good job
18 in past years.

19 Q In past years?

20 A In past years. Again, this is 2007,
21 2008 historical data that, as we know, at the end of
22 2008 started to change drastically.

23 Q Thank you. Proceed.

24 A Okay. Union Exhibit No. 47,
25 Dr. McCarthy stated here, in reviewing this

1 agreement, that the RTD had taken an ambitious
2 capital project with remarkable run-up in capital
3 assets. And those are capital assets. And that's
4 net of depreciation, as defined by GASD. You start
5 with your capital assets, then the depreciation, and
6 then you take out your related debt. And any
7 reserves that are held as restricted assets related
8 to that debt are added back.

9 So it's very hard to get to what is in
10 that number, if you just flip to the balance sheet,
11 as we tried to do yesterday.

12 Q When you say "we," who do you mean?

13 A Dr. McCarthy.

14 Q Proceed.

15 A Okay. So with that being said, we
16 have had a remarkable run-up in our fixed assets. I
17 agree with the statement that RTD management has
18 taken on a huge task. And I would say that it was
19 tasked by the voters in 2004, as opposed to an RTD
20 policy that we want to do this.

21 We've been tasked with building 122
22 miles of light rail and commuter rail in a 12-year
23 period. That is a huge undertaking for RTD to have
24 this all completed by 2017.

25 Q Dr. McCarthy testify yesterday with

1 regard to Union Exhibit 47 -- and the transcript
2 will reflect that she testified looking at this
3 exhibit. She said that this was the entire
4 operation, that includes FasTracks. And the earlier
5 ones -- and by the earlier ones, she was referring
6 to Union Exhibits 46 and 45 -- did not include
7 FasTracks. Is that, in fact, an incorrect statement
8 on her part?

9 A That is an incorrect statement, as I
10 just discussed.

11 Q Thank you. Go ahead and proceed.

12 A On the next Union Exhibit 48, we've
13 already discussed this one in detail. It was quite
14 easy for myself and staff to see the error in 2008,
15 and -- it just stood out at you, like showing the
16 long-term principal payments as an add back to our
17 cash flows.

18 It just almost appears to be
19 erroneous, and a material misstatement, as we've
20 discussed on this set of forms.

21 Q Let me stop you for a second. There
22 was testimony by Dr. McCarthy yesterday, when this
23 fact that long-term principal payments for previous
24 years were always in parenthesis, and were multiples
25 of -- several tens of millions every year. And

1 suddenly, you have a long-term principal payment
2 reflected in 2008 of 63,040,000, original budget is
3 63,020,000, actually, as positive numbers.

4 She was asked whether that was an
5 error, and her response was that, well, it could
6 have been an add back or something like that?

7 A A return of debt or something. I'm
8 not sure where we were going with that one. I've
9 never seen a return of debt that would be classified
10 that way. You'd have the extinguishment of your
11 debt. Prepayments always draw down your funds.
12 Payments draw down your funds, of course.

13 And it could have been assumed that we
14 had misclassified something. But a quick look back
15 at the financial statements, it's quite easy to see
16 that the debt payments are deducted.

17 Q If she had looked back at the
18 comprehensive annual financial report of 2008, page
19 105, which is referenced on Union Exhibit 48, that
20 would quickly become apparent?

21 A It would. And the big one that would
22 have been quickly apparent is it was not \$14 million
23 worth of net income, it was 113, as restated in the
24 documents provided this morning.

25 Q All right. Proceed.

1 A The other thing I'd like to say on
2 this statement, I think I heard this morning that
3 this just further represents and supports our
4 position, that with \$113.9 million of income, RTD
5 has the ability to take on future obligations.

6 I'd like to point out that these
7 statements, once again, include FasTracks.
8 FasTracks sales tax alone in 2007 was 167 million,
9 165 million in 2008. If you take that out of the
10 picture, you also have to address things like
11 interest income, interest expense, and get back to
12 the base system only. You'd be telling quite a
13 different story here.

14 Q What kind of story would you be
15 telling? Just put it in layman's terms for us.

16 A I think you'd be telling that on the
17 base operating system, we've been taking care of our
18 necessary capital. We've been servicing our debt,
19 and we have been making our -- paying for our
20 operating expenses as planned.

21 Q Proceed.

22 A It's just a point that kind of sticks
23 with me here. We have the one.

24 ARBITRATOR VAUGHN: What document are
25 you referring to?

1 THE WITNESS: Still on Union Exhibit
2 48.

3 ARBITRATOR VAUGHN: Thank you.

4 A We've referred to this huge number,
5 next to the last line, each year as being an
6 accounting adjustment, the standard kind of thing
7 that accountants do at year-end. The whole -- it
8 bothers me -- and I'll just touch on it briefly.

9 MR. BUESCHER: I guess I'm going to
10 object to what bothers him. That's part of the
11 problem with the narrative in here, what bothers
12 him, if it isn't relative to what the issues are
13 here, we're just wasting time.

14 ARBITRATOR VAUGHN: I'm sure you can
15 phrase your testimony in terms of the dispute that's
16 before us.

17 THE WITNESS: Okay. I'll pass on
18 that, then.

19 ARBITRATOR VAUGHN: I didn't say to
20 pass on it. You may have characterized something as
21 it bothers you, and that's one of those ephemeral
22 terms. If there is a problem with the exhibit, that
23 goes to its validity or that the District would have
24 a different take on, you may tell us that.

25 I think the objection is to the

1 possibility that this was some personal opinion
2 rather than a professional opinion related to the
3 dispute.

4 THE WITNESS: I would say it's
5 professional, in that those are not accounting
6 adjustments. They're reconciliations between a
7 budget cash flow and an actual. And the details on
8 page 83 of the CAFR and on page 105 bear that out
9 quite plainly.

10 Q (By Mr. Asphaug) Let me stop for a
11 minute. The reconciliation between actual and
12 budget, is that something you would expect to see
13 every single year?

14 A We do that every year. It is not a
15 required statement. Most governmental entities
16 present it. Us being a single-entity proprietary
17 fund, we're not required to present this one.

18 Q But if you have a situation where in
19 prior years, 2007, 2006, 2005, 2004, each year you
20 have reconciliations of tens of millions to hundreds
21 of millions of dollars, as a professional, expert in
22 the field of accounting, would an accounting
23 adjustment with just a blank in it for 2008 cause
24 any accountant to have some question as to what was
25 going on?

1 A It definitely stands out and should
2 have been challenged.

3 Q And is this also a historical document
4 that ends with 2008?

5 A It does.

6 Q All right. Proceed.

7 A Union Exhibit 49, I had no additional
8 comments on that document. Union Exhibit 50 --

9 Q Let me ask you, with regard to Union
10 Exhibit 49, again, does the analysis stop in this
11 document at 2008?

12 A The analysis is historical information
13 that ends in 2008.

14 Q And Dr. McCarthy's testimony yesterday
15 was that RTD had been very successful, quote, up
16 until this point, closed quote, with regard to
17 budgeting, revenues, expenditures, et cetera.

18 And then there was -- I believe I
19 pointed out that we were now almost seven months
20 after 2008. So my testimony [sic] to you -- has
21 there been a change from that point on, with regard
22 to RTD's ability to meet its challenges?

23 A As far as the ability to meet the
24 challenges, of course, we're seeing from the fourth
25 quarter 2008, second or third and fourth quarter,

1 that our revenues are down. Of course, our
2 challenges have gotten huge with the loss of the
3 sales tax revenues in 2009 and those last two
4 quarters of '08.

5 Operating expenses would continue to
6 control, and we have implemented several policies
7 and procedures -- I shouldn't say policies, but
8 procedures that RTD -- where we're now reviewing on
9 a regular basis the monthly income statements, the
10 budgets. We're looking to fine tune, as we have
11 serious challenges ahead of us in 2009.

12 Q And it was after this historical
13 period that RTD was instituting service cuts to the
14 public?

15 A That's correct. We might have minor
16 service adjustments in prior years for routes that
17 did not meet our service standards, but in 2009, in
18 May, we had a substantial reduction in service that
19 took out routes that did meet our service --

20 Q Productive routes that were serving
21 customers?

22 A That's correct.

23 Q All right. Go ahead.

24 A On Union Exhibit 50, I have always
25 talked -- in any quotes that you see in the papers,

1 I've always talked about sales and use tax as being
2 one revenue source from the government. As those
3 come in, you have to consider them both. They are
4 both a revenue source. And in the budget document,
5 we show the use tax as a reduction in capital
6 expenditures.

7 And in this example here, in Union
8 Exhibit 50, this is the first one, I think, that
9 is -- I can't say that. This excludes the use tax.
10 It compares to budget, and doesn't give a good
11 representation, to take 6.9 percent down on the
12 budgeted sales tax only, and to work through the
13 numbers showing the total operating revenue.

14 Q You're saying that this Union Exhibit
15 50 excludes use taxes and excludes the changes from
16 2008, which were negative, I assume, in the use
17 taxes?

18 A No. The use taxes were actually
19 positive. That would have given a better appearance
20 for how much sales and use tax you brought in. It
21 would have been a benefit to the Union to have shown
22 that.

23 Q But they did not indicate that?

24 A They did not. And, again, it just
25 depends on doing your due diligence. You'll see on

1 the financial statements, we refer to sales and use
2 tax quite often. This line does say sales tax on
3 it.

4 Q Now, the reference to 6.9 percent
5 that's being used here, in actuality, what is the
6 latest projection from the State of Colorado?

7 A Current projections, based on the info
8 we have at this time, is 9.7 percent down from 2008.

9 Q All right. Go ahead.

10 A On Union Exhibit 51, I believe the
11 intent here was to show that the sales taxes were
12 not 63 percent of the revenues. And to me -- first
13 thing, again, we did not include the sales and use
14 tax. I think Cal Marsella and myself have both been
15 quoted as saying the sale tax made up 63 percent of
16 our revenues at some point in time.

17 That point in time was 2008. And that
18 information is included in the MD&A and the CAFR.
19 At that point in time, sales taxes were 63 percent
20 of the revenues. What you have here are these sales
21 and use taxes were 63 percent of the revenues.

22 What you have here, as these times
23 change, those percentages will change drastically.
24 If you look at 2009, going back to the TDP
25 presentation we had, you'll recall we showed 154.8

1 million in grant revenue that we have now brought
2 into our 2009 projections.

3 If you were to run your percentages
4 based on 2009 revenue, total revenue in this
5 scenario, because the grant revenue went up so high,
6 your sales tax revenue went down, it's not going to
7 be 63 percent in future years.

8 What I would say in this situation is
9 sales taxes, grant revenue, are a huge portion of
10 our revenues at any point in time, and they are
11 needed in order to run the operation. They are
12 important to the operation, as well as fare box
13 revenue.

14 Q All right. Continue.

15 A Exhibit 52, I think we've already
16 talked through that one.

17 Q That's where there was a double added
18 \$426,020,000?

19 A That's correct. And to show that our
20 revenues, over-and-under expenditures as being a
21 negative \$334 million at the end of 2009 adopted
22 year. And to say that you would use reserves to
23 cover those, just doesn't quite work for me.

24 We've talked about --

25 Q Let me stop you. Let's not use that

1 personal -- I understand. From a professional
2 standpoint, as someone who works in the field of
3 accounting, is -- tell me from that standpoint
4 whether it would be proper or improper or however
5 you want to characterize it.

6 A To have that type of deficit at the
7 end of the budget, period --

8 Q And we're talking 334,506,000, as
9 referenced in this exhibit?

10 A That's correct. That would result in
11 several accounting issues, and should have brought
12 up several questions as to where exactly would the
13 funding come from, how would you rectify the
14 situation. And I don't believe those questions were
15 addressed prior to providing this exhibit.

16 Q Would you expect any professional
17 accountant to -- presented with this Union Exhibit
18 52, and with revenues under expenditures indicating
19 \$334 million in the 2009 adopted budget, would, at
20 least, wonder a little whether there was, perhaps, a
21 problem with that number?

22 A I would think so. And I would think
23 that the question would be more of they
24 anticipate -- or RTD would anticipate covering it
25 with reserves. This would require serious debt

1 financing, which would have been in the plan. It
2 will have required some serious comments and
3 notation in our financials.

4 Q Have you ever heard of an accountant
5 double adding \$426 million?

6 A Not any that have worked for me.

7 Q Are there any others that you've heard
8 of?

9 A I have not. Mistakes do happen,
10 though.

11 Q I understand.

12 A On the last exhibit, Exhibit 53, we
13 talk about the payroll and the way payroll increases
14 and salary and wages --

15 Q I'm sorry, which exhibit are you
16 referring to?

17 A Union Exhibit 53.

18 Q Okay. Go ahead.

19 A We talk about the significance of
20 payroll not having kept up with operating expenses.
21 I believe a statement may have been made that the
22 Union's lost their share of the total operations.

23 There's been no consideration in this
24 explanation as far as the operating expenses go, as
25 it relates to the volatility of the economy in the

1 past couple years, as it relates to fuel, which had
2 astronomical run-ups in costs, which also drove up
3 our shipping costs, which also drove up the cost of
4 concrete, steel, and had a huge impact in the
5 operating expenses.

6 I would not expect salary and wages to
7 stay into -- stay in that direct correlation or
8 apportion to those kind of expense run-ups.

9 In addition, there's been a huge
10 change in our services. Our services have grown
11 year after year on our bus operations, plus the fact
12 that in November 2006, we opened the Southeast Rail
13 Corridor, and 2007 reflects a full year of those
14 expenses that were not in the earlier periods.

15 So you have to -- when doing this kind
16 of analysis, you have to make adjustments for the
17 extraordinary items, and that has not been done.

18 That's all I have on those exhibits.

19 Q Let me ask you this: Union Exhibit 53
20 would indicate to anyone looking at it that if you
21 just look at salaries, wages, and fringe benefits,
22 that in every single year from 2004 to the 2008,
23 salaries, wages, and fringe benefits have actually
24 increased, correct?

25 A It would.

1 Q In fact, 2006 to 2007, increasing by,
2 what, 12 or \$13 million, something like that?

3 A That's correct.

4 Q 2007 to 2008, another about \$5
5 million?

6 A Yes.

7 Q All right. Did anything that
8 Dr. McCarthy testified to with regard to these
9 historical documents in 2008, for the most part,
10 change your testimony back from when you were
11 previously testifying in this matter, that after the
12 Democratic National Convention, RTD basically,
13 quote, fell off the ledge with regard to sales and
14 use tax revenues?

15 A No. The historical documents, to me,
16 as I stated, indicate RTD has done an excellent job
17 of managing the organization. The management there
18 has a strong team. It does not address our future
19 problems and what we're seeing today in 2009 and our
20 revised numbers.

21 Q Has anything in Dr. McCarthy's
22 testimony and presentation changed your opinion with
23 regard to the -- I believe you were asked whether --
24 if the Arbitrator were to provide this year the wage
25 demands that were demanded by the Union and health

1 and welfare demands, whether RTD would be able to --
2 what RTD would be able to do for it?

