

TRANSCRIPT

INTEREST ARBITRATION PROCEEDINGS

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

**Transport Workers Union Local 200
And
Municipal Transportation Agency**

**Tuesday, May 10, 2005
Vol. 3 (excerpt)**

ARBITRATOR HOH: Back on the record. Today is the 10th of May. This is the third day of the mediation arbitration involving Metropolitan Transit – Transit Agency and TWU Local 200. It is now about seven minutes after 2 o'clock in the afternoon. We had suspended what we had been doing previously today, which is the mediation portion of this proceeding, to go back into the hearing portion of it dealing with the subject area of the employer's proposal in the area of assignment. Is that basically correct, gentlemen?

MR. DE NARDO: Yes.

MR. SLOAN: Yes.

ARBITRATOR HOH: All right. And are you ready to proceed, Mr. Sloan?

MR. SLOAN: Yes

ARBITRATOR HOH: Whenever you're ready.

MR. SLOAN: We call Larry Williams.

ARBITRATOR HOH: You're still under oath, Mr. Williams. There is fine. Do you prefer to be there? It doesn't make a difference with me.

THE WITNESS: Yeah.

ARBITRATOR HOH: You're still under oath. Go ahead, Mr. Sloan.

Redirect Examination By Mr. Sloan

MR. SLOAN: Q. I want to start by asking you to explain to the arbitration panel --

ARBITRATOR HOH: Including himself.

MR. SLOAN: -- including himself, but most particularly the neutral arbitrator --

Q. -- MTA's position in respect to assignment of work.

ARBITRATOR HOH: Are we talking about the contract proposal itself or the concept?

MR. SLOAN: The whole -- the whole shebang.

ARBITRATOR HOH: All right.

MR. SLOAN: Q. And if you could please walk him through it as succinctly as you always do, the -- the documents showing the course of bargaining history and MTA's efforts to work with Local 200 to develop a fair procedure that met the goals that you expressed in negotiations.

A. Okay. Well, first of all, starting out, we, actually, I'll say, formally commenced negotiations on April the 12th, at which time we had agreed to exchange proposals. And on April 12th we exchanged proposals with the Union and included with our proposals -- we gave the Union -- included a letter which previewed our opening proposals. And that's shown in Exhibit 8 of our volume I binder.

And in the course of exchanging the proposals, I reviewed the contents of that letter with the Union, explaining to them, as it says in Exhibit 8, that we had essentially three major objectives that we wanted to achieve in these negotiations. One was to incorporate into the agreement provisions that would acknowledge that we are now operating under the purview of Proposition E, since this is the first contract we would have renegotiated since we formally merged and became the Municipal Transportation Agency.

The second major objective was cost reductions, namely, specifically I refer to the -- asking the employees to pick up the seven and a half percent retirement contribution.

And thirdly, there was the issue of assignment of work related to moving away from the current practice with the 9139s, of them being able to choose their work locations and assignments based on seniority; that we were concerned that that no longer was effectively working in at least four specialty areas that we were identifying as specialty units, namely, center control, schedules, training and dispatch; and that our proposal would be predicated upon trying to work with the Union to see if we could come up with a process that would address their concerns as well as ours, but ultimately would leave us with more flexibility in being able to take advantage of employees' interests, skills, knowledge, expertise, based on the needs of the service more so than simply by seniority.

Q. Now, just to cover it in a little bit more detail than the ground you covered, why is it important for MTA that the principles of Proposition E be incorporated into the contract?

A. Because primarily this is a management and supervisory unit -- a managers' and supervisory unit, and the employees represented in this bargaining unit are the very employees who we have to rely on to effectively carry out and meet the mandates that are provided for in Proposition E. These are the employees who directly supervise and/or direct and manage the work of the operators and other employees in operations that are crucial to the implementation or the achievement of Proposition E goals.

Q. Mr. Anderson made some reference to the designation of service critical positions, so I want to ask you before we get into more of the details of assignment of work to turn to Exhibits 4 and 5 -- and please tell the arbitrator the

importance of the designation of service critical positions.

