

TRANSCRIPT

INTEREST ARBITRATION PROCEEDINGS Pursuant to Charter Sections A8.409 & 8A.104(N)

Transport Workers Union, Local 200
And
Municipal Transportation Agency

Saturday, May 7, 2005
Vol. 1 (excerpt)

ARBITRATOR HOH: On the record. This is a formal hearing in the matter of mediation interest arbitration under the San Francisco Civic Charter involving Municipal Transit Agency and Transportation Workers Union Local number 200. The first day of the hearing today is the 7th of May, 2005. We are currently scheduled for at least three days of hearing and hopefully some mediation thereafter.

At this time I'd like the -- we have a three-person -- three-person panel, and speaking now is Ronald -- Ron Hoh, the panel chairperson. And if the advocate members of the panel would identify themselves beginning with the Union, I would appreciate that.

MS. LAVIGNE: Glenda Lavigne, Transport Workers Union, Local 200.

MR. WILLIAMS: Larry Williams, MTA.

ARBITRATOR HOH: Thank you. I would also like the parties to -- advocates to state their appearances for the record, please. And we're talking now about the attorneys.

MR. SLOAN: Jeffrey Sloan, Renne, Sloan Holtzman, Sakai for MTA.

MR. ANDERSON: Neyhart, Anderson -- okay. We dropped Freitas. That's Neyhart, Anderson, Flynn & Grosboll by John Anderson. What are you doing here?

MR. ROTHMAN: Just hanging around.

MR. DE NARDO: And Scott De Nardo.

ARBITRATOR HOH: Thank you. I understand there's another one from Renee Sloan, another attorney.

MS. FRIEDLANDER: No. Julia Friedlander, MTA counsel.

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(Testimony & Cross by Witness Ben Lunch)

ARBITRATOR HOH: We're back on the record. And Mr. Sloan tells me he's going to make a brief opening statement. Guys? Hey. Thank you.

Go ahead, Mr. Sloan.

OPENING STATEMENT BY MR. SLOAN

MR. SLOAN: Okay. Good afternoon, everyone. We wanted to give an overview of our case, not touching on all issues, but instead touching on the key issues. There are some operational-type issues also in play, and I presume that we will be getting those -- on to those later in the proceeding, and we'll try to be doing those strictly by narrative.

ARBITRATOR HOH: Yes. That would be my preference.

MR. SLOAN: Yes. So we just kind of wanted to draw a tree or a route relating to MTA's perspective on the present arbitration. And we start by making clear what the arbitrator and the panel already know. And that is that this matter is governed by the criteria in process that are in two places in the charter. One is an A-8409, which covers non-sworn employees generally in

San Francisco. That's joint Exhibit No. 1. But even more important is the second prong, and that is Proposition E.

Proposition E was voted in by the electorate a few years ago. The parties, up until these negotiations, have not had the opportunity to address how Prop E directly affects matters of negotiations and what changes should be brought into the contract to assure that management and labor unions and employees all are cognizant of and fulfill their duties under Proposition E.

And if we turn to Exhibit 2, joint Exhibit No. 2, relative to Prop E, looking at the preamble of section 8A.100, we see a statement of very important interest, from the standpoint of transit riders and the taxpayers, the goal of making the San Francisco transit system comparable to the best urban transportation systems in the world's major cities and the statement of what the residents require.

It's plain that residents wrote a good part of this and had the support of the majority of those voting, focusing on reliable, safe, timely, frequent and convenient service, reduction in breakdowns, delays, overcrowding and preventable accidents, cleanliness and comfort in vehicles and stations operated by competent, courteous and well-trained employees, supporting and accommodating special transportation needs of elderly and disabled, crime protection against inappropriate passenger behavior and, last enumerated, but not least, responsible, efficient and accountable management. It goes on from there, but those are -- that statement of purpose is crucial to MTA's ability to serve the public appropriately. And ever since the implementation of Proposition E, it has been viewed by the administration and management of MTA as defining their guiding purposes.

Also, an important part of Proposition E is section 8A.103, a further elaboration on service, standards and accountability, which I know the arbitrator carefully will read and, therefore, I will simply make that reference to him.

And further of importance in connection with Proposition E is 8A.104, defining the personnel and merit system. As previously indicated in correspondence between the City and the arbitration panel, there has also been reference to section A -- I'm sorry -- 8A.104, close paren -- open paren, N, close paren. And this language is also crucial for this interest arbitration.

The arbitrator noted previously, although I think off the record, that the -- this charter, unlike any of the other charters, at least in California, like some other charters in a few other states perhaps -- but this charter says that the arbitration panel must apply applicable criteria, explain precisely how the applicable criteria do apply to each issue at hand. That is covered in A8.409, which is the general provision relating to all of -- all City interest arbitrations.

ARBITRATOR HOH: Essentially 8A not A8.

MR. SLOAN: I'm sorry. 8A. I'm -- I don't think I'll ever really learn.

ARBITRATOR HOH: You're doing fine. I'm with you.

MR. SLOAN: But in 8A.104(N) there is an articulation of additional factors which must be made -- which must be considered when making a determination in any impasse involving this agency, and that is -- and consistent with what I've just talked about regarding the goals of Prop E -- the interests and welfare of transit riders, residents and other members of the public and the agency's ability to meet the costs of the decision of the arbitration award without materially reducing service. And you will see, Mr. Arbitrator, again on numbers over the next hour, that that ties in much more directly than an outside observer might think upon casual inquiry.

Now, in addition to Prop E, but tied into the points I just made, is this third -- third prong in the introduction, and that is the fact that we are dealing with personnel and jobs here that involve supervisory and managerial functions. Now, I'm putting aside for now the question of how many managers there are, true managers if you applied a textbook NLRB definition. But it is very, very clear, Mr. Arbitrator, members of the panel, that this bargaining unit has been set up and the core goal of this bargaining unit must be to oversee core transit operations by supervising and managing those operations fully, effectively, competently and capably, and I'm going to get into a little bit more detail about that in just a couple of minutes because it is clear to the management team -- and we would -- we would ask the Union team to seriously consider that part of what's going on here is an effort at a basic culture change consistent with Proposition E, an effort that is premised on members of this bargaining unit not regarding themselves as

rank-and-file workers who had the good fortune to promote up into a higher paying job, but instead, as former rank-and-file workers who had the desire to promote up into a supervisory or management job and who want to -- and who want to contribute everything that they can as supervisors and managers in making MTA a better place for everybody.