3 A No. The historical information that's
4 been presented here, the ratios, the analysis that's
5 been done, does not change the fact that we're in
6 the recession in Colorado and this District; that
7 our challenges are huge in order to balance our
8 budget; and that any additional expenses would just
9 result in additional reductions in some other place.

10 Q And you heard Mr. Marsella testifying
11 that there would be immediate service cuts?

12 A I did.

13 Q And do you have an opinion as to
14 whether or not that would need to be done in a
15 situation where the Union's wage and health and
16 welfare demands were adopted?

17 MR. BUESCHER: I'm sorry, could you
18 repeat that question.

19 ARBITRATOR VAUGHN: And you also need
20 to keep your voice up for the court reporter.

21 Q (By Mr. Asphaug) Do you have an
22 opinion as to whether there would need to be
23 additional service cuts, if the Union's health and
24 welfare or wage demands would be adopted by the
25 Arbitrator?

1 MR. BUESCHER: Well, I'm going to
2 object to whether he has an opinion. There's
3 nothing to indicate he is the person who would make
4 the decisions about these reductions in some other
5 place that he testified to, particularly with an
6 elected board that controls the entity.

7 ARBITRATOR VAUGHN: If you can
8 rephrase the question.

9 MR. ASPHAUG: Sure.

10 Q (By Mr. Asphaug) From your standpoint,
11 as the chief financial officer of RTD, what would be
12 your recommendation?

13 A The way our recommendation works with
14 that, we would put together a list of options that
15 would balance our budget. And we talked about those
16 with my testimony previously. The list of options
17 will include continued wage freezes for salaried
18 employees. It will include things such as service
19 cuts.

20 And we would take that and put
21 together a menu of options and we would present it
22 to the board to make a final decision.

23 I would -- my past practice, and what
24 I've seen at RTD, is one of the last things you do,
25 once you go through your budgets and you review

1 everything, are those service cuts, because that's
2 the most harmful, and we are here to provide service
3 to the district.

4 Q And yet, RTD has already had the need
5 to go through substantial service cuts for
6 productive routes serving our citizens, even before
7 this wage proposal by the Union?

8 A That's correct. And when we did that,
9 we were looking at only a 3.45 percent reduction in
10 our sales taxes, which has now tripled, and we're at
11 9.7 percent.

12 MR. ASPHAUG: May I have just one
13 moment, please.

14 ARBITRATOR VAUGHN: You may.

15 Off the record.

16 (Pause in the proceedings.)

17 ARBITRATOR VAUGHN: On the record.

18 The District has announced that it has
19 nothing further for this witness.

20 Will the union have questions on
21 cross?

22 MR. BUESCHER: Yes. And I will try to
23 be as brief as I can, about a break, but I would
24 like a break.

25 ARBITRATOR VAUGHN: Off the record.

1 (A recess was taken.)

2 ARBITRATOR VAUGHN: On the record.

3 Questions on cross.

4 CROSS-EXAMINATION

5 BY MR. BUESCHER:

6 Q Mr. Howerter, I want to start with
7 your comment about the voters. I don't remember
8 what term you used, whatever they did to RTD to do
9 FasTracks. I don't want to put words in your mouth,
10 but something like requires you to do FasTracks or
11 something. You used some term like that, right?

12 A I think the term was that the voters
13 authorized RTD to do the FasTracks program.

14 Q Okay. Now, let's make sure he have a
15 complete record here. Are you aware that before
16 that proposition can go to a vote of the people, RTD
17 had to go to the state legislature to put it on the
18 ballot?

19 A I believe I heard that. I was not
20 here at that time.

21 Q Okay. But you believe that's
22 accurate?

23 A Yes.

24 Q And you believe that the RTD Board of
25 Directors did just that, authorized the legislature

1 to put it on the ballot, correct?

2 A I'm not sure if that is a request of
3 the RTD Board.

4 Q RTD is an entity, though, regardless
5 of --

6 A It was a request to put it on. . .

7 Q And it was a decision, RTD as an
8 entity, to seek authorization from the voters to do
9 FasTracks, correct?

10 A Yes.

11 Q And the voters could say yes, go
12 ahead, or no, don't, correct?

13 A That's correct.

14 Q All right. Look at Union Exhibit 45.
15 I want to make sure I understand the arithmetic
16 here. You testified that the liabilities, because
17 they include FasTracks' liabilities, are not -- do
18 not correspond with the unrestricted current assets,
19 which are non-FasTracks only, correct?

20 A I think my statement was that the
21 current assets divided by current liabilities, which
22 includes FasTracks, results in a different ratio.

23 Q But the difference between the
24 unrestricted current assets in the current
25 liabilities, is that the unrestricted current assets

1 did not include anything about FaTracks, and the
2 liabilities do, correct?

3 A That's correct.

4 Q Okay. By some amount, each of those
5 years, if we remove the FaTracks liabilities, those
6 current liabilities would be reduced, correct?

7 A That's correct.

8 Q And the ratio calculated would be --
9 in fact, go higher, correct?

10 A That is correct.

11 Q And let's now look at RTD Exhibit 42,
12 which is the CAFR, if you just want to grab yours
13 that's sitting there on the table, and go to page 86
14 of the CAFR, which is 87 of the exhibit, the way RTD
15 has numbered the pages. Are you at that page?

16 A I am.

17 Q And does that page appear to be, in
18 the terms of the numbers and the labels in the
19 left-hand column, identical to Exhibit 45?

20 A In the unrestricted current assets?

21 Q Yes. Did I take you to the wrong
22 page?

23 A I think you did.

24 Q I'm sorry, I want you on page 26, 25
25 of the CAFR, 26 of the exhibit. My mistake. I

1 apologize.

2 A 25 of the CAFR?

3 Q Yes.

4 A And what other page?

5 Q That's the only page, in Exhibit 45.

6 Okay? And are -- the numbers on Exhibit 45 come
7 directly from the numbers on page 25 of the CAFR, 26
8 of the exhibit?

9 A Well, I think you have to do a little
10 math. The assets, for instance, the current total
11 assets -- yes, they do.

12 Q And that's also true for the
13 liabilities, correct?

14 A Yes.

15 Q And the CAFR is the report done by
16 RTD, correct?

17 A It is.

18 Q Now, go to Union Exhibit 47, and page
19 86 of the CAFR. This time, now, I've got it right,
20 87 of the exhibit. With the exception of footnotes
21 and the heading, potentially, the columns for 2008
22 through 2002 come right off of page 87 of the
23 exhibit, don't they?

24 A They do.

25 Q And these numbers, by the way, in the

1 CAFR, are audited financial statements, correct?

2 A They are.

3 Q So they are after whatever
4 adjustments, accounting adjustments, or -- I can't
5 remember the term that you used -- occur, correct?

6 A These would be the final year-end
7 numbers, after all adjustments.

8 Q And the numbers that you have been
9 testifying to about 2009, some of those are numbers
10 that having been simply reported to you by the
11 State, up until this point, in terms of sales tax
12 revenue, sales and use tax revenue, correct?

13 A Yes.

14 Q And the projections are just that,
15 they are projections, correct?

16 A They are.

17 Q When was the 2009 budget adopted by
18 RTD?

19 A I believe it was adopted in November
20 of 2008.

21 Q Go to Exhibit 53. Union Exhibit 53,
22 sorry.

23 A Yes.

24 Q You testified that the operating
25 expenses in 2007 included a big increase due to the

1 opening of the Southeast Corridor. That's of light
2 rail, correct?

3 A That's correct.

4 Q So is it your testimony, then, that
5 that movement between 2006 and 2007 doesn't
6 represent the norm? Is that the point you were
7 trying to make?

8 A I didn't say that. I said that it
9 includes the increases in services that would not
10 have been in the prior year.

11 Q Okay. All right. And am I misreading
12 this document, that the percentage of salaries, et
13 cetera, as a percent of those expenses, actually
14 went up from 2006, 2007?

15 A I would expect them to. You'd expect
16 your salary and wages to go up as you increase your
17 services.

18 Q Okay. All right. And so --

19 A As well as incremental increases,
20 everything else that goes into additional health
21 costs, et cetera.

22 Q Okay. So really, then, that increase
23 in services -- if you look at these numbers in the
24 right-hand column, they continually move downward,
25 except for 2007, correct?

1 A They do.

2 Q If I heard you right, what you said is
3 there was an increase in 2007 that is due to a
4 particular event that did not occur in any of the
5 other years?

6 A I think I said there were several
7 increases in 2007, the fuel the, volumes, et cetera.

8 Q Okay. Now, you said that the process
9 that would be used by the -- by RTD, at least by the
10 staff, would be to present a list of options to the
11 board about ways to deal with the results of this
12 award, correct?

13 A The results of?

14 Q This award, this decision by the
15 Arbitrator, particularly if they granted the Union
16 its request in terms of wages and/or health
17 insurance.

18 A What will happen is when we present
19 the TDP, we'll be doing it -- mostly likely before
20 this award is decided, and we will have a list of
21 options to balance our budget.

22 Should this award be made, we'll be
23 back in front of our board rebalancing our budget at
24 some point in time, looking for additional costs
25 with a list of options.

1 Q And you listed in your testimony, I
2 believe, two options, wage freeze and service cuts,
3 correct?

4 A I called out two today, but I think we
5 listed out at least 10 items in yesterday's
6 conversation, as to possible ways to remediate any
7 shortfalls.

8 Q So the two today certainly did not --
9 was not intended to be the exclusive list of options
10 the staff would list?

11 A Not at all.

12 Q Staying with Exhibit 42, RTD Exhibit
13 42, which is the CAFR. Go to what is exhibit page
14 106, and, therefore, probably page 105, what you're
15 looking at.

16 A Yes.

17 Q And am I correct in reading this, that
18 the budget reflected on this document in each year
19 of 2008, 2007, 2005, and 2004, shows a deficit
20 correct?

21 At the bottom, excessive or deficit of
22 revenue over nonoperating income, and nonoperating
23 income --

24 A Which line are you referring to?

25 Q I'm looking at the line that has the

1 double -- the first set of rows that has the double
2 black lines underneath it. First one under budget
3 2008 is 270 million and change?

4 A It does show that.

5 Q In each of those years that I rattled
6 off -- every year except 2006; am I correct?

7 A It does.

8 MR. BUESCHER: No additional
9 questions.

10 ARBITRATOR VAUGHN: Redirect?

11 MR. ASPHAUG: Yes.

12 REDIRECT EXAMINATION

13 BY MR. ASPHAUG:

14 Q Just one question, just to make sure
15 we're clear on this. The Southeast Corridor that
16 was referenced with regard to increased expensed in
17 Union Exhibit 53, that's not a FasTracks corridor?

18 A That is not.

19 MR. BUESCHER: No additional
20 questions.

21 ARBITRATOR VAUGHN: The page that you
22 were looking at before, on RTD Exhibit 42, I think I
23 am looking at the right page, which is page 106 of
24 the exhibit, which is 105 of the report; is that
25 right?

1 THE WITNESS: Right.

2 ARBITRATOR VAUGHN: And the double
3 black line that you were directed to, with the
4 exception of 2006, recognizes a deficit in revenues
5 versus expenses, including capital outlay and debt
6 principal obligations.

7 Without taking this entire page apart,
8 let me make sure that the record reflects how those
9 large, apparent deficits square with the obligation
10 of RTD to have a balanced budget each year.

11 THE WITNESS: The way that would work,
12 you will see in 2006, we had a substantial
13 borrowing, which is reflected -- proceeds from the
14 issue of long-term debt, \$594 million. And that
15 debt was not all used in 2006, it was carried
16 forward to future years and be used against these
17 budget numbers.

18 The other thing that is important in
19 this scenario is to recall that RTD appropriates all
20 of its expenditures prior to authorizing the
21 department, the person to go out and to do that
22 project.

23 So a for instance would be that when
24 we approve a project on FasTracks, which is in these
25 numbers, to build a corridor, we have to have those

1 funds available, funded in some way. The West
2 Corridor, of course, was funded with a \$308 million
3 grant that was awarded by FTA for a full funding
4 grant agreement. That money is not reflected here,
5 as it's not received, but we do have an obligation
6 to take care of it.

7 So even though you would show it as a
8 deficit at this point in time, you're just showing
9 your budget at that point to reconcile back the
10 expenditure's not been made, the funds have been
11 appropriated or reserved.

12 ARBITRATOR VAUGHN: Thank you.

13 Anything by the way of follow-up?

14 MR. BUESCHER: No.

15 MR. ASPHAUG: No. Thank you.

16 ARBITRATOR VAUGHN: Go off the record
17 to discuss schedule.

18 (A recess was taken.)

19 ARBITRATOR VAUGHN: On the record.

20 The District may announce its next
21 witness.

22 MR. ASPHAUG: We call back Gregg Dash.

23 ARBITRATOR VAUGHN: Mr. Dash, you were
24 placed under oath before and remain under oath now.

25 Your witness.

1

2

GREGORY DASH,

3

having been previously duly sworn the state the

4

truth, testified as follows:

5

DIRECT EXAMINATION

6

BY MR. ASPHAUG:

7

Q Mr. Dash, I'm going to ask you now to

8

focus on rebuttal testimony that you've heard from

9

the Union. I'll do the same as I did with

10

Mr. Howerter, if you could provide your testimony in

11

somewhat of a narrative format. I may interrupt you

12

from time to time with questions. All right.

13

A I'd like to begin with Union Exhibit

14

37. There's been some discussion of this exhibit

15

earlier in the day, but I just want to make sure a

16

couple of points are clear.

17

There was testimony about correlations

18

between number of vehicles and wage rates and a lot

19

of information that's on Union Exhibit 37.

20

Q Let me stop you just a second.

21

A We see that the Denver number for

22

buses and railcars, heavy and light, available for

23

maximum service is identified -- or is listed as

24

1163. The 1163 does include purchased

25

transportation, as evidenced by the slide on the

1 screen that we were looking at earlier today.

2 The 1163 is the sum of these three
3 numbers. It's light rail, motor bus, directly
4 operated, and PT, purchased transportation. It
5 includes 445 vehicles in the 1163 that is operated
6 by -- service which is operated by the contractor.

7 This is RTD operator services. This
8 is contractor service.

9 The others numbers that are on the
10 sheet for RTD, for example, are even broader than
11 that. If you look, for example, at the annual
12 unlinked passenger trips, that's all modes of
13 transportation. That includes, for example, under
14 VP, this is van pool, which is also contracted out.
15 It's purchased transportation, but it's van pool.

16 The annual unlinked trips, in addition
17 to including the motor bus and light rail, both
18 directly operated and purchased, also includes van
19 pool, purchased transportation. That would also be
20 true -- that's the 319 -- well, it's both. It's the
21 annual unlinked trips, which is 94 million and
22 change, and the average weekday unlinked trips,
23 which is about 320,000.

24 Just so the chairman would understand,
25 unlinked trip means every boarding passenger is

1 counted. If you have a transfer, and you go from
2 one vehicle to another vehicle, that's twice you're
3 counted, unlinked trips.

4 Q And the privately -- the purchased
5 transportation you're talking about would be the
6 transportation, First Transit, Veolia, the ones
7 we've been talking about?