ARBITRATOR HOH: Hold on. I have to have it in front of me. I took it out last night. I pulled it out last night. I apologize. I started to look at it last night. Thank you. I'm ready now. Exhibit 4, is that what you said? I'm sorry.

MR. SLOAN: Exhibits 4 and 5.

ARBITRATOR HOH: All right.

MR. SLOAN: Q. Let's just start with, What's the importance of service critical classifications?

A. There are two primary important reasons. First of all, Proposition E mandates that we will designate those employees or those classifications within the organization that meet certain criteria that was specified in Proposition E. And in Exhibit 4, paragraph 2 it spells out those specific requirements or those specific provisions that should be taken into account. It also required us to do that prior to the formal implementation of Proposition E, which was in July of 2000.

And the Exhibit 5 is the board resolution designating all of the positions within the agency, including all of the positions represented by Local 200 at MTA, as service critical. The significance of that is two-fold. Proposition E gives MTA the ability to negotiate its own collective bargaining agreement separate and apart from the City for positions or classifications designated as service critical at our sole discretion. And it also provides further that employees designated as service critical shall be entitled to receive incentive bonuses for achieving of certain goals and objectives, as specified in Proposition E. I might add. It further gives MTA the ability to manage its own labor relations and human resources matters for service critical employees.

Q. So this bargaining unit, the Local 200 bargaining unit, is comprised entirely of service critical classes?

A. Yes.

Q. Now, you mentioned that Exhibit 8 --

ARBITRATOR HOH: 8?

MR. SLOAN: 8.

Q. -- previewed MTA's opening proposal and the three key goals that you had expressed.

A. Yes.

Q. The arbitrator cannot only read, but can read very quickly and thoroughly, so let's -- let's not -- let's not read anything here, but please do highlight to him the -- in your view, the most important aspects of Exhibit 8 as it relates to the issue of the assignment of work.

A. That would be on page 3 of Exhibit 8.

ARBITRATOR HOH: Under "Raising the Bar"?

THE WITNESS: Right, where we referred to it as raising the bar regarding the efficiency of MTA operations. And we spell out the reasons for doing that is namely, again, that in order for us to fulfill our objectives under Proposition E, it is important that we get the employees in this unit, the managers and supervisors in this unit, to recognize our responsibility to effectively raise the bar by utilizing the talents of those employees in those areas more effectively than we felt we currently were as a result of strictly seniority bidding as a way for employees to be able to be assigned, and further that we were identifying -- we had identified those four specialty unit areas that I previously named as ones where we felt that we had had sufficient difficulties in getting the right match of talent and -- and ability in those areas as opposed to what we call the general supervisory units of streets, station operations and municipal rail operations where we were less concerned about it, because it appears as though the bidding process is working rather effectively there.

So we're not proposing to change the bidding process for 9139s in those areas. It was only in these crucial core areas of schedules, training, dispatch and central control that were at the heart of operating the organization that we felt we needed to get a better match.

MR. SLOAN: Q. Let's -- for the arbitrator, let's quantify a little bit in here in terms of the number of 9139s we have how big a proportion they represent of the bargaining unit and also the number of -- roughly of 9139s in the four specialty units. Could you please turn to Exhibit 3? What is Exhibit 3?

A. Exhibit 3 gives a general -- is a general list of the employees in the Local 200 classifications who were paid as of the pay period ending April 8th. And it shows the breakdown of the number of employees by classification. 9139 shows it has a total of 182, and that's the target group here. And of the employees in the specialty units that we referred to, my best recollection is we're talking in the neighborhood of about 60 to 70 employees, I think, in those -- those groups.

Q. Sixty to seventy?

ARBITRATOR HOH: In that class you mean?

THE WITNESS: In that class, right.

MR. SLOAN: Q. So --

A. Maybe -- maybe more than that. But again, it's not -- most of the employees are not in the specialty units. Most of them are in the street operations than the other ones.