And by the way, I've got to say that is not to suggest that is not what most people in the unit think. I know that I'm looking right now at very, very capable people in terms of how they perform their jobs. So I'm not making a critical comment at all about individuals, but I am making a comment that's focused on the need to make a culture change along the lines that I talked about, along the lines that I will be talking about a little bit more in just a minute.

Next, the issue of the criteria that are to apply in deciding how each of these 11 issues, issue by issue, are to be resolved are also set forth in the charter, and I just quoted to you the add-ons from Proposition E. In general, the panel must look at the agency's financial condition. It must look at the analysis that's been done, both at the City side and at the MTA side on the financial condition, and their disclosures - - extensive disclosures, as you can see from the size of the record, that have been made in preparation for the '06 budget. Also, of course, are the Muni-specific criteria.

Another important facet, though, of the case, important enough for me to have perhaps vexed a prior witness a little bit more than -- than time might have suggested was appropriate, relates to the issue of comparability of existing benefits. And in terms of comparability of existing benefits, we want to give you this overview. First of all, there are -- there is internal comparability. And second there is external comparability, as the arbitrator is well aware.

In terms of internal comparability, it is very clear that folks in this bargaining unit come primarily, if not exclusively, from operator ranks. There is a -- there is a plain, clear promotive straight trail -- promotive trail from the ranks of operator to this unit. And that's a little bit troublesome in a way. First, because this unit -- folks who perform supervisory and managerial functions are not administered under the same charter section that operators are -- and, in fact, operators, for whatever political reasons and others, are under a separate charter provision shared by no other personnel in San Francisco -- and their disputes are not subject to interest

arbitration, whereas the employees in this unit, like virtually all employees in San Francisco and at MTA, including managers who are covered by the MEA bargaining unit. Their MOU is in the record. Attorneys who are covered by the MEA bargaining unit are now in the process of mediation adjacent to interest arbitration. From the lowest level employee to some of the highest, they are covered by collective bargaining, and this group of Local 200 members are essentially situated similarly to all other miscellaneous employees who are under the 8409 charter sections, which permit and require interest arbitration in the event of a dispute once it gets to impasse.

And I thought that it was very important to ask you to take a look at a particular document relating to this issue of internal comparability. It's in volume II of our exhibits, Exhibit No. 37. And if you turn to table 1 of that document, which is the fourth page in, this is a -- an overall memo from Larry Williams, panel member -- Larry Williams to Michael Burns back at the end of last year. It is a public document. It was presented in public session. It looks like this (indicating).

ARBITRATOR HOH: The first page, then, right?

MR. SLOAN: I'm on the first page.

ARBITRATOR HOH: Okay.

MR. SLOAN: Just to introduce it.

ARBITRATOR HOH: Okay.

MR. SLOAN: I commend it to your reading and know you will.

But if you turn to the fourth page, table 1, this is a list of how each bargaining unit, both within MTA covered by their -- both within MTA and outside of MTA, have been afforded -- have been treated from fiscal year 2000 through fiscal year 2005.

Just for a little bit of clarity, as I'm sure the arbitrator already knows from reading Prop E, there are service critical classifications, and the MTA has direct collective bargaining relationships with some unions that represent employees in service critical classes. I will be identifying for you the document that defines the service critical classes through witness number two, but suffice it to say that the highlighted groups are folks who are in service critical

classes covered by MOUs, known here as collective bargaining agreements, reached between MTA and the affected unions.

The other groups, though they have personnel working these contracts, these other MOUs, have people covered by these MOUs, have personnel working at MTA. But as I understand it, the contracts covering those personnel were negotiated at the City table rather than at the MTA table.

So there's a -- there's a difference between folks in the service critical classes that are -- where the personnel in the bargaining unit are numerous enough to warrant their own special treatment and folks who are -- who are differently situated than that. And our core group here of Local 200 members fit in as service critical employees with -- with whom, through their exclusive representative, MTA has a negotiating relationship, including an impasse procedure that calls for the interesting form of expedited arbitration that we have here.

Now, if you look at the second and third columns here, there is information that we think is very, very important because we're talking now about internal relationships. I start by saying on that point that there's nothing that we can do at this point about the transit operators because they are not covered by interest arbitration. They're covered by their own charter section. You can see that the transit operators fared the best in all likelihood, when you take into account their base wage increase and subtract from it the -- any employee retirement giveback that may have been built up during that time period 2000 to 2005.

But I dare say that besides the operators, there is not another group that has fared as well as the Local 200 supervisor. The Local 200 supervisors have gotten as fair an increase as could have been had under the circumstances that the City, like many other cities, are facing since 2000. And that 7.5 percent employee retirement giveback was giveback that was made during one year and one year only. The City sought -- excuse me. MTA sought to have that continued in negotiations in interest arbitration last year. You see the result, one which we view as unfortunate as the Union views it fortunate. You see the results of that in the record in the Chris Burdick award, which I will refer to in a few minutes. So we have those preliminary words on internal comparability.

In respect to external comparability, you will hear from our witness, who has extensive experience both as a management advocate and

as a neutral in the conduct of comparability analysis throughout California, that it is appropriate to look both at the -- look at the statewide and also at a national grouping of agencies. You will see that, based on his analysis, the individuals who are represented, well represented, I would say, by Local 200 are paid quite well in comparison to their peers.

I want to highlight an anomaly, and that is BART. I'm not sure, Mr. Arbitrator, to what extent you're aware of the -- of the circumstances which caused BART salaries to increase, especially in recent years. But as we note here, BART is one of a variety of agencies, but is what we call an outlier, which is now suffering financial difficulties because of their prior largesse in negotiations.

Another key point about BART that -- that our witnesses will make is that BART is a heavy rail operation. MTA is not a heavy rail operation. MTA combines different transit activities, but their rail operation is light rail, not heavy rail. And part of the anomaly of BART's pay, we believe, is that BART pays more because, as the heavy rail operation, there is a higher skill set needed, and in some ways there may be a higher risk in terms of transportation operations.

So having made those comments about -- about the criteria -- and I've already -- I know we've already talked about the fact that there's a requirement that there be an issue-by-issue application of the charter criteria -- a little housekeeping. I think that the parties are on track to be in compliance with the charter deadline and the charter process. We understand that the arbitration will continue Monday through Tuesday with the hope that we'll conclude sometime early on Wednesday, but Mr. Anderson has indicated a desire to put on his fiscal data on Wednesday. I know that the arbitrator wishes to engage at the first appropriate opportunity.