8 A Yes. I'm not sure about the van pool,
9 how that works, but the buses number on there would
10 be Veolia and First Transit.

11 Q So this chart linking -- having Denver
12 in a rank of 25 as 7, this Union Exhibit 37 fails to
13 take into account that the portion of approximately
14 626.45, a large portion of that is actually
15 privately contracted?

16 A That's correct. Also, the comments on
17 the total operating expenses, total operating
18 expenses on this sheet, which are 345 million and
19 change, that also includes all modes of services,
20 including paratransit.

21 I mentioned the van pool at the
22 bottom, but if you look at the DR on the top, that's
23 demand responsive service, which is paratransit
24 services, paratransit services is included in all
25 these numbers also. I failed to mention that. I

1 should have mentioned that the last time I was up
2 there.

3 And you can also see that the vast
4 majority of the paratransit service is purchased
5 transportation. This 354 vehicles -- or 363
6 vehicles, the maximum service -- available for
7 maximum services -- I got to keep my terms straight
8 -- are paratransit.

9 And a much more commonly used term in
10 the industry is this other column, I'd just point it
11 out for your reference, this is vehicles operated in
12 maximum service. That's a more common measure used
13 in the industry. This is what you actually operate.
14 This is what's available. This one includes fares.

15 You can't have all the buses out on
16 the street all the time. Maintenance is done on
17 vehicles and so forth.

18 This basically is the total fleet,
19 vehicles available. This is a better measure of
20 services, vehicles operated at maximum services,
21 rather than vehicles available.

22 The comment, then, on the service area
23 population. This is Denver Regional Transportation
24 District. This is what they call the system profile
25 sheet. Each of those -- each transit system in the

1 National Transit Database has a profile sheet, which
2 is just theirs. There's many other tables
3 available, like that other table we were just
4 looking at a minute ago. But this is a system
5 profile sheet.

6 One of the things the system profile
7 sheet lists is the service area statistics,
8 population 2,000,619. That is the number which is
9 listed on Union Exhibit 37 for Denver, 2,000,619.

10 There's been a lot of discussion that
11 I've heard early, yesterday and today, about what
12 this list is. This is a list of 25 systems with a
13 service area population between 781,000 and 4.5
14 million going from Kansas City down to Boston.

15 If one were to go through and look at
16 the system profile sheet for all of the systems
17 listed in the National Transit Database, there would
18 be approximately 33 systems that could be added to
19 this listing that fall within that service area
20 population.

21 My little antenna went off yesterday
22 when I saw this listing, because it doesn't include
23 Philadelphia, my hometown. Something appeared,
24 obviously, wrong. Philadelphia would fit in this
25 listing. It has a service area population of 3.3

1 million in round numbers, but many other systems,
2 just to give you an example. We already mentioned
3 Detroit.

4 This is the city of Detroit Department
5 of Transportation, currently called DDOT. Detroit
6 has to two transit systems. They have SMART, but
7 like I'm trying to come up with the acronym,
8 Southeastern Michigan Regional Transit, SMART, which
9 serves suburban Detroit.

10 This is the city of Detroit. It is a
11 department of the city development. It only
12 operates within the city proper, because it is a
13 department of the city. All the suburban
14 communities are served by SMART.

15 The city of Detroit has a service area
16 population of 951,270. So that would fall within
17 the grouping.

18 The bus operators' wage rate for
19 Detroit, DDOT, the city of Detroit, that is \$17.31.

20 Q Top hourly wage?

21 A Bus operators' top hourly wage rate.

22 Another one that sort of my antenna
23 went off is Indianapolis, because I am, at the
24 moment, involved in an interest arbitration in
25 Indianapolis. They would also make the population

1 grouping. They have a wage rate today of \$18.69 per
2 hour.

3 Hampton is always -- Hampton, Newport
4 News has been a client of mine for the last 20
5 years. They have a service area population of
6 approximately 1.2 million. It serves a large area.
7 It serves all of the peninsula. It also goes down
8 into Norfolk, down into Virginia Beach. It's a
9 large area, 1.2 million service area population,
10 with a wage rate of 17.16, which, incidentally, was
11 set by arbitration, Abigail Majeska (phonetic), as
12 arbitrator, in the fall of '07, late in the year
13 '07.

14 Q I don't want you to run through 33
15 properties, but can you give us some other examples?

16 A I'll give you -- I'm spending too much
17 time. I got a couple more. For example, Orlando,
18 Florida, that's 239. It has a service area
19 population of 1.4 million, their operator wage rate
20 today is \$19.81 per hour.

21 Jacksonville is another one, 827,000
22 service area population, with a wage rate today of
23 18.38.

24 Q Is that Florida?

25 A Yes. I'm sorry, Jacksonville,

1 Florida.

2 For example Ride On -- we have some
3 information on Montgomery County in the record
4 already. Ride On, down in Montgomery County, would
5 be one which does that. In fact, there's a few in
6 the Washington area. For example, Fairfax County
7 would fall within that population grouping.

8 The bus down in Prince George's
9 County, in the Chairman's neck of the woods, that
10 would fall in that population grouping.

11 But other major cities, for example,
12 Memphis, Clearwater, Fort Lauderdale, Miami,
13 Cincinnati, and Columbus, and Ohio would fall in
14 there. Austin, Texas. San Francisco Municipal
15 Railway. That's a biggie. They would fall in
16 there.

17 Q Now, that's -- is that the one where
18 there's a regulation that says that they're going to
19 have no less than --

20 A Yes, that's the one where the
21 average -- they average the two highest rates in the
22 country, except they're taking a year off by
23 statute. They're on a wage through 2009.

24 Q There was some testimony about some
25 place -- I can't remember if it was Harrisburg, of

1 having population by 3.1 million, by Dr. McCarthy.

2 A Yes. If we put up page 116. This is
3 the main transit system in Harrisburg. They have a
4 service area population of 292 million.

5 Q 292,000?

6 A 292,000, I'm sorry. That's another
7 thing, my antenna went off this morning when I heard
8 that 3.1 million number, because there's no way that
9 Harrisburg -- being a Pennsylvania guy, there's no
10 way that Harrisburg has a population of 3.1 million.

11 This can get confusing if you're not
12 familiar with the transit system. Search for
13 Harrisburg, what you come with is the Pennsylvania
14 Department of Transportation, which has a Harrisburg
15 address. It's a rail system under contract to
16 Amtrak. That has nothing do with the Harrisburg
17 local transit area.

18 Here's where the 3.1 million comes
19 from. This is not the Harrisburg transit system,
20 CAT, Capital Area Transit, Harrisburg transit
21 system. This is something under contract, not even
22 commuter rail. It's a rail line from Harrisburg
23 over into Philadelphia.

24 So that's not really something
25 appropriate. Then Harrisburg itself would not fall

1 into the parameters established by the Union, in
2 Union Exhibit 37, because it would have been too
3 small.

4 Couple of more comments on the Union
5 exhibit itself. For example, on Houston -- Houston,
6 on Union Exhibit 38, indicates a bus operators top
7 rate of 19.23 per hour. Houston has a two-tier wage
8 system. And when I say two-tier, I don't mean two
9 tier just in terms of starting rates. I don't
10 consider that a two-tier system. If it has a
11 different progression to get to the top rate, I
12 don't consider that two tiers.

13 I consider two tier as two different
14 top rates. A person gets to a lower top rate -- a
15 new hire gets to a lower top rate than an incumbent
16 as of this point in time.

17 The split date -- at the Metropolitan
18 Transit Authority of Harris County, which is
19 Houston, the split date is August 1, 1994. Anyone
20 hired before August 1, 1994, goes to the top rate,
21 as shown on this exhibit, of 19.23. Anyone hired
22 after August 1, 1994, progresses to a top rate
23 today, the current top rate of \$17.49 per hour.

24 So they reduced the top rate by a
25 couple bucks an hour. They have a significant

1 majority of operators at the new top rate today.

2 The \$19.23 an hour rate is not applicable to the

3 majority of bus operators employed there today.

4 The same type of thing is available --

5 is true with San Antonio. San Antonio is listed

6 about 8 or 10 down the list -- about a dozen down.

7 The Union shows a top rate of \$19.76 per hour. They

8 have multi-tiers. I don't recall at the moment

9 exactly how many tiers. It's in the range of four

10 or five tiers, based on when you were hired.

11 The current top rate for people hired

12 after July 1, 1997, a dozen years ago, is \$16.42

13 round off, 16.42 for people hired after July 1,

14 1997. The \$19.76 rate, which is show on the Union

15 exhibit, would not be for people hired directly

16 before that date, because there were several tiers,

17 19.76.

18 I would guess it's five to six years

19 prior to that July 1, 1997, date. It's in the early

20 '90s, that the 1976 rate would be applicable to.

21 Q Would you think that somebody

22 presenting this as an exhibit, as a -- some sort of

23 statistical, as it says on the top, analysis of

24 operator wage rates, might have, at least, a

25 footnote next to these properties to indicate these

1 unusual situations or the anomalies with these
2 properties?

3 A For the two-tier rates?

4 Q Yeah.

5 A I always do when I list either San
6 Antonio or Houston or Los Angeles. Los Angeles is
7 not on this sheet, but Los Angeles also has a
8 two-tier system.

9 Q Especially if you're getting into a
10 situation where down below you're going into
11 calculations or differences from the mean,
12 differences from the median, and all that stuff?

13 A Right.

14 Q Go ahead.

15 A Did I forget -- did I mention the
16 Detroit wage rate and the SMART wage rate?

17 Q You mention the Detroit rate of
18 \$17.35.

19 A 31 cents, I believe, unless I
20 misspoke.

21 Q So DDOT is \$17.31?

22 A DDOT is \$17.31, yes. SMART is the
23 rate which is listed -- no, I'm sorry. It's not
24 even listed on here. That's right. There was a
25 reference to it this morning in testimony, that the

1 Detroit rate was is \$20.14. That is SMART. That is
2 not the rate for DDOT, the major city system in
3 Detroit.

4 ARBITRATOR VAUGHN: So the wage rate
5 for SMART is what?

6 THE WITNESS: The union testified this
7 morning it was \$20.14.

8 Q (By Mr. Asphaug) Do you have any idea
9 where they got that information?

10 A Where they got the wage information?

11 Q Sure, their hourly -- top hourly --

12 A They indicated the ATU research
13 department. Union Exhibit 37 says the ATU research
14 department. The ATU research department, every
15 month, publishes a list of wage rates. They used to
16 send me one, and they haven't done it in last six
17 months or so. So I haven't seen it.

18 They've had a change of personnel at
19 the international, and I guess I'm not in favor with
20 the current folks, so I got crossed off the list.
21 But they will list -- that's a listing in high to
22 low order, that the international puts out.

23 If you're just going down the list
24 looking for Detroit's rate, you will see Detroit,
25 and the parenthetically after, it will say SMART.

1 And then a couple pages later, when you get to the
2 major system of DDOT, it would say, Detroit dot,
3 typically, after it.

4 Q So someone doing a very cursory look
5 at these kind of things, might make the mistake
6 between SMART and DDOT?

7 A Right. If you're not familiar with
8 the system.

9 Q Thank you. Proceed.

10 A They're both listed as Detroit, with a
11 parenthetical acronym after it.

12 I think that's all I had on Exhibit
13 37. I wonder if we could look at a couple other
14 things that there has been reference to.

15 There has been some reference to
16 District Exhibit 7, the map. I mentioned a couple
17 minutes ago that the ATU International sends us
18 their wage information. Dash & Associates also
19 publishes a monthly wage report, which I used to
20 exchange with the international, and I cut them off
21 since they're not sending theirs to us.

22 What this map does, District Exhibit
23 8, is to take the systems which we list on our
24 monthly listing, which cuts off the West Coast,
25 obviously. We don't include California, Oregon or

1 Washington, and we go east to the next -- the states
2 that are contiguous to next -- next layer over, if
3 you will, going east, and take that group of states
4 and say what -- who do we list in our monthly report
5 that's in that area. And this District Exhibit 7
6 includes all of those.

7 Q Let me ask you this: Are you -- and
8 you provided the information that went into this
9 chart back in April of 2009?

10 A Yes, I did.

11 Q Are you in any way endorsing the
12 concept of using these specific properties as
13 comparators to Denver itself?

14 A Absolutely not. But it does --
15 there's a natural process in this thing. Like, I've
16 been involved in arbitrations now, interest
17 arbitrations in transit in Baltimore and Washington,
18 for example. When one is down here in Baltimore and
19 Washington, you can draw a little circle around
20 here, and you can end up with Pennsylvania, and draw
21 a bigger circle and end up with New York and
22 Pittsburgh, the entire state of New Jersey, which is
23 one transit system, New Jersey Transit.

24 You can find a number of large systems
25 in relatively close proximity to that area. I'm

1 also working in Indiana right now, which is under --
2 you know these circles. They get a lot of their
3 funding from the state. Most of the funding they
4 get is directly from the state, based on boarding
5 passengers.

6 So there's a natural -- when you're in
7 Indiana, there's a natural tendency, because of the
8 funding, to look at the other cities within Indiana.

9 Last year I did an interest
10 arbitration in Muncie. I'd also -- bad things were
11 said about Muncie, but -- Lafayette, Indiana, I also
12 worked for -- Indianapolis arbitration -- there's a
13 tendency to look in Indiana. When you're in Denver,
14 there isn't anything there.

15 Denver is the largest thing around,
16 but a long way around. You can pick one of these
17 cities and say they're not appropriate because
18 they're too small. Sioux Falls, that last contract
19 was determined by interest arbitration, by the
20 way --

21 Q Let me ask you: Are all those figures
22 accurate as of today's date?

23 A No. Some of them have changed. They
24 have had new settlements, but if you look -- if you
25 have a copy of our April -- like that red sheet you

1 have there, if you had a copy of the sheet in April,
2 that's what we published as of that point in time.

3 Also, just for your information, where
4 they have the union listed under it -- like, the ATU
5 systems are identified -- like Omaha, TBU. Most of
6 the others, I believe are teamster contracts, except
7 for Albuquerque, Albuquerque is an SP contract
8 (phonetic).

9 Q So if you wanted to do -- now, if you
10 preferred to use that methodology, and you wanted to
11 do what Dr. McCarthy did back when she was
12 representing the FOP in Baltimore, you might
13 similarly, in the transit context, have several
14 other transit agencies within somewhat close
15 proximity to Baltimore, if you wanted to use that
16 analysis?

17 MR. BUESCHER: I object to the
18 characterization of Dr. McCarthy's testimony. It
19 very specifically was, she did the comparisons that
20 the parties agreed to, period.

21 MR. ASPHAUG: I appreciate that.
22 Thank you. I stand corrected.

23 THE WITNESS: As an example, going
24 back to --

25 MR. BUESCHER: Wait a minute. I

1 object to the question, and therefore the answer or
2 him answering the question.

3 ARBITRATOR VAUGHN: Try another
4 question.

5 Q (By Mr. Asphaug) But if you used
6 properties in the general vicinity of Baltimore, as
7 testified to, because that's what the parties wanted
8 to do in that situation, if that was going to be --
9 if that's what the parties chose to do in a police
10 context, you might be able to do something like
11 that, somewhat analogous to that in a transit
12 context, if you so chose to do that, when you're
13 dealing with these East Coast properties that are
14 close to each other?