Q. So in the contract now, just to be sure we're all working off the same page now, you mentioned earlier that in -- under the present policy and practice, typically 9139 assignments are -- are chosen and made through a bidding process which features seniority?

A. Yes.

Q. Okay. And can you highlight to the arbitrator the key sections in the agreement that call for that?

A. That would be in the section called "Assignment of Work."

ARBITRATOR HOH: Which is --

THE WITNESS: Which is on page 15.

MR. SLOAN: We are looking at the --

MR. DE NARDO: Where are you?

MR. SLOAN: We're looking at Exhibit 9, I believe.

ARBITRATOR HOH: I'm using this. I assume that's okay, because it's just a little handier for me.

THE WITNESS: It's the same paragraphing.

MR. SLOAN: Same paragraphing.

THE WITNESS: Page 15, section 2C, paragraph 82 starting with "Assignment of Work."

ARBITRATOR HOH: Hold it. Okay. It's page 13 in this book, but nonetheless it's --

THE WITNESS: They're the same. It's the same --

ARBITRATOR HOH: Yes.

THE WITNESS: -- same paragraphs.

ARBITRATOR HOH: Article 2, section 2C, 82 through what? I'm sorry.

THE WITNESS: Through 113.

ARBITRATOR HOH: 113.

THE WITNESS: Approximately, yes.

ARBITRATOR HOH: Okay.

MR. SLOAN: Q. So please -- please walk Mr. Hoh through the existing way that 9139 assignments are made.

A. Under this -- the language under these provisions under the existing contract, at least every three years we are required to have what's called a general sign-up where all of the positions in the organization that are occupied by the 9139s -- the positions are put up for bid and employees --

ARBITRATOR HOH: All positions or all specialty positions?

THE WITNESS: All positions in the 9139 class. And employees in those classifications -- in that classification throughout the organization are allowed to pick and choose which area they want to work in, and based on their seniority -- they move based on their seniority. They get their pick by exercise of their seniority.

MR. SLOAN: Q. Now, what typically influences a 9139's choice of assignment?

A. Well, our experience is, and we feel, that it in many ways is largely motivated by the pay that's attached to the particular assignments. For

example, in certain areas there may be specialty premiums attached to -- like in central or training. And also there may be differing amounts of overtime that can be earned depending on the nature of the operation that you're going into as well as we note that employees sometimes choose their jobs based on which days off. If they, for example, want to have weekends off, training and scheduling would be an area that would be amenable to that choice.

So it -- it appears in many cases that employees pick their assignments based on the amount of pay that they can earn and/or a combination of the days off, less so than based on their interest and their background and skills and ability.

Q. Now, before we move ahead to the next general subject, can you please address the issue of the 50 percent limitation on -- on turnover that appears, for example, in paragraph 84 --

A. Yes.

Q. -- of the MOU? This is a subpoint, Mr. Arbitrator, because it's important to get the two places in context.

ARBITRATOR HOH: Just a second. We're talking about the second bullet point there in 84?

THE WITNESS: Yes.

ARBITRATOR HOH: Okay. Go ahead.

THE WITNESS: This --

ARBITRATOR HOH: I'm with you.

THE WITNESS: This is a paragraph in the current language that acknowledges between the Union and management that the schedule department, the safety -- I mean the training department and the central control are, in fact, different and special. And in previous negotiations the way we were trying to mimic turnover in these areas because of our concern about losing talent or turnover of talent, we placed a limitation of no more than 50 percent of the employees in those units could move under the general sign-up. That was an attempt on our part -- an earlier attempt on our part to keep stability in those units because the --

ARBITRATOR HOH: You're talking about the -- in the specialty units?

THE WITNESS: In those specialty units at that time.

ARBITRATOR HOH: Okay.

THE WITNESS: We were proposing to add dispatch. But that was the background on that. It was recognized by union and management that these were, in fact, core issues -- core areas and there was importance of keeping --

ARBITRATOR HOH: Okay. I understand.

THE WITNESS: -- stability there.