ARBITRATOR HOH: He does.

MR. SLOAN: And I know that he will consult with his counterparts on the panel so that he can get their sense of when that most appropriate opportunity will be, and I know that the parties are committed to an exchange of final offers and briefing such that the matter will be fully before you a mere week from today on Saturday morning once the briefs are filed. And we emphasize the importance of that due to the importance of knowing what -- what the agency

is facing in terms of -- in terms of budgeting in -- in the next year.

Now, a little bit more of detail about what I referred to earlier as a culture clash. We will -- we will be producing a more refined chart of this use. We deeply appreciate the Union's work in reducing the number of issues, and we -- we hope to respond as closely in kind to that as we can. But this in some ways, in MTA's view, is an historical case. It's an historical case by virtue of something that is not shown in the charts, and that is that one of the two key issues here involves decades of legacy.

Muni, as it used to be called, started as -- as a very informal organization. For many decades Muni has been growing larger and larger and more complex, but has not corrected what we would call a vestigial assignment practice that has caused inefficiency and defeated the criteria mandates of Proposition E. That's what this whole assignment dispute is about.

And I refer to culture clash again before -- I will refer to it again, and our definition of that clash is that it is between an operator mentality -- and God bless our operators, but it's between an operator mentality on the one hand and a mentality that focuses on leadership, supervisory mentality and management mentality. We say that because that underlies, we think, what the dispute is in this case, and we earnestly ask the panel to take the side of the electorate in Proposition E when it comes to resolving that dispute.

Now, turning to the -- the issues, we have as of this morning a count of about 11 arbitrable issues, and to follow the route about our key proposals, there are essentially three in number, not to in any way suggest that the others are not important, but three that are the most important.

First, as our next two witnesses will emphasize, there is the issue of wages and also retirement pickup. As you can see from the chart in table 1 of Exhibit 37, there has been a practice over the -- over the years in which Local 200 has participated less than almost anyone of -- of accepting the responsibility for employees to pay their share, 7 and a half percent -- their share of retirement in order to help the agency balance its budget and to assist in -- in the delivery of needed services to -- to San Franciscans. Our proposal is to have that be triggered at the beginning of the next fiscal year by contract and to have reopeners on that subject as well as the subject of wages for the '06/'07 fiscal year.

On the subject of wages, we are not proposing that employees, on the one hand, accept the burden of the retirement switch and, on the other hand, receive no -- no additional wages. To the contrary, our proposal coming into arbitration is that employees be the recipients of an additional 2 percent increase in wages for the coming year.

To -- to be clear, we're not engaging in ball-hiding. I also want to concede to you that there was a package offer that we made very, very recently that was a point above that as part of an overall package, which is customary in my experience when parties want to try to settle based on an overall package without going through the expense of arbitration. They may be willing to pay somewhat more. Now that we are in arbitration, we are in no way saying that we will come in with a final offer that is at 3 percent. That remains to be seen.

Another key point is that the MTA has on the table language which strangely the Union has been completely unreceptive to. And that is language which simply embraces the standards and existence of Proposition E. MTA wants the standards and qualities of Proposition E more and more to be recognized by personnel throughout MTA because that's the basis of what this operation does. It is all the more important that those standards be embraced by the unit that oversees transit operators by the unit that on a day-by-day basis handles supervisory and management-related functions.

The third point related to that is assignment of work. In essence what we have is a proposal calling for management to have a right that management does not now have because it was given away in negotiations, and that is the right to select and assign key personnel in core operational areas. Mr. Williams will talk about this after we cover the issue of finances.

By the way, time allowing, we will also cover comparability today. We hope to get both of those things out today. But he will tell you about what the MTA is seeking.

It is -- it is already clear that MTA and the Union are agreeable to, if not both committed to, a collaborative process for bringing folks into these key specialty areas of MTA operations, bringing them in not by just saying management can hand-pick people to do these jobs, which could well result in favoritism, could well result in a selection that's not based on merit, but instead by saying we're going to refine this profession through a joint high-level labor

management committee called the UMM, the Union management committee.

The process shall involve a fair and open training process and a fair and open appraisal process, including separate independent committees and outside experts. We're not talking about people in management who will do this alone, but outside experts, to examine jobs and establish qualifications criteria. As far as we can tell, the only real issue out there is the core issue, and that is whether the selection decision is to be made by strict seniority or whether instead it is to be based on a fair assessment of qualifications.

Finally, you'll note that although the Union has withdrawn its demands for a premium in virtually every area, I believe -- and we express appreciation for that -- as -- as part of MTA's commitment to fair and properly implement this new process, MTA is proposing that an additional premium be conferred to the folks in these specialty units in recognition of the value of the work performed and also in recognition that management will have a greater degree of discretion in selecting and assigning and reassigning those personnel.

Besides those proposals -- those are our top three. The Union has its proposals, one the mirror image of ours, in a way, on wages and retirement pickup, another on stewards and release time will -- which I'm sure they will get to in due course.

And just in terms of our position, recognizing your patience with this rather lengthy statement, I just want to ask you to look at the expression of our position about money and also about the assignment of work issue. You will see within the next hour that the MTA is facing a serious economic dilemma. MTA had to make \$57 million in corrections going into the coming year, and those corrections include not only very, very substantial service cuts, but also the layoffs of almost 150 operators. All we are asking for on these economic issues is for Local 200 to pay its fair share so that service can -- so that the cuts in service are less Draconian than they would otherwise be and so that their counterparts in the operator's unit will not be laid off to the extent that they would otherwise be laid off.

On the assignment of work issue, I think that I've already fully summarized it.

The final issue is last year's proceeding. It is no wonder that the Union has tried to essentially make its case here based on the record in the prior proceeding. I've already

indicated to Mr. De Nardo that we object to the introduction of the transcript as an overall document because this proceeding is a different proceeding based on different financial circumstances, a different arbitrator, a different year, and different issues. But in essence, last year we don't -- we're not sore losers. MTA took it and moved ahead. But in our view -- and we will detail this more as the case goes on -- the proceeding last year was flawed, and Mr. Burdick, the arbitrator, had made a few key incorrect premises which he relied on in saying that the MTA unit last year, at least those working at -- at MTA -- he said the MTA unit with the City would have to pay the pickup, but he let MTA employees at -- here get off the hook on the pickup because of what he saw as being flaws in the presentation of the employer's case.