15 A Yes. Like I mentioned, the Washington
16 arbitration, which is currently going on, Washington
17 Metropolitan Area Transit Authority, it is the
18 position of WMATA, W-M-A-T-A, that the appropriate
19 standards for the Arbitrator are the other local
20 jurisdictions in the Washington area, and the burrow
21 and Virginia suburbs, which would include Montgomery
22 County Ride On.

23 It would include a couple of divisions
24 in Fairfax County, Alexandria, Prince George's
25 County. There's seven or eight of them.

1 Q Enough said.

2 A All of them don't come to me, but they
3 all operate within the Washington consolidated
4 metropolitan area.

5 I'll pass on 8 on the way by. 8 is a
6 table which basically identifies the --

7 Q You're talking about RTD Exhibit 8?

8 A RTD Exhibit 8. I'm sorry, yes. It's
9 just a graphical presentation of the wage rates.
10 This does add into the mix -- this is something
11 which was created here. I don't have First Transit
12 and Veolia rates, but you can see that the First
13 Transit, like -- they're underlined, Denver First
14 Transit, Denver Laidlaw, and Denver Veolia, where
15 the three contractors in the -- to RTD.

16 They have been added on this.
17 Otherwise, the group of systems is the same as on
18 the prior one.

19 Q And this also states on the top, April
20 2009, some wage rate reflecting this chart were in
21 effect as of April 2009?

22 A Yes, sir.

23 Q And as you've testified before, some
24 of those have changed; we're now here at the end of
25 June?

1 A Yes, sir.

2 Q Go ahead. If we can jump back to
3 District Exhibit 66. This attempts to adjust the
4 wage rates that you saw in District Exhibit 7 for
5 intercity living cost differences. It takes the
6 same group of systems, lists their wage rate as of
7 April. It lists the living cost index that you see
8 from the footnote is from the America Chamber of
9 Commerce Research Association.

10 These are 2008 average annual data.
11 In the first column, where it says living cost index
12 is for -- it's a number that's published for each
13 area. Denver is 105, meaning living cost is 105
14 percent of the 322 urban area average, a little
15 above average.

16 In the next column, we have taken and
17 converted the living cost for each city and made it
18 as a percent of Denver. For example, the third one
19 down, Wichita, the number published is 91.8. It's
20 87.4 percent of the Denver living cost.

21 And then going off to the next column,
22 we show the Wichita wage rate has \$15.86.

23 In terms of the purchasing power here
24 in Denver, we divide the \$15.86 by the living cost
25 number, and it basically inflates their number,

1 since they have a lower living cost. It ends up
2 with an indicated rate of \$18.14 per hour. It's
3 cheaper to live in Wichita, so we inflate their
4 rate.

5 If you take the average -- and you'll
6 notice the note on the bottom, there's several
7 systems which information was not available. We
8 obviously have not included them here, Billings,
9 Lincoln, Sioux Falls. If you average the one --
10 take the median for the systems for which
11 information is available, \$19.10 per hour, and,
12 obviously, hour rate today here, RTD is 19.85.

13 Q Let me ask you this: These sources
14 for the living cost are taken from the Council for
15 Community and Economic Research "Accra cost of
16 living index"?

17 A Yes.

18 Q Is it a -- leaving aside whether --
19 and keeping in mind that, as you stated before, you
20 do not ascribe to the philosophy of using these
21 outside properties as comparators, but if you're
22 going to compare one city to another that has
23 information for Accra, in terms of cost of living,
24 is it pretty standard, or is it unusual, in your
25 practices and your experience, to use the Accra cost

1 of living index as an attempt to arrive at such a
2 comparison?

3 A It's introduced, I think, in every
4 case I've been in in recent years.

5 Q Well, let me, by contrast, ask you
6 about Dr. McCarthy's methodology in this case, where
7 she took an analysis of median home prices using the
8 first quarter 2009, nationwide median sales price of
9 existing family homes. I want to ask you whether
10 you have ever seen that in any other case you've
11 used -- been involved in, be used as the sole
12 attempt to serve as, quote, something of a proxy,
13 unquote, for the cost of living, because it is,
14 quote, better than nothing, closed quote?

15 A Not as a sole piece by itself, no.

16 Q Go ahead. I'm sorry, let me ask you
17 this: To your knowledge, has the median sales price
18 of existing family homes over the past several
19 quarters, maybe the past year or two, had a bit of a
20 fluctuation?

21 A It has generally dropped.

22 Q Have there been fluctuations from city
23 to city, depending on foreclosure rates and problems
24 with one city or another?

25 A Yes.

1 Q To your knowledge, is the current
2 median sales price of existing family homes, 2009,
3 first quarter, according to the Wall Street Journal,
4 \$570,000 in Honolulu?

5 A I did read that article. Yes, it is.

6 Q And is the median price in Fort
7 Meyers, Florida, \$87,300.

8 A According to that Wall Street Journal,
9 yes.

10 Q And that's actually -- Fort Meyers,
11 Florida, is right now below Gary, Indiana, which is
12 92,000; is that correct?

13 A Yes, sir.

14 Q I don't have -- if you were to go to
15 www.realtor.org, the National Association of
16 Realtors website, would it surprise you to hear that
17 the chief economist for the National Association of
18 Realtors wrote, on May 27, 2009, that the current
19 market price should be read with care?

20 A I'm sorry. I didn't understand.

21 Q Would it surprise you to hear that the
22 National Association of Realtors itself states that
23 the current market price should be read with care?

24 A I'm not sure what that means.

25 MR. BUESCHER: I object. Who cares

1 whether he's surprised.

2 Q (By Mr. Asphaug) Do you know whether,
3 as the National Association of Realtors itself says,
4 the lowest transaction prices occurring in the city
5 of Detroit and year-to-date median price is \$11,500?

6 A That's a number I have here before,
7 yes.

8 Q All right. Proceed.

9 A I want to jump back, if I may, to
10 District Exhibit 116. This goes back to the
11 National Transit Database information. And before I
12 begin to talk about it, I want to make one
13 correction. There were two versions of this exhibit
14 floating around at different points, and the
15 uncorrected version got put into the books.

16 This line should be lined off of your
17 exhibit, Port Authority Trans-Hudson Corporation
18 should not exist. It doesn't exist on the copy I
19 have. It just ended up with the wrong one in the
20 books.

21 MR. BUESCHER: What exhibit is that?

22 THE WITNESS: Exhibit 116.

23 MR. ASPHAUG: Page 1.

24 A The reason it should be lined off is
25 because it doesn't meet the criteria for inclusion

1 in the listing that we have included in the
2 footnote. The footnote identifies the source and
3 then says: Systems included on this exhibit are all
4 systems in the source document that report at least
5 100 directly operated buses in maximum service. The
6 Port Authority Trans-Hudson Corp. is irrelevant. It
7 doesn't have any buses. Therefore, it should not be
8 included on this exhibit.

9 What we have done here is gone back to
10 the NTB, National Transit Database, and taken the
11 top 50 systems. They have a separate document that
12 has the profile pages in it for the top 50 agencies
13 in the country, the top 50 transit agencies.

14 We have taken those top 50, eliminated
15 some which would not meet the requirements as
16 identified in the note, and listed their remainder.
17 And we list that this is buses operated at maximum
18 service, not available, but buses operated at
19 maximum service.

20 And it's only buses. It doesn't go
21 into the rail component at all. It's only buses
22 operated at maximum service. Those directly
23 operated and those purchased, and then we calculate
24 it out to the right, purchase as to percent of
25 total.

1 It is -- it is just -- put it a
2 different way, most of the transit systems listed on
3 this exhibit, do not purchase transportation. It is
4 directly operated service.

5 In Union Exhibit 37, for example, the
6 systems on here that are included in Union Exhibit
7 37 are the first and second ones, Portland and
8 Buffalo. If you go down a few, Pittsburgh, Atlanta,
9 Milwaukee, Cleveland, Minneapolis, Chicago, San
10 Antonio, Dallas, St. Louis, Salt Lake City, Alameda
11 Contra Costa District, which is in Oakland, and
12 Sacramento, those systems are listed on Union
13 Exhibit 37, and they have zero purchased
14 transportation.

15 When we do Sacramento, now we're down
16 to here, and we begin to have systems that do
17 purchase transportation. On that -- bottom of that
18 page, Washington, Seattle, San Jose, and Boston,
19 those systems are listed on Union Exhibit 37.

20 So you have 18. If you recall,
21 there's 25 systems listed on Union Exhibit 37, and
22 18 of 25 are listed on the first page of this
23 exhibit, indicating that they have little or no
24 purchased transportation. It's directly operated
25 service.

1 If you turn the page on this one,
2 there are a couple more systems that the Union has.
3 They have Houston, which is the first one on the
4 page listed on Union Exhibit 37, and Baltimore does
5 have about 25 percent.

6 Denver is a very significant component
7 of purchased transportation. It's 40 percent of the
8 buses. The only one higher is San Diego. San Diego
9 is included in Union 37 as being one of the
10 comparables on the Union listing.

11 You may not know who some of these
12 guys are. If you want to know -- for example, the
13 capital -- the Metropolitan Transportation Authority
14 doesn't say who that is, but it's the capital of
15 Texas, it's Austin.

16 Q (By Mr. Asphaug) Is there any other
17 transit agency that you're aware of in the country
18 that has a situation similar to that in Denver,
19 where the exact same union local is representing the
20 purchased service, as is representing the service
21 done in-house?

22 A Only a brother at the bottom of the
23 list. San Diego Transit does do some of that.

24 Q Some of that?

25 A Yes. ATU Local 1309, which is the

1 local that represents bus drivers of San Diego
2 Transit, also represents at least one of the
3 subcontractors. That's a situation which is similar
4 to Denver, in that they have a number of
5 subcontractors that operate regular service in a
6 transparent environment, customers can't really
7 tell. And they have a significant portion of the
8 service of subcontracted.

9 Q But in terms of the situation where
10 the same union local represents all of the
11 contracted service and the in-house service, Denver
12 is the only agency that you're aware of?

13 A Yes.

14 Q All right. Proceed.

15 A At the bottom of that, you have Denver
16 and San Diego as the two systems with the highest
17 degree of subcontracting of bus service. So I
18 thought it would be interesting to take a look and
19 see how the wage change has been for those two
20 systems over a period of years, and offer that as --
21 oh, no, let me back up first. Back up to 115.

22 Q RTD 115?

23 A Yes, I want to cover that before I go
24 on to San Diego.

25 Q Okay.

1 A This, again, goes to the same source.
2 If you'll recall, there's been some discussion of
3 Mr. Marsella's contract with the Regional
4 Transportation District and how his compensation is
5 determined under that contract. And his contract
6 references these five transit systems, Atlanta,
7 Cleveland, Dallas, Washington, and Houston. I think
8 it's gotten lost in the shuffle somewhere that his
9 compensation is determined by some average of those
10 five systems.

11 If you read the contract carefully, it
12 doesn't say that. His compensation is not
13 determined by the average of those five systems.
14 His compensation increase on an annual basis is
15 determined by the increase of the compensation for
16 these other five systems.

17 But the basic compensation itself is
18 not determined by taking the general manager and CEO
19 salaryies for these five guys and adding it up and
20 dividing by five. It's the increase from here to
21 there, and the increase is applied to whatever his
22 compensation level is.

23 So then I scratch my head and say how
24 is that going to help an Arbitrator determine what
25 the increase should be for Denver bus drivers. For

1 example, of those systems, Atlanta just had -- I
2 don't know if you want to call it a contract
3 settlement or contract extension, or what you want
4 to call it. They extended a contract that expired
5 in 2009 for 15 months with no change whatsoever,
6 including no wage change.

7 Cleveland has a contract that expires
8 8/1/09. So I'm not sure if that helps a whole lot,
9 trying to determine what the increase in the future
10 will be.

11 Washington, as we mentioned before,
12 has a contract that expired in July 1, '08, and is
13 in interest arbitration at the moment. And with
14 Richard Casher as the impartial guy. He's a
15 Philadelphia area Arbitrator.

16 Q It expired July 1, '08, Washington
17 did?

18 A Yeah, June 30, '08.

19 Q So from July 1, 2008, to the present,
20 what's been happening to the operators in
21 Washington?

22 A There's been no change.

23 Q Zero increases?

24 A Zero increases.

25 Q Go ahead.

1 A Dallas and Houston are in Texas.
2 There is no -- it's illegal to have public sector
3 bargaining in the state of Texas. Dallas doesn't
4 have a collective bargaining agreement. They
5 declare by management fiat what the compensation
6 package will be for their employees.

7 Houston is a little more complicated.
8 I don't know if you need the details at this point.
9 But, basically, Dallas and Houston management can
10 set wage rates as they consider appropriate.

11 So I'm not quite sure, even if one
12 were to embrace the five systems in the general
13 manager's contract, in terms of increase, I don't
14 think that helps you a whole bunch trying to figure
15 out some kind of increase for RTD.

16 With that said, you will recall that
17 the two comparable systems on the prior exhibit that
18 -- doing a lot of purchase service are RTD here in
19 Denver, of course, and San Diego.

20 And I wanted to look at District
21 Exhibit 67. This is a very long-term wage history.
22 This goes back to 1950. So you have almost a
23 60-year wage change chart in District Exhibit 67.
24 They have tracked each other fairly closely.

25 There has been some separation of

1 those lines since the late '90s and the 2000 period.
2 But generally, over a 60-year period, they have
3 remained remarkably close. Also, if you look at
4 where those lines end up after a 60-year period, I
5 think it is appropriate to have a moratorium on wage
6 change, assuming that San Diego will continue to
7 have wage change that will allow the San Diego rate
8 to catch up with the Denver rate over the period
9 over the next several years.

10 Q When you have -- on this RTD Exhibit
11 67, there's a flat line, for example, corresponding
12 to what the years -- is that corresponding to the
13 years when Denver had a zero-wage increase?

14 A Yeah. The flat lines -- flat red
15 lines are hour wage freezes. Flat blue lines are --

16 Q San Diego?

17 A -- San Diego wage freezes, yes.
18 They've had a number of them over the years,
19 probably four of them in the San Diego period.

20 Q All right.

21 A We can give you the numbers to back it
22 up, but I mean, this is just to get an idea of what
23 the wage change has been over that 60-year period.
24 Of course, you have the numbers.

25 Q But from about 1995 onward, using this

1 index with 1950 equaling 100, Denver has been ahead
2 of San Diego?

3 A '95 or '96, yes.

4 Q Sorry to interrupt you. Go ahead.

5 A There's been some discussion earlier
6 of District Exhibit No. 64, which is a memorandum of
7 agreement between Montgomery County government and
8 United Food and Commercial Workers. This covers the
9 Ride On bus operators, in addition to a lot of other
10 people. It's a large contract that covers many
11 groups of people. It's not what I consider to be a
12 transit contract.