We can guarantee you, Mr. Arbitrator, one thing, and that is there -- there will be no flaws in the presentation of MTA's case in here.

Thank you for your patience. We rest, and we're ready to call a witness.

ARBITRATOR HOH: Mr. De Nardo, I'm going to allow you at some future point to make an opening statement, but I prefer if you do to make it at the beginning of your case.

MR. ANDERSON: We'll do it at the beginning of our case.

ARBITRATOR HOH: Are you ready to go, Mr. Sloan?

MR. SLOAN: Yes.

ARBITRATOR HOH: Bring him on. The witness has already been sworn, I believe. Where are you going to speak?

THE WITNESS: I could go either there or --

ARBITRATOR HOH: You can't be there. Come around. No, no. Would you state your name please. You have been sworn.

THE WITNESS: Stuart Sunshine.

ARBITRATOR HOH: S-t-u-a-r-t?

THE WITNESS: S-t-u-a-r-t.

(Discussion off the record.)

ARBITRATOR HOH: Go ahead, Mr. Sloan.
Back on the record. Sorry.

DIRECT EXAMINATION BY MR. SLOAN

MR. SLOAN: Q. A succinct paragraph about your background educational experience, please.

A. Educational experience, I have a master's from San Francisco State in political science, a bachelor's from the University of Colorado in journalism. I've been with the City and County of San Francisco 12 years. I've served under three mayoral administrations. I was a policy analyst for Mayor Jordan. I served under Willie -- Mayor Willie Brown as the director of parking and traffic for two years. I was the project director for air flow development at San Francisco International for three years and served under Mayor Newsom as the first director of SF Stat, which was a program created to monitor productivity of City departments, before being asked to come over to the MTA as the deputy executive director.

Q. So your involvement in the development and administration of the MTA budget is...?

A. My involvement has been to oversee the -- the creation of the budget and the submittal of the budget as well as the oversight and the implementation of the current year's budget.

Q. What about last year's budget?

A. Last year's budget was already in effect when I came along, but my job was to facilitate, with the operating divisions and maintenance divisions, the implementation of the adopted budget, keeping an eye on overtime and keeping an eye on missed service, along those lines.

Q. Okay. Now, the title of this -- the document that we have distributed, but I don't think we've marked for identification --

ARBITRATOR HOH: Do I have it, by the way?

MR. DONAHUE: Yes, it should be coming around.

ARBITRATOR HOH: Let's go off the record for just a minute.

Discussion off the record.)

ARBITRATOR HOH: Back on the record.

MR. SLOAN: Okay. I'd like to have this marked as 16A and ask you to designate what has been in the binder as 16, 16B.

ARBITRATOR HOH: So this is 16B in the binder?

MR. SLOAN: Correct.

ARBITRATOR HOH: All right. And the other is marked as 16A. Go ahead, Mr. Sloan.

MR. SLOAN: Q. The title of this presentation appears to be "MTA Proposed Service Changes for Fiscal Year 2006."

A. That's correct.

Q. Why?

A. This was one of the most recent in a series of public presentations as it relates to the adopted 2006 budget by the board of directors, the MTA board of directors, and it was -- it includes in detail the service cuts that were not detailed a month earlier when the board adopted the budget

Q. Why is MTA making service cuts?

A. They are -- they are -- they are required under Proposition E to have a balanced budget by March 1st of every calendar year. They are forced to -- they were forced to make service cuts in response to a 57 and a half million dollar deficit for the fiscal year '06. The -- the board took a balanced approach in in-service cuts and fare increases and parking fees and rate increases, and this was a detailed report on -- a summary of the -- of the service cuts.

Q. Proceed and tell me when to turn the page.

A. Okay.

Q. Page 2.

A. Page 2. Muni has basically -- in the past has faced a severe financial challenge, and --

MR. SLOAN: Excuse me one second. Just to be clear, this is exhibit is two slides per page. So when he is making page references, they are to

the actual slide numbers. For example, page 2 is the bottom of page 1.

MR. ANDERSON: Okay. This says, "Presented to the MTA Board on 5/3/05." Is that the document we're talking about?

THE WITNESS: Yes. I'm sorry. You gave it a title number.

ARBITRATOR HOH: It's the second one on the first page, though? Because all of these are 5/3/05 materials.

MR. ANDERSON: I guess I do the -- it's absolutely illegible.

MR. SLOAN: You'd have to crook your neck to actually see.

MR. ANDERSON: Okay. Well, I was working off of this. Go ahead. I'm sorry.

ARBITRATOR HOH: We're at the bottom of the first page. It actually is marked 2 on this particular document. Go ahead, Mr. Sloan.

MR. SLOAN: There was just so much red ink on the first page that --

Q. Go ahead.

A. Our projections for the previous fiscal year, that is, '04, we had a 46 million -- sorry -- 2003, we had a \$46 million deficit. 2004, we had a \$60 million deficit projected.

ARBITRATOR HOH: 6-0?

THE WITNESS: 6-0.

ARBITRATOR HOH: Slow, please.

THE WITNESS: And fiscal year 2005 we had a projected \$32 million deficit. And over the years the MTA has implemented policy changes and other initiatives to bring the agency's budget into balance, including expenditure reductions of close to \$80 million since fiscal year 2003. In fiscal year 2004, the agency increased revenue by implementing fee, fare and fine increases to help cover the budget shortfall. In fiscal year '05 Muni recognized that it had very little options left, but to lay off employees, reduce service and use capital funds for operating balance to help manage the budget deficit. And in fiscal year

'06, which is this presentation, we once again find ourselves trying to come up with solutions for a 57 and a half million dollar budget deficit. You will see on this slide, slide 2, that we've had parking traffic, which represents \$4.8 million of the deficit, the Muni deficit, as well, 52.5. In the next slide --

MR. SLOAN: Q. Tell the arbitrator a little bit about, if you haven't already -- I haven't heard it -- the difference between why you referred separately to Muni and DPT.

A. Well, Mr. Arbitrator, in the past with the development of the budget, even though MTA was created, DPT had its own budget. Muni had its own budget. We've been requested by the mayor and the controller and the policy direction by Mr. Burns and the MTA board of directors to create a single budget from here on out, and so this reflects a combining of the -- of the two departments' budgets.

MR. SLOAN: Q. And there's the 57.3 at the bottom.

A. That's correct.

Q. Go to page 3.

A. Slide 3 is a little more detail on what our deficit is and how it looks. It is -- as I mentioned, we have in previous years looked at or used one-time sources such as Breda money and flexible federal spending, which is a transaction that we did which allowed us to basically borrow on some of our equipment and use that money.

Q. A sentence on Breda, please.

A. Breda is -- it's called Breda. It's a type of equipment. It's our light rail vehicles. I have a picture, which you just took down. And what we did was we -- we allowed for the tax value to be purchased by a third party, and Muni received -- because the City does not get a tax writeoff for depreciation of equipment, so a third party purchased it on our behalf. They're taking the tax credit. We take a one-time payment, and we've used that one-time payment for some capital, and last year we had to use some of it for operating expenses. That is no longer available in our '06 scenario.

Q. What is no longer available?

A. The Breda money.

Q. Go ahead.

A. The other drivers for our expenditures are fringe benefits and mandatory fringe benefits as well as increases in costs of operation, such as fuel and also the DPT deficit, which I've alluded to earlier. On the following slide --

Q. Moving to slide 4?

A. -- slide 4, which is a snapshot of our expenditures, a pie chart of our expenditures, you will see that labor and costs are almost 70 percent of our budget, and on slide 5, another pie chart. This is on revenue, a breakdown of how we receive our revenue. We get nearly a third of our revenue from parking fees and fines and rates. Our fares come in around 23 percent. We also have a general fund transfer that represents about 22 percent. The balance of the chart is other taxes that flow in from the state and -- and the region sales tax, gas tax, et cetera.

On slide 6, which is the next slide, is how we approach the solution to solving our \$57.3 million deficit, and we took an approach at the direction of the board of directors and -- and Mr. Burns in taking a look at fare increases, parking fee, fine and rate increases and service reductions as a way of spreading this across to all of the users of the system. And that's -- those are the four -- excuse me -- those are the three legs of our stool that we use to solve the problem. And there is a fourth element, which is another one-time use of preventive maintenance funds to close the gap. So the following slides just represent a breakout of each of those solutions.

Slide 7 is the fare structure that's being proposed based -- adult-based fare increasing by 25 cents, Fast Pass increasing, maintaining transfers, introducing Lifeline passes, which is what we would do for the working poor.

We've -- on the next slide, which is slide 8, is our recommendation on parking increases, fines, going up on average about \$10, meter rates being increased a dollar an hour across the City, garage rates being increased, residential parking and contractor permit fees being increased as well.

Slide 9 represents the first slide related to service. We have been -- we have proposed

schedule -- changes in service as a result of either routing or hours of service or vehicle type or scheduled frequency, and those changes are based on ridership demands, responding to community requests and the need to consolidate overlapping lines and -- which are providing the same level of service.

The following two slides represent the lines which are being impacted, which are scheduled for a reduction in frequency or a change in routes or in hours of service.

And final -- and slide 12, which is the lines, which we are changing the type of vehicle, going, for example, to the longer, larger bus rather than a shorter bus to carry more people, but maybe run less frequently.

That is slide 12.

And then slide 13 is -- is our summary of how we came up with the balancing plan, which represents about 28 percent from our fares, about 44 percent from parking fees, fines and rates, and 28 percent of the solution is coming from service adjustments.

And the final slide is related to our outreach, which is a requirement for the service cuts, which we started last week and will go into next week.

Q. What's the public's reaction been?

A. To date the public's -- at least at the community meetings that were held this week, very few people came, less than 30 to both public meetings, and most people were sympathetic to the approach, but mainly addressed issues that weren't related to the budget.

Q. Now, in the '06 year you're going to have to make 13.5 million in service reductions; is that right?

A. Yes.

MR. SLOAN: I'd like to, if I may, Mr. Arbitrator, consistent with your stated preference, make a few broad offers of proof and ask him to confirm and, if he has anything further, to comment on those issues. Okay?

ARBITRATOR HOH: Are we referring to specific documents or are we going to be --

MR. SLOAN: No, that comes next.

ARBITRATOR HOH: All right. Fair enough.

MR. SLOAN: Q. I want to know whether you agree with the following points that have emerged from management analysis. The points are that the cuts in service are not in the interest of riders; that they will result in longer waits and more crowded conditions on buses; that all of the services being cut are needed, but are only being cut to address a fiscal problem; 145 operators, more or less, are to be laid off through this process because of the service cuts; many lines will have less frequent service; now, currently operating a service schedule -- you are currently operating a service schedule that cannot actually be fulfilled due to budget reasons; is that true?

A. That's correct.

MR. ANDERSON: I'm sorry. I don't understand the question nor the answer.

MR. SLOAN: Q. In other words, there is a public published schedule of bus operations, but that the -- but the actual routes and times for stops that are published are typically not able to be met; is that correct?

A. That's correct.

MR. ANDERSON: That's true of every service.

MR. SLOAN: Q. To meet the published public schedule, MTA would need to hire new operators?

A. That's correct.

Q. And MTA is not hiring new operators at this point because it is laying off about 145 operators?

A. Yes.

Q. MTA typically also attrits about 200 operators a year?

A. Yes.

Q. Now, as to the question of the money that we are trying to save, first of all, to be very clear, the MTA has a proposal that calls for a 2 percent wage increase across the board to MTA members? You're aware of that?

A. Yes.

Q. Has that 2 percent been budgeted?

A. No.

Q. What does that mean?

A. It's not part of the budget that was adopted by the board of directors.

Q. Okay. So what will MTA have to do in order to pay employees that 2 percent or the 3 percent, if it ends up being 3, that Local 200 is demanding?

A. We will have to find that savings from within the budget that was passed.

Q. By doing what?

A. Either changing, for example, the Third Street lines, not opening on a certain time. There are savings that are assumed in the budget. We would use some of those savings for the salary increases.

Q. What impact will that have on service?

A. Well, service is being reduced as part of the budget solution, so it's not going to have much impact on service.

Q. Okay. Now, also to be clear, the MTA has proposed that -- that employees be required to pay their 7.5 percent share of retirement, correct?