13 But this was to expire -- this
14 multi-year deal started a couple years ago, and it
15 was to expire July 1, '10, next year, 2010. And
16 they opened it this year, and the Item No. 2 on that
17 first page talks about Article 5.2(c). That
18 negated -- or postponed, is the word they used. I'm
19 not quite sure what postponed means, but it
20 postpones a 4.5 wage increase, which was to be
21 effective on July 1, 2009.

22 The contract expires at the end of the
23 next fiscal year. This memorandum states: It's
24 postponed and shall not be effective during the
25 fiscal year 2010. So I'm not quite sure of its

1 status after that, but it basically eliminates a 4.5
2 percent wage increase.

3 There have been a number of other
4 transit-type things in the last few months, and I
5 just wanted to mention them.

6 And when one looks at this, one has to
7 look at a fairly recent period, because the downturn
8 of the economy, you know, it started -- became
9 visible to everyone last fall. It's -- I think it's
10 inappropriate in today's economic environment to
11 look at a contract that expired or that was made two
12 years ago and say, there's a 4 percent wage increase
13 in 2009. 2009 is a lot different world than 2007.

14 But to look at some of the more recent
15 events, I think I mentioned Atlanta, that they have
16 a 15-month contract with wage freeze. You have this
17 Montgomery County contract, which basically negates
18 the 4.5 percent increase July 1, '09.

19 And District Exhibit 26, pages 26 to
20 28, there's a mention of the Massachusetts Bay
21 Transportation Authority. There's several unions of
22 the MTBA in Boston that have agreed to reopen
23 contracts and not to have wage increases. That did
24 not include, as of the date of that news article,
25 Amalgamated Transit Union Local 589, which is bus

1 operators.

2 Whether or not ATU 589 will give up
3 their increase which is to go into effect July 1,
4 '09, I don't know. I don't see anything about it.
5 But some of the unions in the MTBA in Boston have,
6 in fact, done that at this point.

7 We've mentioned San Francisco Muni.
8 San Francisco Muni has a one-year wage freeze
9 effective July 1, '09.

10 Transport of New Jersey and the New
11 Jersey State Council of the Amalgamated Transit
12 Union recently had a settlement which is a one-year
13 wage freeze effective July 1, '09. That is in the
14 record of District Exhibit 26, at pages 22 and 23.
15 There's a news article, District Exhibit 26, pages
16 22 and 23.

17 Again, that's something that's
18 occurred within the last 30 days, I think, when New
19 Jersey Transit approved -- I think the ATU may have
20 approved it back in May. I don't think the New
21 Jersey Transit approved it until just a few weeks
22 ago.

23 In District Exhibit 26, page 14, there
24 is a report of a settlement in California, in North
25 San Diego County Transit District. This is a

1 Teamsters contract. They agreed to a one-year wage
2 freeze effective from July 1 of 2009. It's a
3 contract that just came open. They settled it a few
4 weeks early and agreed on a one-year wage freeze.

5 Q Mr. Dash, can you tell us, overall, if
6 you look at RTD Exhibit 28, page 1.

7 A I'm sorry, just a second. Yes, sir.

8 Q An ATU local -- not this ATU local,
9 but another ATU local news review wrote, in May of
10 this year, that: The dire economy has caused huge
11 shortfalls in state and local budgets. As a result,
12 transit agencies across the country are considering
13 cutting services, increasing fares, laying off
14 workers.

15 Based on your experience and contacts
16 in the transit agency, is that ATU statement
17 correct?

18 A Absolutely.

19 Q There is a reference in this news
20 review that St. Louis Metro just laid off 550
21 employees. Cleveland's RTA plans to cut 300 jobs.
22 WMATA is considering slashing over 400 jobs. MTA
23 board members in New York City called the situation
24 a disaster, as they voted to increase fares by 25
25 percent, cut 35 bus routes, and eliminate 1100 jobs.

1 California, literally, thousands of workers are at
2 risk of being laid off.

3 Again, same question: Is this a
4 system that because of the current -- problem
5 because of the current system in the economy
6 nationwide?

7 A Yes. It is. I can't read that number
8 on the top of there. Can you read that, ATU
9 local --

10 Q I think it is either 1587 or 1687.

11 And just so we all know, you're sort
12 of approaching the tail end of your --

13 A Just a couple more things, which I'll
14 try to cover quickly.

15 By way of explanation, perhaps, more
16 than anything else, Exhibit 78, one may wonder what
17 this is doing in the book. This is a distribution
18 of Denver area workers by major industry division
19 one can get from the Department of Labor information
20 on national employment in terms of major industries,
21 like total private non-farm economy, and broken down
22 by manufacturing, and the subdivisions of goods
23 producing and the subdivision of service providing
24 industries. One can get that information.

25 One cannot get it for the Denver area.

1 They don't publish information on trade and so forth
2 and all these other divisions.

3 So this is a distribution of Denver
4 area workers here in Denver. But then in order to
5 see in terms of wage and trend, what I would like to
6 do is look at Exhibit 71. Exhibit 71 are national
7 data. They're U.S. workers by major industry
8 division. They give you the division of workers in
9 Exhibit 78. But in 71, we can't give you the data
10 for Denver worker, so we go to the U.S.

11 These are, as was pointed out earlier,
12 average hourly earnings. I think it is
13 inappropriate to compare wage levels and average
14 hourly earnings levels. We are not doing that. We
15 are comparing trends. I think, for trend purposes,
16 wage rates and hourly earnings data are a valid
17 comparison.

18 There are problems with overtime, for
19 example. If you turn back to page 9 of Authority
20 Exhibit 71, the United States Department of Labor
21 does publish straight-time hourly earnings for
22 manufacturing workers. The straight-time hourly
23 earnings are adjusted for overtime. That's what
24 they're called, straight-time hourly earnings.

25 This is not something we calculated.

1 And the United States Department of Labor only does
2 it for manufacturing. You can do it for the other
3 groups that are listed here.

4 Q So to the extent that the Union's
5 expert yesterday was attempting to characterize what
6 you were going to use -- what this exhibit was
7 intended to be as a comparison between
8 average-hourly earnings and top-hourly earnings,
9 that was just a misunderstanding?

10 A Yeah. I'm not comparing -- I'm not
11 saying we should compare wage levels. I think for
12 trend purposes, where have they been over the period
13 since 1964, I think it's a valid comparison.

14 One can also say, why pick '64, it's
15 like you're bopping around all over the place. Here
16 you picked 1990. 1964 is the first year for which
17 earnings data are available. I haven't selected it.
18 I've gone back as far as you can.

19 And I'd also show in these things,
20 year-by-year increases. You're saying, you know,
21 it's tainted because it's an index-type thing, and
22 it shows you over a base. It doesn't show it over a
23 base. For example, you look -- like, go beyond the
24 cover page to the first total private non-farm
25 economy, this is the entire U.S. economy.

1 It shows it over the base of 1964.

2 But it also shows it on a year-by-year basis. It's
3 standing alone. It's not all keyed to 1964.

4 If you look at the bottom of that page
5 on -- I don't have page numbers, but page number --
6 whatever this is down here. Do you have a page
7 number down here. Yeah, go back up to the
8 beginning.

9 This is the total average hourly
10 earnings of all U.S. workers, total private non-farm
11 economy. This is the entire U.S. economy, total
12 private non-farm. Bus operators, U.S. workers. And
13 the increase over 1964 for us, 1964 for them.

14 U.S. workers generally have had an
15 increase of 634 percent. We have an increase of 704
16 percent. I think it's appropriate that there be a
17 moratorium and allow the Denver operators to catch
18 up. They've done very well. Even though they have
19 had their periods of freeze in the past, they have
20 done very well.

21 Enough said about that one, just as
22 long as we understand the basic information in it.

23 You can also look at 78 -- I'm sorry,
24 68. 68 is the same basic data, except it's in terms
25 of -- it's charts. It's the same basic data, but

1 it's charts. They are in no particular order. You
2 will notice that the manufacturing chart in here is
3 the straight-time hourly earnings, not gross-hourly
4 earning. Again, we're looking at trends. We're not
5 trying to compare wage levels.

6 Q In the interest of time then, let's
7 just --

8 A All right. Let's go on. Thank you.
9 I think that might have been
10 everything I wanted to cover.

11 Q All right. Is that everything?

12 A I think so.

13 MR. ASPHAUG: Thank you. No further
14 questions.

15 ARBITRATOR VAUGHN: Thank you. Let's
16 take a short break before cross. Off the record.

17 (A recess was taken.)

18 ARBITRATOR VAUGHN: On the record.
19 Before we proceed to questions on cross, Mr. Dash,
20 of the District has marked as its Exhibit 203, the
21 system profile for Denver RTD, and has circulated
22 copies of that, and consistent with our practice, it
23 will be received in the record.

24 Proceed with cross.

25 CROSS-EXAMINATION

1 BY MR. BUESCHER:

2 Q Mr. Dash, I may have simply missed
3 this, but did you say that you thought it was
4 inappropriate to look at contracts that were expired
5 two years ago, collective bargaining agreements?

6 A I think if one -- yes and no. I think
7 if one is to determine -- or if one were seeking to
8 determine the current rate of wage change in the
9 transit industry, I think one would get a better
10 idea of what's going on on a newly settled contract,
11 something that happens in the last month, two or
12 three, rather than something that happened a year
13 ago, because the world was different a year or two
14 ago.

15 Q So if you're looking just for trend,
16 is what you're saying, you would look in a much
17 shorter time span than if you were looking for
18 something else?

19 A Right. It's a different world today
20 in the economy.

21 Q Okay. So you would include within
22 that, then, contracts that were negotiated a couple
23 of years ago, but where -- had wage increases last
24 year and this year that were fully honored? You
25 wouldn't have those either?

1 A No. I think it would be inappropriate
2 to look at those, because they were negotiated in a
3 different economic environment.

4 Q So then the fact that a Union may have
5 made concessions during that time period, in a
6 contract that was negotiated in a different
7 environment, should also not be counted?

8 A I don't know if you don't count them,
9 but it's more appropriate, I think, to look at more
10 recent developments.

11 Q But isn't it a recent development,
12 Mr. Dash, if a Union in a property had negotiated a
13 contract that provided for a wage increase in
14 January of 2009, and they, in fact, honored every
15 term of that contract?

16 That's not an appropriate thing to
17 consider; is that what you're saying?

18 A Give me the question again. I'm not
19 quite sure I understood it.

20 Q Negotiated a contract two years ago.
21 Okay.

22 A That would have been --

23 Q Early '07, that had a wage increase in
24 January of '09, well into the recession, correct?

25 A Yes.

1 Q The recession actually began in
2 December or so of '07, right?

3 A Yes.

4 Q And if there is such a contract, and
5 it provided for a wage increase in January, and the
6 parties honored that wage increase and all the other
7 terms that were negotiated, you don't think that's a
8 factor to be considered; is that what you're saying?

9 A What I am saying is --

10 Q Is that what you're saying?

11 A Should it not be considered?

12 Q Yeah.

13 A No, that's not what I'm saying. What
14 I'm saying is it's more appropriate, if one were to
15 look at the current rate of wage change within the
16 industry, one would get a better view of it.

17 If one were to look at settlements
18 that were made in the last six months or whatever
19 period of time one might choose -- when the economy
20 started turning really bad.

21 Q But not contracts negotiated before
22 that were honored in the last six months?

23 A You can look at them if you wish, but
24 you get a better view of what's happening in the
25 industry or outside the industry or any collective

1 bargaining environment, if you look at the more
2 recent developments.

3 Q Do you have any reason to believe
4 that -- the numbers on Exhibit 37, you said that
5 they, for example, for Denver, count vehicles that
6 are operated by private contractors, correct?

7 A 1163 include vehicles operated by
8 private contractors, correct.

9 Q Do you have any reason to believe that
10 any other system on there that has vehicles operated
11 by private contractors, those vehicles are not
12 included in that same number, that row?

13 A The situation which you suggest would
14 not be applicable to a majority of those systems.

15 Q That was not my question, Mr. Dash.

16 A But if it were to be applicable, I do
17 have no reason to believe that they would not be
18 included the same as it is in Denver.

19 Q In fact, for any column on there, to
20 the extent that it includes something in Denver that
21 you, in your opinion, do not believe should be
22 included, you have no reason to believe that if that
23 same thing exists in one of those other properties,
24 that it's not included there, do you?

25 A I have no reason to believe that that

1 would be the case.

2 Q Did I understand you to say that RTD
3 Exhibit 8, which is that map of the United States
4 with various property wage rates circled in there,
5 arrows and lines and all that --

6 A If you want the map with circles and
7 lines, that's 7.

8 Q That's 7? Sorry. That you do not
9 endorse that as comparable properties; is that what
10 you said?

11 A That's true. The comparable
12 properties are the contractor properties, First
13 Transit and Veolia.

14 Q Thank you. So in your view, the only
15 comparable properties are the First Transit and
16 Veolia properties?

17 A The most comparable.

18 Q Only comparable properties?

19 A I don't know the answer to that. In
20 my opinion, they should be controlling, as far as
21 the determination of wage levels here at RTD,
22 irrespective of other --

23 Q And so if the arbitrator's going to
24 look at comparable properties, then if those should
25 be controlling, those are the only ones he should

1 look at, then, because looking at things that are
2 not controlling would be a waste of his time?

3 A I'd agree.

4 Q Look at RTD Exhibit 116, please.

5 A Yes, sir.

6 Q The note at the second page of that
7 exhibit says this is the top 50 agencies for the
8 2007 report year dated October 2008, correct?

9 A Yes.

10 Q Do you know how the National Transit
11 Database -- what factor or factors it used to
12 determine those top 50?

13 A That, on the computer, is the cover to
14 that document. I could go through within the first
15 page or two, it would tell me. But without looking
16 over there reading it, I don't know.

17 Q That is somehow, that that agency
18 determined these to be the top 50, but you don't
19 know what it is?

20 A Give me 30 seconds, I could probably
21 give you an answer.

22 Q Why don't you take that 30 seconds.

23 ARBITRATOR VAUGHN: Go off the record.

24 (Pause in the proceedings.)

25 ARBITRATOR VAUGHN: On the record.

1 A At the beginning of the document that
2 I just referenced, on the table of contents, page
3 numbered 1 -- I'm sorry, it's page 1, the first page
4 beyond the table of contents. It says: This volume
5 of the National Transit Database annual report
6 consists of transit profiles for each of the 50
7 transit agencies filing an NTD annual report for the
8 2007 report year. These agencies were selected
9 based on unlinked passenger trips.

10 Q (By Mr. Buescher) You pointed out that
11 the language in Mr. Marsella's contract talks about
12 how he looks at the -- that contract looks at the
13 changes in pay to general managers in the five
14 properties listed, correct?

15 A Compensation, yes.

16 Q Changes in compensation to those.
17 Okay.

18 And do you recall him testifying that
19 pursuant to that formula, which is one of two ways,
20 his compensation is adjusted under that contract, or
21 one of multiple ways that looking at that, he was
22 entitled to a compensation increase in 2009?