A. Correct.

Q. Right now, by virtue of the award from last year, MTA pays that, correct?

A. That's correct.

Q. Has that 7.5 percent been budgeted?

A. Yes.

Q. Okay. Why is that?

A. We were -- it's a requirement.

Q. Why is it a requirement?

A. Based on a previous ruling.

Q. Okay. So if MTA succeeds in convincing the panel that the Local 200 members should

assume the payment of that 7.5 in the coming year, I want to ask you some -- I want to make some points about where that -- what that -- where that money could be reallocated. If I could just do the whole thing and if he wants to respond affirmatively, that's fine. First, the 7.5 from this bargaining unit, do you know roughly the amount of money that would save?

A. A million and a half maybe, off the top of my head.

MS. LAVIGNE: A million six.

ARBITRATOR HOH: Well, it's his testimony. If you have something different, you'll have time to correct it.

MR. SLOAN: Excuse me for one second.

MR. ANDERSON: A million 586.

MR. SLOAN: Q. That million and a half or so could result in the return of 10 to 15 operators who would otherwise be laid off?

A. Yes.

Q. By the way, the layoffs are scheduled to occur in September?

A. Yes.

Q. Not in -- not July 1, but in September. That 7.5, which quantifies to about 1.5 million, could fund additional personnel in 9141 -- class 9140 or class 9139 to staff divisions after hours?

A. Yes.

Q. That additional money could restore cuts in the maintenance budget which was cut?

A. Yes.

Q. Was that a reallocation of \$10 million for preventive maintenance --

A. There was.

Q. -- resulting in a deferred schedule -- a deferral in scheduled maintenance?

A. Yes.

Q. The -- the result of that deferral will be deteriorated and less reliable equipment, more breakdowns, fewer buses on the street and less service to riders, and this also will force the delay of the purchase of hybrid buses?

A. Yes.

Q. Okay. Now, in --

MR. ANDERSON: I realize we're doing this as a narrative --

ARBITRATOR HOH: We are doing it as a narrative.

MR. ANDERSON: -- but it seems to -- you know, we have testimony of Mr. Sloan rather than Mr. Sunshine here.

MR. SLOAN: Well, that's what --

ARBITRATOR HOH: That's what I've -- that's sort of what I've asked for.

MR. SLOAN: I can do it all at once if you let me try to speed it up a little bit.

Q. We had 91 -- 92 positions in class 9102, which is car cleaners, funded in 1906 -- I mean 2006. Eighteen of those will be vacant. They could be funded if we had the additional money. Right now also there is no extra board to fill behind vacancies. With more money, of which this 1.5 million could be an ample source of funds, MTA could create an extra board. Right now, if there are open or missed runs which occur -- I'm sorry. Right now open or missed runs occur unless MTA backfills with overtime, although that is usually disallowed because of monetary limitations. With more money, an extra board would get routes on the street. There is a need for equipment purchases within MTA. This money could purchase inspector trucks, which now do require replacement.

Central control needs an upgraded phone system. Right now, you call into central control, there are three lines. After that, you're put on hold. It also needs a new data voice recorder -- recorder and a better computer system.

These monies could also be used for the training of 9139s in communications skills and accident prevention or for training operators with regard to customer service orientation.

A significant problem for the public and -- and for folks that work at MTA now relates to issues of cleaning and the availability of janitorial help and facilities. Because of cuts in car cleaning and in janitorial services, buses and stations are dirty, and gillies, restrooms, including the lunch and restroom, are cleaned once a day.

ARBITRATOR HOH: I'm sorry. What was the first word? Gilly? What is a gilly?

THE WITNESS: A gilly room is a break room in the divisions.

ARBITRATOR HOH: All right.

MR. SLOAN: Q. They're only cleaned once a day now due to shortages. MTA is also short in what is called receivers, that is, vacant positions that perform clerical functions needed to maintain outfits and daily working documents. This work is now assigned to people on light duty, but that is, frankly, creating some legal risk because local 790 claims that that work is their bargaining unit work. This source of funds could be used also to address that problem.

Last, marketing -- the marketing department was depleted because of budget cuts relating in less -- less effective means to get information to the public regarding service adjustments and other Muni matters.

These are a variety of alternatives as to how the 1.5 could be used. That amount of money, obviously, would not be sufficient to cover all or even many of those concepts. Do you disagree with anything I just said?

A. I do not disagree.

MR. ANDERSON: Of course not.

MR. SLOAN: Q. Do you have anything to add?

A. Of course --

MR. ANDERSON: You and me disagree.

ARBITRATOR HOH: Move forward, please.

MR. SLOAN: Okay. No further questions.

ARBITRATOR HOH: Okay. Cross-examine.

MR. ANDERSON: Yeah, I have a few questions.

CROSS-EXAMINATION BY MR. ANDERSON

MR. ANDERSON: Q. Mr. Sunshine, if you take a look at your own Exhibit No. 37 and table 2 --

MR. SLOAN: 37, table 2?

MR. ANDERSON: Uh-huh.

ARBITRATOR HOH: Okay. Two of them say table 2, actually, Mr. Anderson. The first page of table 2?

MR. ANDERSON: Yeah, the first page of table 2. Actually -- and I think is a sheet that goes completely across.

ARBITRATOR HOH: But your reference right now is to the first page?

MR. ANDERSON: Yeah, it's to the first page.

ARBITRATOR HOH: Go ahead.

MR. ANDERSON: Q. I just want to know -- this apparently is a report that was made from Larry Williams, the deputy general manager for human resources and labor relations, to the executive director, and I'm assuming for the purposes of these questions that this is accurate. If you'll take a look down to fiscal year 2005/2006 on the table --

ARBITRATOR HOH: This first page.

THE WITNESS: Okay.

ARBITRATOR HOH: Right here. He's there.

MR. ANDERSON: Q. You're there. In the first column is the machinists. You have 260 employees who are machinists. These are the -- the diesel maintenance people, correct?

A. Yes.

Q. Okay. Diesel mechanics. They're in negotiations; is that correct?

A. It's my understanding they just completed negotiations.

Q. And was there any wage increase?

A. I was not involved with that.

Q. So you don't know?

A. I cannot answer that question.

Q. You haven't been advised, you know, that you better plug something into the budget for a wage increase?

A. That's correct.

Q. You haven't been advised anything with regard to retirement pickup or giveback?

A. I have not been advised on the 1414 issue.

Q. Okay. So that's 280 employees who apparently, you know, are not part of the budget so far because they -- because their negotiations have not been reported to you or at least they're not a permanent part of the budget because of lack of that information; is that correct?