23 A I was here for that testimony, yes.

24 Q In response to a question from RTD,
25 you pointed out -- you agreed with the statement

1 about St. Louis laying off a bunch of people,
2 correct?

3 A Yes.

4 Q You're aware that the problems in
5 St. Louis extend far beyond just those that may be
6 caused by the current condition. They go back with
7 years of loss of federal money and other things,
8 right?

9 A No, I'm not familiar with that.

10 Q You're not familiar with that? So
11 notwithstanding your familiarity with the transit
12 systems around the country, you have no knowledge --
13 you believe that the layoffs are a result of the
14 economic downturn that we're suffering right now,
15 and that's all?

16 A In my 40-some years of doing what I
17 do, St. Louis, by state development agency, has
18 never been a client. I am not as familiar with
19 St. Louis as I may be with some of the other
20 systems.

21 Q And when you were testifying about RTD
22 Exhibit 71, pointing out how it was there to show
23 trends, and you said that the data goes back to
24 1964, and so -- and then I believe at one point you
25 testified that you need to look at the data all the

1 way back to 1964 for the trends, correct?

2 A No. You don't have to look back to
3 1964. I offer it from 1964, but that's -- because,
4 that's the total period of time from which it's
5 available.

6 There are year-to-year increases on
7 each of those tables in Exhibit 71. So while the
8 right-hand column of each data set has the increase
9 over 1964, the column next to that has year-to-year
10 increase.

11 Q And you would agree, wouldn't you,
12 that the period from 1964 to 2009, the number of
13 changes in the economies of both the nation, the
14 local areas that are impacted here, this is U.S.
15 average, or at least one of them shows -- you were
16 talking about a U.S. average --

17 A 71 is all U.S. average.

18 Q That the number of factors that could
19 go into why wages change in any given year is almost
20 immeasurable, right?

21 A It's very diverse.

22 Q And if you look at page 3 of that
23 exhibit, which is page 2 probably of what you're
24 looking at, since yours doesn't have the page
25 numbers on it, it is the second page of the

1 comparison, the Denver bus operator annual average
2 wage and average hourly earnings of U.S. workers in
3 the total private non-farm economy, correct?

4 A Yes, sir.

5 Q And do I understand that in 2004, the
6 way I read this, the Denver bus drivers were 632
7 percent above 1964 levels; is that correct?

8 A In round numbers, correct.

9 Q And then, in 2008, they were, in round
10 numbers, 689 percent different, correct?

11 A 689 increase.

12 Q That's right, increase above. Okay.
13 So that the increase above 2000 -- 1964, for Denver,
14 in those five years, was, roughly, 67, 68, 69
15 percent, right?

16 A You're going from -- in the right-hand
17 column under Denver, you're going from 631 down to
18 689; is that what you're doing?

19 Q Yeah.

20 A It would be that percent, but it would
21 be that percent of the 1964 wage level.

22 Q Right. But it would be roughly that
23 percent different of the 1964 wage level?

24 A Yes.

25 Q And the same comparison appears, in

1 the next group, U.S. workers, if you look, 520
2 percent above 64 in 2004, correct?

3 A I'm sorry. Give it to me again.

4 Q 520 to 614.6 percent, correct?

5 A Right.

6 Q That difference is roughly 96 percent,
7 correct?

8 A In that order of magnitude, correct.
9 The Denver operators had a period of catch-up.

10 Q Catch-up or fall behind?

11 A Not fall behind, they had a period of
12 moratorium to allow the U.S. to catch up.

13 Q So they didn't increase as fast above
14 '64 rates, as this particular group of U.S. workers,
15 correct?

16 A Right. It's easier to see on a chart.
17 There's a chart in there that plots the same
18 information, which is back in exhibit -- I'm afraid
19 to say, 78 --

20 Q That's fine.

21 A -- 68. Same thing, there's a chart in
22 '68 which would allow you to see the same thing in
23 chart format. If you're looking for -- page 3 of 68
24 is basically the same information. You can see the
25 lines come together towards the end, total private

1 non-farm, page 3 of 68.

2 The lines are closer at the end than
3 they are a few years earlier, is what you're saying,
4 yes.

5 Q You've been looking a red sheet there
6 that has wage rates on it, correct?

7 A Yes.

8 Q Have that sheet handy, and then go to
9 Exhibit 116.

10 A Our Exhibit 116?

11 Q Your Exhibit 116, RTD Exhibit 116.

12 A Yes, sir.

13 Q Now, starting at the Washington one,
14 which is the first one here that shows any
15 percentage of purchased service, correct?

16 A Yes.

17 Q What is the wage rate that shows on
18 your sheet for that?

19 A \$27 and change.

20 Q What's the change?

21 A Actually, I was wrong. I think it's
22 \$26 and change. Yeah, it's 26.03.

23 Q And that is as of what date?

24 A Today.

25 Q Okay. King County?

1 A Actually, it's not today. These
2 are -- this is a listing as of July of '09, so it
3 will be as of next week.

4 But in Washington, it will be the same
5 in either case, because that Washington contract
6 expired a year ago.

7 Q King County?

8 A Seattle rate today is 27.64.

9 Q Santa Clara?

10 A San Jose has one of the higher rates.

11 Q Santa Clara. Is that the same as San
12 Jose?

13 A San Jose is in Santa Clara County.

14 Q Okay.

15 A San Jose's say rate is 28.86.

16 Q Los Angeles County?

17 A The LA expires in a couple of days,
18 but the rate today -- again, that's a -- we've had
19 some talk about two-tier wage structures. LA has a
20 two-tier wage structure. The rate we list on here
21 is the rate for employees hired after July 1, '97,
22 and that rate is \$221.12 an hour.

23 Q And is that -- you have the rate for
24 the lower tier?

25 A That's for people hired after whatever

1 that date was. People hired after July 1, '97.

2 Q Is that the lower tier?

3 A Oh, yes, it's the lower tier. The
4 lower tier the all for newer hires. They don't have
5 a higher rate for new hires.

6 Q I don't make any such exclusions.

7 Do you have the higher rate there?

8 A No, I do not.

9 Q Massachusetts Bay?

10 A Boston rate is scheduled to go up on
11 July 1, to a rate of \$30.18 per hour. One of the
12 earlier exhibits talked about MBTA Union's giving up
13 their July 1 increase. Whether that's going to
14 happen with ATU 589, I don't know. But that's the
15 higher rate effective July 1.

16 Q Orange County?

17 A 23.92.

18 Q Okay. Page 2 of that exhibit.

19 A 25.12, under a one-year wage freeze.

20 ARBITRATOR VAUGHN: I'm sorry, what
21 does that number relate to?

22 Q (By Mr. Buescher) New Jersey, is
23 25.12?

24 A Yes. It's for the one-wage freeze.

25 Q Metropolitan Transit Authority of

1 Harris County?

2 A That's Houston. Again, Houston is the
3 multi-tiered -- I think we already put that
4 information in the record. Again, this is a rate
5 for an employee hired after June 1, 1999, and that
6 rate is 17.49.

7 Q Suburban Chicago?

8 A I can't give you that one. The
9 suburban bus division is made up of about 10
10 different divisions. They have a northeast
11 division. There's as whole pile of divisions.
12 There is not a rate. They must have 20 collective
13 bargaining agreements covering operators and
14 mechanics.

15 I can probably give you some of them.

16 Q Well, if there's that many of them,
17 I'm not sure it's worth it. We'll just take that as
18 we cannot tell.

19 Maryland Transit Administration.

20 A Baltimore rate expired July 1, '08, at
21 22.57.

22 Q Broward County?

23 A Fort Lauderdale has a rate today of
24 23.02.

25 Q Ride On, Montgomery County?

1 A I think that one is in the record
2 somewhere, too, but the rate is 28.22.

3 Q Capital Metropolitan?

4 A Austin is 20.59.

5 Q San Diego?

6 A San Diego is about 20 bucks, 21.17.

7 Q You recall that Exhibit 37 -- Union
8 Exhibit 37 had a rate for Houston Metro on it. And
9 you pointed out that that was the top rate, correct?
10 Feel free to look.

11 A Oh, is that this one? Oh, I'm sorry.

12 Q Yeah.

13 A The rate shown on Union Exhibit 37 for
14 Houston is 19.23.

15 Q And you -- is that consistent with
16 your understanding of Houston as the top rate?

17 A No. The top rate in Houston is 17.49.

18 Q Well, in one tier, but the actual top
19 rate that any operator can earn.

20 A I don't know what 19.23 is. I don't
21 list 19.23. I list 17.49.

22 Q And if the highest rate available to
23 an operator, regardless of date of hire, in Los
24 Angeles is 25.15, is that a number that is
25 consistent with your knowledge?

1 A I don't know. The rate I have on Los
2 Angeles County Metropolitan Transportation Authority
3 is 22.12 for employees hired after July 1, '97.

4 Q And your document doesn't show what
5 the highest rate --

6 A No, it doesn't. That is the highest
7 rate for the dominant number of operators. They can
8 never progress to the tier-one rates.

9 MR. BUESCHER: No additional
10 questions.

11 ARBITRATOR VAUGHN: Redirect?

12 MR. ASPHAUG: No redirect.

13 ARBITRATOR VAUGHN: Thank you,
14 Mr. Dash.

15 Let's go off the record and discuss
16 schedule and witnesses just for a moment.

17 (A recess was taken.)

18 ARBITRATOR VAUGHN: On the record.

19 The Union will now present additional
20 witnesses on economic issues. You may announce your
21 first witness, and then we will have that witness
22 and others who have appeared since the initial
23 swearing in to stand at the same time and be sworn.

24 MR. BUESCHER: My next witness is
25 Yvette Salazar, and she was sworn.

1 ARBITRATOR VAUGHN: All right. I
2 would ask that the remaining person who will be
3 testifying who were not sworn at the outset, to
4 raise your right hand and be sworn.

5 (The oath was administered to several
6 pending witnesses.)

7 ARBITRATOR VAUGHN: Ms. Salazar, you
8 may come to the witness chair.

9 Your witness.

10 MR. BUESCHER: Thank you.

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

14 DIRECT EXAMINATION

15 BY MR. BUESCHER:

16 Q Yvette, what's your current position?

17 A International rep with the Amalgamated
18 Transit Union.

19 Q How long have you held that position?

20 A This will be my third year, since
21 January 1, 2007.

22 Q Generally, tell the Arbitrator what
23 your duties and responsibilities are as
24 international rep?

25 A My duties and responsibilities are to

1 assist local unions, the Amalgamated Transit Union,
2 with contract negotiations, arbitrations,
3 organizing, audits, and any other assistance that
4 the Union might need from the International.

5 Q And as such, are you provided with
6 information from the International or from the
7 various geographic areas in which you work --

8 A Yes, I am.

9 Q -- about the systems within those
10 areas or just from the International?

11 A Yes, I am.

12 Q And are you familiar with -- there's
13 an exhibit in here that talks about St. Louis laying
14 off about 550 people. Were you aware of that
15 number, either has been or about to be laid off?

16 A Yes, I am.

17 Q And are you familiar with the economic
18 circumstances in St. Louis which contributed to it?

19 A Yes, I am.

20 Q Would you explain those to the
21 Arbitrator?

22 A St. Louis lost their federal funding
23 sometime in 1999, which has had a high impact on
24 being able to maintain and operate service in the
25 area. And since then, they've just slowly and

1 steadily been coming up on this problem, and it just
2 so happened to really hit this year during the rest
3 of this economic downfall that we're experiencing.
4 But from our perspective, it was a train wreck
5 waiting to happen, once that funding was -- federal
6 funding was cut off.

7 MR. BUESCHER: No additional
8 questions.

9 ARBITRATOR VAUGHN: Questions on
10 cross?

11 MR. ASPHAUG: If I may have just a
12 moment.

13 ARBITRATOR VAUGHN: You may.
14 Off the record.

15 (Pause in the proceeding.)

16 ARBITRATOR VAUGHN: On the record.

17 CROSS-EXAMINATION

18 BY MR. ASPHAUG:

19 Q Is St. Louis an ATU property?

20 A Yes.

21 Q What local number?

22 A 788, I think.

23 Q Could you turn to RTD Exhibit 27.

24 MR. BUESCHER: In a white notebook.

25 One of three.

1 Sorry. 27 Rolf?

2 MR. ASPHAUG: Yes, 27.

3 Q (By Mr. Asphaug) Got that?

4 A I'm there.

5 Q This is a couple of pages from an In
6 Transit. Are you familiar with that magazine?

7 A Yes.

8 Q That's the ATU International Magazine,
9 correct?

10 A Correct.

11 Q And if you'd turn to the first page of
12 that ATU International Magazine, an article called
13 Transit Paradox affects at least 50 ATU employees.

14 MR. BUESCHER: Page 11?

15 MR. ASPHAUG: RTD Exhibit 27, page 11.

16 MR. BUESCHER: That was my problem. I
17 was looking at 1.

18 A Okay.

19 Q (By Mr. Asphaug) All right. If you'll
20 look at the bottom of the second column of that
21 article, not the bridges for crossing. We're
22 looking at page 11.

23 MR. ASPHAUG: And I think, just for
24 everyone, else what's being shown on the screen is
25 page 2.

1 Q (By Mr. Asphaug) If you'll look at the
2 bottom of page 11, it says, in the second column,
3 does it not: Meanwhile, as funding dwindles,
4 America's public transit systems are desperate to
5 find a way to avoid service cuts and fare increases.
6 Listed on page 21 are the 50 U.S. properties
7 affected by the transit paradox, and what they are
8 planning to do about it.

9 Does it say that?

10 A Yes.

11 Q And now, the transit paradox is
12 defined in this article in the ATU magazine, as in
13 the first column at the top line: It's a term which
14 first appeared in American newspapers on February 3.

15 Do you believe that they mean 2009?

16 A I don't know what they mean. I would
17 assume that, but I don't --

18 Q It refers to: A recent phenomenon in
19 which transit systems are being forced to cut
20 service and increase fares, even as ridership hits
21 record levels.

22 So assuming that that term, "transit
23 paradox," as it's defined by the Amalgamated Transit
24 Union International -- which is the same group you
25 work for, correct?

1 A Yes.

2 Q If you turn to page 2 of RTD Exhibit
3 27, at what was that ATU local number again?

4 A 788.

5 Q 788, it's about a third of the way
6 down.

7 A Yes.

8 Q Doesn't your very own ATU list
9 St. Louis Regional Transit as being affected by the
10 transit paradox and that they are cutting service
11 routes -- and actually, they say 600 jobs, don't
12 they?

13 A Yes.

14 MR. ASPHAUG: Thank you. No further
15 questions.

16 THE WITNESS: Can I say one thing?

17 MR. ASPHAUG: No, not to me.

18 THE WITNESS: Gee, this is like the
19 old days, Rolf.

20 ARBITRATOR VAUGHN: Redirect.

21 REDIRECT EXAMINATION

22 BY MR. BUESCHER:

23 Q The article that appears on page 11
24 and 12 of that exhibit, did you write that?

25 A No, I didn't.

1 Q Now, what were you going to say?

2 A I was going to say that there was not
3 600 jobs lost. I was just with the financial
4 secretary of that local. There were a couple
5 hundred. Fortunately, it didn't reach the 600 mark.