A. I can't answer that.

ARBITRATOR HOH: You said 280, but I think you meant 260. But nonetheless, I got it.

MR. ANDERSON: 260. I'm sorry.

Q. Next column is electrical workers. There's 480 of them. These are the electrical workers and transit technicians that do the maintenance on the trolley cars, the metro system, the control system, et cetera, et cetera; is that correct? They're due a 6 percent increase in fiscal 25 -- 2'05/2006, and that is a contractually firm rate, is that not, increase?

A. That's my understanding.

Q. And so you have a 6 percent increase --

ARBITRATOR HOH: One second.

MR. ANDERSON: Q. -- for --

MR. SLOAN: Don't testify as to what you don't know.

ARBITRATOR HOH: Don't coach. You can ask him again. It's his testimony right now. If you want to clear up something, do it upon redirect.

MR. SLOAN: Yes, sir.

MR. ANDERSON: Q. So you have a 6 percent increase for 204 employees, I presume. In addition, they were at 7 and a half percent pickup last year, but it is clear from this document that you are now picking up at least 2 and a half percent of that because their giveback is only 5 percent; is that correct?

A. I don't know.

Q. Well, do you see anything in there -- do you see that for fiscal year 2004/2005 it says employee retirement giveback is 7 and a half percent? You see for fiscal year 2005/2006, which is what we're talking about, that there's a -- there's less of a giveback?

ARBITRATOR HOH: Than 7 and a half percent?

MR. ANDERSON: Q. Than 7 and a half percent?

A. Yeah, I see that.

Q. You also note that there is five additional holidays that have been granted to these 480 people, which have a cost that is attached to them --

MR. SLOAN: Objection.

MR. ANDERSON: Q. -- to those holidays? Well, I'm just doing what you did. Do you agree or disagree with that?

MR. SLOAN: Objection. It's a compound question.

ARBITRATOR HOH: Let's just ask him what's on the document. That's really all he can testify, it appears, because he wasn't involved in these negotiations. He can testify as to what the document says. Whether or not they were paid, we can establish some other way.

MR. SLOAN: We have a witness who will be covering all of this.

MR. ANDERSON: Q. Mr. Sunshine, I assume that this report by Larry Williams to his boss, indicating what these increases are, somehow or

another are going to find their way into the budget. Do you agree or disagree?

A. I can't answer that.

Q. Well, we'll just take a look at them. You've got 575 people with the SEIU that are scheduled for a 6 percent wage increase, four additional holidays and a reduction in the amount of retirement giveback. TWU, Local 250A, these employees, which are the bulk of the employees in the system, are in the San Francisco employee retirement system, right? Do you know that?

A. You need to repeat the question.

ARBITRATOR HOH: You're talking about, basically, operators?

MR. ANDERSON: Q. You have 215 operators. Those are, you know, the bus drivers. They are enrolled in the San Francisco employee retirement system; isn't that correct?

A. I don't know that.

Q. I'll refer you back to table 1, and you note the employee retirement giveback for TWU operators is zero over the period of time in question from 2005 -- 2000-2005? Do you see that?

A. Yeah, I see it.

Q. Okay. In addition, there have been contributions to an MTA trust fund, which is a fund over and above retirement, which is -- there is a contribution to the bus driver's trust fund; isn't that correct, the \$4,204,000 during that period of time?

A. That appears what this chart says.

Q. Well, I can go through this chart, and I can see -- can show you where you have wage increases from -- anywhere from 4 to 6 percent for every category of employee for fiscal year 2005/2006; in addition, with respect to most of them, that the retirement giveback is being reduced. It's not being increased. All that money that you need for all those various wonderful things that have been alluded to by your counsel somehow or another do not take precedence over giving 6 percent increases --

MR. SLOAN: Objection.

MR. ANDERSON: Q. -- 4 percent increases and 5 percent, you know, and reductions in the amount of employee contribution giveback.

ARBITRATOR HOH: With regard to the objection, that is argumentative. It is essentially narrative. I'm letting him do it.

MR. ANDERSON: Okay. I'm going to let this exhibit speak for itself with respect to the wage increases, which have been promised to other classifications within the City. I will only state for the record -- make the representation that in August there will be further increases for the drivers as a result of the charter process, which takes the two highest jurisdictions in the country and from that is derived the formula for a wage increase. And I'll note that, for example, during - - in that -- in that chart, that during the period from 19 -- from 2002, supervisors represented by the Local 200 have received no wage increases, none. The operators whom they supervise have received wage increases every year. The supervisors gave back 7 and a half percent in one year, as did everybody else, and they were promised to have it returned to them. And when the City attempted to renege on the promise -- and that's why we ended up in arbitration last year. Others extended their contracts for the goodies that are contained in their 6 percent increases, 4 percent increases, et cetera, et cetera.

I'll also note that what that chart says is that the operators have never during this period of time paid one dime into the employee retirement system to support their retirement and benefits.

Q. Okay. I want to ask you one other question.

MR. SLOAN: You mean one question?

MR. ANDERSON: One series of questions.

ARBITRATOR HOH: Let's get on with it, please.

MR. ANDERSON: Q. You say you supervise the budget, is that correct, for 2000 -- for fiscal year 2006?

A. Yes.

Q. So I'm going to assume that you're familiar with the methodology used to determine the labor component of your budget. I'll make that

statement. I'm not asking you to confirm or deny that. The budget, with respect to the labor component, is based upon a projected number of budgeted positions; is that not correct?

A. Yes.

Q. Okay. You also have in the budget a figure - again, I believe for this year it was an 8 and a half percent attrition rate, 8.1 percent attrition rate?

A. I don't know that.

Q. All right. We'll get to that. It is true, is it not, as it has been virtually every year, that the number of budgeted positions that are in your budget are in excess of the actual positions?

A. Can you say that again?

Q. All right. Let's just say the budgeted positions for 9139s, which are the supervisors - the current budget, so far as we can see, has somewhere in the neighborhood of about 199 budgeted positions for a 9139 when, in actual fact, there are only 181. Do you know that to be a fact?

A. I do not.

Q. Okay. We'll get to that in our own case. I think it's, you know, all well and good that there is money that you want to expend upon various - various other capital improvements --

MR. SLOAN: Is this --

MR. ANDERSON: Q. -- et cetera --

MR. SLOAN: Is this how you want to handle this?

MR. ANDERSON: Q. -- but on the other hand -

MR. SLOAN: No, I'm serious. There's no question.

ARBITRATOR HOH: You've done some of that yourself.

MR. ANDERSON: He did more than that.

ARBITRATOR HOH: I would prefer that we'd refer to documents when we do that, and I'll say that to both sides.

MR. ANDERSON: I'll let it drop.

ARBITRATOR HOH: Thank you.

MR. ANDERSON: Q. I'll only suggest to you one thing, and that is that you testified that there is approximately a \$1.5 million savings from requiring the supervisors to pick up their contribution, employee contribution to pension. Have you costed out a proposal -- has anybody costed out the proposal from MTA's side?

A. I can't answer that.

Q. Even with the 3 percent wage increase that has been on the proposal, which apparently has not been budgeted despite the fact that other people have gotten 4 percent increases that are contractually required and 6 percent increases across the board, would you agree or disagree that the MTA's offer is to reduce the aggregate compensation to this unit by \$1.2 million from its current levels over the next two years?

A. I can't answer that.

MR. ANDERSON: That's all right. I have no further questions.

ARBITRATOR HOH: Redirect?

MR. SLOAN: Nothing further.

ARBITRATOR HOH: Thank you.

MR. SLOAN: Sure.

ARBITRATOR HOH: Thank you, Mr. Sunshine. Sure. What's next?

MR. SLOAN: He didn't have any questions about his budget presentation, so I have no redirect.

ARBITRATOR HOH: What's next?

MR. SLOAN: Call Larry Williams.

ARBITRATOR HOH: As far as I'm concerned, I'll let him stay there. Is that okay with you?

MR. ANDERSON: That's okay.

ARBITRATOR HOH: State -- and let me swear you in.

(Whereupon, the witness was sworn.)

ARBITRATOR HOH: State your name, please.

THE WITNESS: Larry Williams.

ARBITRATOR HOH: And your position, if you would?

THE WITNESS: Deputy General Manager for Human Relations and Labor Relations, MTA.

ARBITRATOR HOH: Go ahead, Mr. Sloan.

DIRECT EXAMINATION BY MR. SLOAN

MR. SLOAN: Q. Larry, your job principally covers what?

A. I'm responsible for five different sections, including labor relations and human resources, supervisory training, affirmative action, workers' compensation, substance abuse testing and examinations and classifications.

Q. Okay. Now, responding to the issues raised by Mr. Anderson about the agreements made with other unions, let me start to ask you about the prior packages agreed to by other unions in the face of the MTA's financial problems.

A. The other -- since about 2003, as I recall, initially the mayor asked all unions to reopen their contracts because of the fiscal crisis and to consider voluntarily giving back 2.75 percent or picking up 2.75 percent of their employee contribution to the pension. This was in the mid -- mid-term in all agreements. All the agreements were in effect, and so the mayor asked all unions in the City to consider giving back voluntarily 2.75 percent of their -- their employee contributions. All unions in the City, with the exception of Local 200, agreed to do that. And as a condition of that, there were certain wage agreements made with regard to increases that would be granted in future years.

The same thing occurred in reopening negotiations in 2003, which included Local 200. The unions were asked to give up the full 7.5 percent and in exchange for that would get additional floating holidays as well as no increase in the first year. And some of those

agreements had reopened a contract -- reopened the clauses in them for subsequent years, such as the contracts that are open this year with the auto machinists and Local 200. We just recently reached a TA with automotive machinists last week in which they are continuing to give up the 7 and a half percent in exchange for a 6 percent increase as a part of the package that was offered to Local 200 last year as a part of attempting to settle the dispute at that time.

Q. Can you tell us a little bit more on that agreement? Is that what is called the crafts' deal?

A. Yes.

ARBITRATOR HOH: Crafts' deal?

MR. SLOAN: Crafts' deal.

Q. Did all crafts take that deal?

A. Yes --

Q. Well --

A. -- with the -- there was a variation for the electricians, as I recall.

Q. Okay. And so specifically in the crafts' deal, was that a flat 6 percent at the beginning of the year or was it -- or was it differently configured?

A. No, it was configured in three stages over the year to offset the cost impact to the budget, but the base pay increase would be 6 percent over the term of the next year.

Q. So it was 2 -- it was three 2 percent increases?

A. Yes.

Q. The first one beginning around the beginning of November?

A. Yes.

Q. The second one in March?

A. Yes.

Q. The third one in May?

A. The third, as I recall, yeah, May.

Q. Now, when you made an allusion to Local 200 being offered that deal --

A. Yes.

Q. -- when were they offered that deal?

A. Last year during reopening the negotiations prior to us going into arbitration.

Q. Was there some reason that you were offering various unions the same basic deal?

A. We were attempting to get all the unions to give back the 7 and a half to contribute to helping the City's crisis as well as we were attempting to offer all unions the choice of two packages, one which was called the crafts package, which is the one I just alluded to, and the other was called the SEIU package, which the electricians took, where they agreed to give up only 5 percent of the takeback for less increase in rates and fewer floating holidays.

Q. Okay. And what about the operators' contract?

A. We renegotiated the operators' contract last year under the section of the charter, as you indicated previously, that does not include binding arbitration, interest arbitration, and we included a reopener clause for each of the four-year terms of the operators' contract, and we have recently advised the operators that we wish to reopen their contract to talk about economics this year, and we will engage in those negotiations as soon as we complete these negotiations.

Q. Is there -- is there some sort of a pay or wage formula in the operators' charter section?

A. Yes, according with the charter section, it covers their wage survey.

Q. And what does it provide?

A. That we shall pay them -- we may pay them an average of the two highest similarly situated properties in the nation, and that happens to be Boston and Santa Clara transit for the last several years, as well as it includes a provision that when the overall benefits package, as compared to those two agencies and -- and MTA, is -- ours is less, we will make a comparable monetary

contribution based on an actuarial study on the difference of those two packages, and that's what accounts for the trust fund contributions on table 1.

Q. You're saying that's required, in essence, by charter?

A. That's required by charter.

(A recess was taken from 3:04 p.m. to 3:05 p.m.)

ARBITRATOR HOH: Back on the record.

MR. SLOAN: No further questions.

ARBITRATOR HOH: Cross-examine?

MR. ANDERSON: I have no questions.

ARBITRATOR HOH: Okay. Thank you, Mr. Williams. What's next?