6 MR. BUESCHER: No further questions.

7 ARBITRATOR VAUGHN: Anything further
8 for Ms. Salazar?

9 MR. ASPHAUG: No.

10 ARBITRATOR VAUGHN: Thank you.

11 MR. BUESCHER: Mike Rucker.

12 MICHAEL RUCKER,
13 having been previously duly sworn to state the
14 truth, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. BUESCHER:

17 Q Mr. Rucker, are you currently
18 employed?

19 A No.

20 Q Congratulations. Did you used to work
21 for RTD?

22 A Yes, for three months shy of 30 years.

23 Q When did you leave RTD?

24 A I retired the end of May 2000.

25 Q And during that period of time, were

1 you president of Local 1001?

2 A Yes.

3 Q When?

4 A Don't hold me to the exact dates, but
5 I believe it was 11 years, from 1989 the or '88, '90
6 -- I mean, not '90, 2000.

7 Q Up to about the time you retired?

8 A Yes.

9 Q Did you -- well, let me ask you.
10 There was an interest arbitration between these
11 parties in 1977. Did you attend arbitration?

12 A I did.

13 Q In the blue notebook there, take a
14 look at that. Go to Exhibit 30. Do you recognize
15 that document?

16 A Yes.

17 Q Mr. Jones identified this document as
18 coming from the Local 1001 files from that 1997
19 arbitration. And he believed it to be a Union
20 exhibit entered in that arbitration. What is your
21 understanding of what that document is?

22 A That's a form we received from the
23 International back during that -- in that
24 negotiation. That was, to the best of my
25 recollection, given to -- entered as an exhibit,

1 Union exhibit.

2 Q And I noticed there's a fax -- there's
3 two, actually, fax footprints on that exhibit,
4 correct?

5 A Yes.

6 Q And they're both dated in 1997?

7 A Yeah. I want to say September 8. I
8 don't know. September 9 of 1997, 7:35 a.m.

9 Q From -- and there's -- the one dated
10 September 8 is from the ATU International?

11 A Yes.

12 Q Look at Union Exhibit 31. Do you
13 recognize that document?

14 A Yes. It's a company exhibit that was
15 given to us.

16 Q In what?

17 A The arbitration.

18 Q In 1997?

19 A 1997 negotiations, yes.

20 Q Do you recognize that handwriting?

21 A Well, I'm not sure if that's mine or
22 an International rep. When we receive it, we try to
23 mark whether it's ours or the company exhibits, so
24 we keep track of what came in.

25 Q So it's either yours or that of the

1 International rep that was present?

2 A Yeah.

3 Q Look at Exhibit 32.

4 A Same thing.

5 Q I'm sorry?

6 A It's the same thing, another exhibit
7 that we received from the company in the same
8 negotiation year arbitration, 1997.

9 Q That's another document introduced in
10 that arbitration by RTD?

11 A Yes. Again, to the best of my
12 recollection, yes, that's. . .

13 MR. BUESCHER: No additional
14 questions.

15 ARBITRATOR VAUGHN: Questions on
16 cross?

17 CROSS-EXAMINATION

18 BY MR. ASPHAUG:

19 Q Mr. Rucker, I'm going to direct you to
20 all three documents, Exhibit 31, 32, and 33. All
21 right?

22 A All right.

23 Q You said that this -- well, let me put
24 it this way: Is the last document of this type that
25 you're aware of ever being created was in the fall

1 of 1997?

2 A I'm sorry.

3 Q Well, let me put it this way: Are you
4 aware of any such exhibits being developed in 2000?

5 A Could be. Again, not -- I've been out
6 of the business since then. If I could see some
7 other information. I'm sure there was something
8 during our negotiations in the year 2000.

9 Q Don't you think that if there had been
10 something akin to this document when the parties
11 were negotiating, Mr. Jones might have be able to
12 dig that up?

13 A I can't answer for Mr. Jones.

14 Q Likewise, for 2003, and 2006 -- you,
15 by then, were retired. You have no idea where any
16 such exhibits were developed in 2003 and 2006, do
17 you?

18 A No.

19 MR. ASPHAUG: No additional questions.

20 MR. BUESCHER: None.

21 ARBITRATOR VAUGHN: Thank you, Mr.

22 Rucker.

23 MR. BUESCHER: Julio Rivera.

24 JULIO RIVERA,

25 having been previously duly sworn to state the

1 truth; testified as follows:

2 DIRECT EXAMINATION

3 BY MR. BUESCHER:

4 Q Julio, who are you employed by
5 currently?

6 A RTD.

7 Q Do you hold a -- how long have you
8 worked at RTD?

9 A For 15 years.

10 Q Do you currently hold an office with
11 Local 1001?

12 A I do.

13 Q What office is that?

14 A Financial secretary, treasurer, and
15 assistant business agent.

16 Q And are you on a full-time leave of
17 absence to hold those positions?

18 A I am.

19 Q How long have you been in that
20 position?

21 A I believe five years, or close to
22 that.

23 Q In that -- generally, describe what
24 your job with Local 1001 is, in this position.

25 A As a financial secretary or treasurer,

1 I'm responsible for the accounting of funds for the
2 Local, for the property investments. As the
3 assistant business agent, I assist the president;
4 and business agent, as contract interpretation,
5 contract enforcement.

6 I'm also appointed to the trust, to
7 both the pension and the health and welfare trust.

8 Q So you are a union-appointed trustee
9 to both of those trusts?

10 A Yes, sir.

11 Q And how long have you been a trustee
12 on those trusts?

13 A Off and on for about five years.

14 Q Do you remember when you were not a
15 trustee in that period of five years?

16 Well, let me ask you -- when's the
17 last time you began being a trustee to today?

18 A Probably a year and a half ago, more
19 or less.

20 Q And you are a trustee today?

21 A I am.

22 Q So about the past year and a half
23 you've been a trustee, that time?

24 A Correct.

25 Q In a white notebook sitting there in

1 front of you, take a moment to look at RTD Exhibit
2 40.

3 A Okay.

4 Q First paragraph of that exhibit talks
5 about how much RTD pays per month per full-time
6 employee, correct?

7 A Correct.

8 Q And that's the 549 that I believe
9 there's already been testimony about it, but what
10 the contract currently provides for, correct?

11 A Correct.

12 Q And then, in the four paragraph lower
13 beginning 10,000 or 10,800,000 and some-odd, it
14 shows RTD 724 per month, correct?

15 A Correct.

16 Q Now, do you have an understanding of
17 what these numbers reflect and how they are
18 calculated?

19 A RTD provides a set amount of funds to
20 the health and welfare per full-time employee, but
21 because not every single full-time employee takes
22 the health insurance, RTD recalculates the figures.
23 So it comes out to \$724 a month per plan participant
24 or per plan employee that is actually taking the
25 health insurance.

1 Q Okay. Now, if you go down to the
2 bottom of that exhibit, it shows a formula there 724
3 plus 303 for family; do you see that?

4 A Correct.

5 Q Totaling 1,027, correct?

6 A Correct.

7 Q That \$1,027, where does that number
8 come from?

9 A The 1,027 is when we send an RP out,
10 that the cost to the plan per employee, per plan
11 participant.

12 Q Per plan participant?

13 A Correct.

14 Q And that is a number calculated by?

15 A The actuaries and all the bean
16 counters. No offense.

17 Q So how is the \$303 figure calculated?

18 A We subtract the amount of money that
19 RTD provides to the plan, and whatever is left is
20 what the employee pays. So in this case, it would
21 be 303.

22 Q And similar calculation, then for the
23 single employee, only you're now using \$947, as
24 opposed to 1,027?

25 A Correct.

1 Q You're familiar with Local 1001's
2 proposal as it relates to health insurance in this
3 case, correct?

4 A Correct.

5 Q And how that provides in year one, RTD
6 will pay an additional \$25, correct?

7 A Correct.

8 Q Now, what impact will that additional
9 \$25 have on that calculation?

10 A The only impact that it will have on
11 the calculation is we will take the \$25 and reduce
12 the premium that an employee pays by \$25.

13 Q At least \$25?

14 A At least \$25.

15 Q Because the 25 gets added to the 549,
16 correct?

17 A That's correct.

18 Q Will that mean that the trust fund
19 gets any additional money, if this proposal is
20 granted?

21 A It does not, because the intent of the
22 union in this proposal is to relieve the employees
23 of the premium, to reduce the employees' premiums.

24 Q Okay. And why is that what the
25 Union's trying to do?

1 A We a have a large percentage of
2 members, for whatever reason, are not taking out
3 insurance. Some of them have indicated it's because
4 the premiums are too high. We're just trying to
5 lower the premium to allow more plan participation.

6 Q Shifting now to pension. Okay?

7 A Okay.

8 Q You are on the pension board of
9 trustees, as well; is that correct?

10 A That's correct.

11 Q For how long, how far back does that
12 go, this stint?

13 A Same thing as health and welfare.

14 Q Okay. Back to the blue notebook now.
15 Go to Exhibit 27. That's Union Exhibit 27.

16 A It's the 2001 edition of the Summary
17 Plan Description.

18 Q Go to page 14 of that exhibit. Those
19 pages show in the lower right-hand corner, as you're
20 looking at the document -- these are not the page
21 numbers that show on the printed document itself.
22 Like RTD, we did some duplicate numbers.

23 A So you want the printed --

24 Q Yeah, the one in the lower right-hand
25 corner, page 14 of that.

1 A Okay.

2 Q Does that indicate that now the
3 summary plan description is setting forth the actual
4 amended and restated pension plan?

5 A It does.

6 Q Now, go to page 18 of that document.
7 This is still part of, now, the plan itself; is that
8 correct?

9 A That's correct.

10 Q And there they have the definition of
11 earnings, correct?

12 A Correct.

13 Q Look at paragraph C of 1.11.

14 A Okay.

15 Q Does that include what we have been
16 talking about here of adding the vacation and sick
17 leave payoffs into the calculation of final average
18 earnings?

19 A It does.

20 Q So that is in the planned document
21 itself, correct?

22 A That is correct.

23 Q Now, look at Exhibit 28.

24 A Okay.

25 Q Is this the Summary Plan Description

1 dated January 1, 1995?

2 A It is.

3 Q Go to page 13, in the lower right-hand
4 corner of that document.

5 A Okay.

6 Q All right. And that's the amended and
7 restated plan document as of January 1, 1993,
8 correct?

9 A That is correct.

10 Q Go to page 17 of that.

11 A Okay.

12 Q And again, Section 1.11, beginning at
13 the bottom left column of that, earnings.

14 A Okay.

15 Q And do you see where, right at the
16 bottom of the column, moving on to the next column
17 also includes that calculation of vacation and sick
18 leave payoffs, correct?

19 A It does.

20 Q Now, I want you to go back to the
21 white notebook. Again, I apologize for bouncing you
22 back and forth.

23 A I've got to get exercise somehow.

24 Q And go to RTD Exhibit 48.

25 A Okay.

1 Q Take a moment to look at that
2 document, and tell the Arbitrator the first time you
3 saw it?

4 A I saw this document a couple days ago.
5 I believe it was yesterday.

6 MR. ASPHAUG: Which exhibit are we
7 referring to?

8 MR. BUESCHER: 48.

9 Q (By Mr. Buescher) Yesterday?

10 A Correct.

11 Q Now, I would like for you to explain
12 to the Arbitrator what the trustees of the pension
13 plan have been doing as it relates to concerns they
14 may have about the current funding status of that
15 plan.

16 You understand my question?

17 A Correct.

18 Q Okay. Have the trustees been talking
19 about the issue generically for a while?

20 A Yes.

21 Q When do you recall the discussions
22 really getting focused?

23 A This is probably going back about a
24 year or so, we started discussing the situation of
25 the pension fund and coming up with different ideas

1 of how to address it.

2 Q And did the trustees ask the actuary
3 to evaluate or even provide a list of options, first
4 of all?

5 A Correct. A couple of trust meetings
6 ago, we asked the senior actuary, Segal Company, to
7 come up with different variations of different
8 examples of different things that we could do to
9 probably fix or cure the problem that we're having
10 with the pension fund.

11 Q So a couple meetings ago would put us,
12 roughly, when?

13 A We had a strategy meeting back in
14 January. So we had a strategy meeting in January,
15 that trustee meeting before that. I don't know the
16 exact date, and I got a new Blackberry, so I could
17 not get it out of that.

18 Q Whatever the regular trust meeting
19 would have been before this strategic meeting in
20 January of 2009?

21 A Correct.

22 Q And that was roughly in the latter
23 part of that year, latter quarter of that year?

24 A Correct.

25 Q How often do the trustees meet on a

1 regular basis?

2 A Quarterly.

3 Q So the trustees asked the actuary to
4 come up with a list of potential options, correct?

5 A Correct.

6 Q And did the actuaries do that?

7 A They did.

8 Q And did they present that list to the
9 trustees at some meeting?

10 A They did.

11 Q When do you recall that happening?

12 A Not that May 13 meeting, probably the
13 meeting before that.

14 Q The meeting before May 13, is that the
15 most recent meeting?

16 A Correct.

17 Q So the most recent meeting of the
18 trustees was May 13?

19 A That's correct.

20 Q So the meeting before that, the
21 actuaries came back with a list of ideas?

22 A Correct.

23 Q And was this in writing or was it
24 discussed?

25 A I believe they gave a presentation.

1 Q Oral presentation?

2 A Right, oral presentation. Our trust
3 meetings are kind of informal-type meetings. We all
4 kind of get along, for the most part.

5 Q Unless Mr. Fisher's in the room; is
6 that why you looked at him?

7 A Exactly.

8 Q And during that presentation by the
9 trustees, did the -- presentation by the actuary to
10 the trustees -- I apologize -- list as a potential
11 option eliminating the payoff for vacation and sick
12 leave as part of the final earnings calculation?

13 A They could have. I don't remember
14 specific discussion about that.

15 Q You don't remember any specific
16 discussion about that at all?

17 A Correct.

18 Q Was there specific discussion about
19 some of the options that the actuary listed?

20 A Yes.

21 Q And what options do you remember being
22 specifically discussed?

23 A There was a lot of stuff on the table
24 I cannot give you a . . .

25 Q Did the trustees make any decisions at

1 that meeting, and when that list of options was
2 presented to them?

3 A No.

4 Q Did the trustees ask the actuaries at
5 that meeting to prepare any data, do any more
6 analysis, anymore options?

7 A Not that I can recall.

8 Q The next meeting, then, was May 13,
9 correct?

10 A That is correct.

11 Q At that meeting, was a motion made to
12 amend the plan?

13 A It was.

14 Q By?

15 A Greg Fisher.

16 Q And what did that motion contain? And
17 feel free to look at Exhibit 48, if that helps you?

18 A The motion contained pretty much the
19 three items that are listed in RTD's Exhibit 48.

20 Q On the first page, one, two, and
21 three?

22 A Yes, sir.

23 Q Did that motion mention at all removal
24 of the sick leave and vacation payoff to calculation
25 of final earnings?

1 A It did not.

2 Q And the motion, what happened to the
3 motion?

4 A Dead on arrival.

5 Q Did it deadlock?

6 A Yes, sir. Sorry.

7 MR. ASPHAUG: I like his first answer
8 better.

9 Q (By Mr. Buescher) Is that its current
10 status; it's still deadlocked?

11 A It is pending arbitration.

12 Q Pending arbitration under the
13 appropriate rules and statutes and all that kind of
14 stuff, right?

15 A Yes, sir.

16 Q Did the trustees, at that May 13
17 meeting, ask the actuary, Segal, to prepare any
18 analysis about cost savings that associated with
19 these changes that were in that motion?

20 A Not that I'm aware of. By that time,
21 it would have been a moot point. The motion was
22 made and the motion failed.

23 Q So did the board of trustees, to your
24 knowledge, as an entity, the board of trustees, ever
25 request Segal to prepare what ultimately is RTD

1 Exhibit 48?

2 A Not to the best of my recollection.

3 Q And has Segal ever given the trustees
4 any information about any cost impact on the
5 elimination of the sick leave and vacation payoff on
6 the calculation of final earnings?

7 A Not to the best of my recollection.

8 Q Did the trustees, at that May 13
9 meeting, indicate that that wanted any additional
10 information related to these changes proposed by
11 RTD, from anybody?

12 A No.

13 Q Did the trustees ask for another
14 opinion?

15 A Not at that meeting.

16 Q Have the trustees asked for another
17 opinion of anyone?

18 A We have.

19 Q And explain, if it wasn't done at the
20 meeting, how was it done?

21 A What happened was after that motion
22 was brought forward and the motion failed, the union
23 trustees, we proceeded to inform the plan
24 participants or the members that the motion was made
25 and failed, and that we was pretty sure that RTD --

1 RTD's trustees was going to seek arbitration on it.

2 At that point if time, we discussed
3 it, and, you know, a lot of people had a lot of
4 concerns. We came up with the idea, you know --

5 Q We, being the Union side?

6 A Right the Union side. We should not
7 just take Segal's word for it, you know, that the
8 plan is in the situation that it's in. I called
9 Greg Fisher, which is my primary point of contact on
10 management side. I told him, look, we should get a
11 second opinion. We contacted Greg Parson, the plan
12 attorney. He suggested Leslie Thompson. She used
13 to be in actuary for the trust a while back, so
14 she's familiar with the data.

15 And we entered into a letter of
16 agreement hiring Leslie Thompson's corporation to do
17 a second evaluation.

18 Q And that was all done in conjunction,
19 then, with Mr. Fisher, and if he was acting --
20 assuming he was acting on behalf of the management
21 trustees?

22 A That is correct.

23 Q So you have asked for that second
24 actuarial opinion?

25 A That is correct.

1 Q And did you -- when you asked for that
2 opinion, did you ask that person -- her name again
3 was?

4 A Leslie Thompson.

5 Q -- Ms. Thompson to include in that
6 actuarial opinion any impact of removing the
7 vacation and sick leave payoff from the calculation
8 of final earnings?

9 A I don't believe so. I think the only
10 additional requirement that we gave here in
11 reviewing Segal's figures was to look into the
12 possibility of what impact it would have if
13 membership contributions would increase. I think
14 that was the only additional duties that she was
15 given.

16 Q Additional beyond evaluating the three
17 items made in the motion; is that what you mean by
18 additional?

19 A No. What we hired Leslie Thompson to
20 do is to look at the figures and compare the figures
21 that we received from the Segal Corporation, and to
22 see if the plan was actually -- I believe Segal said
23 56 percent funded status.

24 And we also asked Leslie to come up
25 with, perhaps, different ways in which we would

1 achieve a solvent status on the pension plan.

2 Pretty much the same thing that Segal did, we just
3 wanted Leslie Thompson to do.

4 The only other criteria to ask her is,
5 in a supposal type of way, what impact it will have
6 if the membership increased their pension
7 contribution from RTD.

8 Q From the current 3 percent?

9 A Correct.

10 Q And was that request made to
11 Ms. Thompson prior to June 17, the date of Exhibit
12 48?

13 A I believe so, yes.

14 Q Since that was just a week ago, right?

15 A Correct.

16 Q Now, let us assume for a moment that
17 the Arbitrator recommends that RTD's proposal, with
18 respect to changing the collective bargaining
19 agreement and adding the language removing vacation
20 and sick leave payoffs from the calculation of final
21 earnings; that he says that should be implemented.

22 Will that save RTD any money, in terms
23 of how much -- the 8 percent it contributes to the
24 plan?

25 A No. RTD will still have to pay the

1 vacation. RTD will still have to pay the sick
2 leave. So I don't see any potential saving, other
3 than they won't have to put 8 percent into the
4 pension.

5 ARBITRATOR VAUGHN: I guess I need a
6 clarifying question on that.

7 Q (By Mr. Buescher) Let me ask you this:
8 Do you know whether RTD contributes 8 percent on
9 those payoff amounts?

10 A Yes.

11 Q And is -- do you have any
12 understanding from your participation on the
13 trust -- did you also participate in negotiations
14 this year?

15 A Yes.

16 Q Participation in negotiations for the
17 trust, whether RTD's proposal changes its
18 obligations to still make an 8 percent contribution
19 on that payout, or does it only change how the
20 payout impacts the earnings calculation?

21 A From my understanding, RTD will not be
22 required to pay that 8 percent.

23 Q Okay.

24 ARBITRATOR VAUGHN: What would they be
25 required to pay?

1 THE WITNESS: Nothing.

2 ARBITRATOR VAUGHN: Nothing?

3 THE WITNESS: Correct.

4 Q (By Mr. Buescher) On what?

5 A Towards the pension, on the sick and
6 the vacation payout.

7 Q So it's your understanding that if the
8 collective bargaining agreement is modified as RTD
9 has proposed, in this particular area, that will
10 also -- it would have clearly, you understand, the
11 effect of removing those payouts from the
12 calculation of final earnings, correct?

13 A That's correct.

14 Q You also believe that it would remove
15 any obligation RTD has to make a contribution on
16 that amount; is that what your testimony is?

17 A That's correct.

18 Q Mr. Jones, in his testimony --
19 actually, I think it first came up in Mr. Marsella's
20 testimony, and then Mr. Jones testified about it a
21 little bit, about some sort of agreement that was
22 reached between the Union and RTD relating to MCI
23 buses and working on them, correct?

24 A That is correct.

25 Q Are you familiar with that?

1 A I am.

2 Q And did you participate in reaching
3 that agreement?

4 A I did.

5 Q Were you kind of the primary guy doing
6 it?

7 A Unfortunately, yes.

8 Q I want you to explain to the
9 Arbitrator what the circumstances were leading up to
10 that, okay, what RTD came to you requesting and how
11 you go from them to whatever that deal is.

12 We'll talk about what it is, then,
13 after you walk us through the history.

14 A The actual deal is referred to the
15 Blue Bird MCI deal. Blue Bird buses, from the Blue
16 Bird Corporation. The situation started, I was
17 approached by Ron Dodsworth who is an assistant
18 general manager for bus operations.

19 He approached me and said, look, we
20 have a situation that we would want the Union to
21 help us out on. I have four buses, Blue Bird buses
22 that are sitting around the country in different
23 locations that Blue Bird will give to RTD at a real
24 good price.

25 But what the Blue Bird Corporation

1 wanted, in order for them to sell the buses -- I
2 think it was at \$250,000 apiece, the Blue Bird
3 Corporation wanted the ability to do the refurbishes
4 on the MCI buses.

5 Prior to Ron Dodsworth getting into
6 that, Ron explained to me that they had lost several
7 fundings for different type of buses, so they could
8 no longer buy the buses that they wanted to buy. So
9 they were short on buses.

10 Q RTD could not buy buses it wanted to
11 buy?

12 A Correct.

13 Q Go ahead.

14 A So he -- and he also stated, well,
15 it's a very bad time for me to ask the Union of
16 this, because to give, you know, work away during
17 the time of contract negotiations, it's kind -- it's
18 kind of crazy.

19 So what I did is --

20 Q Excuse me. Did he mention -- Blue
21 Bird was willing to sell him the buses. Did he
22 mention any time frame that RTD had to act?

23 A No. That's --

24 Q Okay. I'm sorry. Go ahead.

25 A That's what I'm getting at. He also

1 stated he wanted -- I think he approached me
2 something like on a Friday, and this deal had to go
3 through, like, on a Wednesday. So it was not a long
4 time to negotiate and investigate and do the normal
5 steps.

6 So what I did, I approached a couple
7 of the chief stewards from the maintenance
8 department. I told them what the deal was, what RTD
9 was proposing, and if we could do it.

10 One of the suggestions that came back
11 from that was, well, if Blue Bird Corporation is
12 going to do the refurbish on the MCI buses, that
13 belongs to the body shop people, they would be
14 willing to let Blue Bird do the work on the MCI
15 buses in exchange for guaranteed overtime for the
16 body shop people.

17 Understanding that body shop folks
18 normally don't work a lot of overtime. So RTD was
19 clearly going to come out ahead on this deal. We
20 just didn't want the body shop people to say, look,
21 they're working on the MCI buses, that's overtime
22 work that we could have been doing.

23 After they came to us with that, what
24 we did is we approached the local president on it.
25 The maintenance people were on board -- the majority

1 of the maintenance people were on board. Then we
2 contacted both Ron Dodsworth on Dean Shaklee, the
3 general superintendent of maintenance, and the deal
4 was struck.

5 It's a situation that RTD really
6 needed these buses. They needed a quick response,
7 and we assisted the District in it, because they
8 were low on funds and they really wanted these
9 buses.

10 Q And when you say "quick response," you
11 said, I think you got approached on a Friday and the
12 deal had to be done by a Wednesday. The next
13 Wednesday?

14 A Correct.

15 Q So we're talking about five or six
16 calendar days?

17 A Correct.

18 Q Okay. You said you have been
19 financial secretary treasury and assistant business
20 agent for about five years. Did you hold that
21 position during the negotiations in 2003?

22 A I was a chief steward then.

23 Q Did you participate in the
24 negotiations during your role as chief steward?

25 A I did. I was part of the contract

1 negotiating committee.

2 Q Okay. Now, we know that in 2003,
3 Local 1001 agreed to a three-year pay increase -- a
4 pay freeze, correct?

5 A Correct.

6 Q Explain to the Arbitrator the
7 circumstances that ATU perceived itself to be in at
8 the time it ultimately made that decision.

9 A When we started contract negotiations
10 for 2003, it was kind of unique, because back then
11 the District started with about 6 percent takeaways
12 in wages. So we started negotiations on a clearly
13 defensive type part. It was the Union strategy to,
14 at the very least, hold our ground, don't lose
15 anything.

16 Q Okay. And as it progressed down to
17 the end, did RTD gradually move off of those
18 takeaways?

19 A They did, in exchange for the wage
20 freeze, they did move away from some of the -- what
21 we consider back then, absurd working condition
22 changes that the District wanted. So it was kind of
23 a --

24 Q So if I understand your testimony, in
25 terms of economics, they came in at like a 6 percent

1 cut?

2 A Correct, across the board.

3 Q But also with lots of changes to
4 working conditions?

5 A That's correct.

6 Q That the Union viewed as detrimental?

7 A It was an all-out assault on the
8 entire contract. Not only on wages, but it was an
9 assault on working conditions.

10 Q So tell the Arbitrator, then, why you
11 agreed to the three-year wage freeze?

12 A Hindsight being 20/20, perhaps we
13 should come up with a better deal. Instead of a
14 three-year wage freeze, perhaps we should have tried
15 to negotiate something else. But back then,
16 especially from the eyes of a new union officer,
17 we're going into a 6 percent takeaway.

18 If at the end of the day we walked
19 away with everything we had intact, to us, it was
20 kind of a victory, especially since we was fighting
21 so many different aspects of the contract. Not just
22 the wages, like I said, we were fighting a lot of
23 the working conditions.

24 So hindsight being 20/20, perhaps it
25 was a stupid idea on our part.

1 Q But that's what caused you to do it?

2 A That's correct.

3 Q You're familiar with the wage proposal
4 currently before the Arbitrator presented by Local
5 1001?

6 A I am.

7 Q That has small increases in the first
8 couple of years and larger increases at the third
9 year, correct?

10 A Correct.

11 Q And you are also familiar with the
12 general economic environment in which we are
13 operating?

14 A Who isn't?

15 Q There has been testimony from RTD
16 witnesses that that economic environment is worse
17 today than it was in 2003. You've heard that
18 testimony, right?

19 A Correct.

20 Q Without getting into details on how
21 much worse and that kind of thing, do you generally
22 agree or disagree with that?

23 A Could you repeat that one more time.

24 Q Without getting into details about how
25 much worse or better it may be and that kind of

1 thing, do you generally agree that the economic
2 circumstances today are not as bad as they were in
3 20003?

4 MR. ASPHAUG: Are not as bad?

5 Q (By Mr. Buescher) Are worse than they
6 are in 2003?

7 A I do.

8 Q RTD has made a big point of making
9 that very point, that in 2003 you're going to do a
10 wage freeze, and now you've got a wage increase on
11 the table. Tell the Arbitrator why.

12 A We went through a three-year pay
13 freeze. During that time, mortgage payments went
14 up, gasoline went up, food prices went up. The
15 following three years, we got a \$1.83 rise. And now
16 the District is asking us to take another pay
17 freeze.

18 But RTD senior management don't seem
19 to feel like we're in a recession, because they
20 continue to get their pay raises. To ask us to take
21 another pay freeze is kind of absurd, with the price
22 of food has gone up, the price of gas, the price of
23 rent. You know, everything we need to live and
24 survive in this economy has gone up.

25 So I don't think that it's fair that

1 we would have to suffer the consequences.

2 Q There has been testimony about how the
3 International -- ATU International provides periodic
4 updates on current wage rates around the country.

5 A Correct.

6 Q Is that information that Local 1001
7 gets regularly?

8 A Every single ATU employee gets a copy
9 of the International Magazine, and that's the page
10 that we turn to, find out what everybody else is
11 making.

12 Q So you were looking at what everybody
13 else is making?

14 A Correct.

15 Q Does that information influence the
16 proposal being made here today?

17 A Of course.

18 Q In what way?

19 A RTD does not live in vacuum. I mean,
20 everybody else is getting pay raises. So what's so
21 different with RTD in Denver?

22 Q Over what period of time?

23 A The last In Transit Magazine was two
24 months ago, and we just go through them, and we just
25 look, okay, they got a pay raise, they got a pay

1 raise, anywhere from between one and three years.

2 We look at the life of the contract.

3 We don't see -- as far as In Transit Magazine, we
4 don't see people taking pay freezes.

5 MR. BUESCHER: No additional
6 questions.

7 ARBITRATOR VAUGHN: Off the record.

8 (WHEREUPON, the hearing was adjourned
9 at 5:23 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 7th day of July, 2009.

My commission expires January 22, 2011.

Angela Smith
Professional Reporter, Notary Public
Calderwood-Mackelprang, Inc.