MR. SLOAN: Q. Now, over time has MTA come to the conclusion that the present mode whereby folks can sign up for work, including work in specialty areas, does not meet the interest of MTA nor the needs expressed in Proposition E?

A. Yes.

Q. Can you explain?

A. Again, as I've said previously, it appears that people have been choosing, even in these units, to move in and out of them primarily based on issues of concern about pay and/or days off more so than super ability and -- and/or interest in those areas.

Q. So how does that affect the ability of MTA to assure that the core functions in the specialty units are fulfilled as well as possible?

A. It affects it in the sense that we feel that the match of skills that are necessary and the kind of background and training that is necessary for employees moving into these areas is missing, and it presents certain retention and/or performance problems that we have seen in terms of attention to duty and execution of their responsibilities in those areas since they're there largely as a function -- motivated by functions other than performance.

Q. Okay. Now, you mentioned that there was an opening proposal framed around the interest that you've expressed. You've mentioned that accompanying the opening proposal was a further explanation of MTA's goals, including

why it was making this proposal. In the course of negotiations, did the parties -- well, let me put it this way: Did you discuss in detail those goals and make your best efforts to meet the -- to address the Union's questions and concerns about your proposal?

A. Yes.

Q. Can you explain?

A. We spent an extensive amount of time, first of all, acknowledging to the Union that we understood that this was a very important issue for them as well as for us, but at the same time it was important for them to understand the objectives and goals that we were trying to achieve, and it was important for us to work together to do that in a collaborative way to meet their concerns as well as ours.

And so we spent an extensive amount of time hearing from the Union and asking the Union specifically what concerns did they have with regard to seniority, appointments, placement, training, issues -- they raised issues of concern about favoritism or how employees would be selected. And so we spent a lot of time trying to -- from our perspective, trying to get an understanding of what the Union's concerns or objection would be to moving to a process similar to what we were proposing.

And during that process, the Union at one point gave us a letter that asked us specific questions that they were concerned about and asked us to respond to that, and we received that letter. And that's one of the exhibits.

Q. I'm about to get you there.

A. You're about to get me there, okay. And we received this letter. And this is after we had spent at least several days of us trying to understand all of the issues and concerns on their part, and then they gave us a letter posing certain questions that they wanted us to respond to, and we received that letter and prepared a response.

Q. Now, I'd like to ask you and the panel to turn to Exhibit 11B. 11A is a draft management transition plan accompanying MTA's assignment of work proposal, but 11B --

ARBITRATOR HOH: Is it so marked in my materials? I'm not seeing it there, at least so far.

MR. SLOAN: It isn't.

ARBITRATOR HOH: It's just a letter to Glenda, 11B?

MR. SLOAN: April 27, 2005.

Q. Now, if we look at 11B -- it's in four pages -- and I see that starting on page 2 there -- there's a section entitled "Questions and Answers," and that's -- that section, spanning three pages, addresses 22 questions.

A. Correct.

Q. Now, we'll bring the Union's letter in and have it marked soon. But did their letter, in essence, state the 22 questions reflected here?

A. Their letter stated specifically 20 questions, and in the course of us asking them questions about that letter in order to get clarification, on how to respond, they verbally added 21 and 22 across the table, so we responded to those as well.

Q. Okay. How much time passed between the time that they had made the request for information and when you responded?

A. One full day. We -- when we received the letter. We explained to the Union that -- obviously we wanted to give them a credible response and give consideration to it, and we asked for a full-day caucus on our part in order to address their letter. And we took one full day, prepared our response that is represented by this exhibit and gave it back to them the following day.

Q. All right. Now, at some time after April 27, did you have an opportunity to discuss your letter with them?

A. We -- the answer is yes, but we didn't -- we were not able to discuss that letter with them on the -- I guess it would have been the 27th when we gave it back to them, because the Union accepted the letter and indicated that they wanted to prepare a response to it. And I specifically asked them what was the concern that they wanted to prepare a response before hearing from us or hearing an explanation as to what we had in mind in our responses, and they indicated that, no, they would prefer to prepare a response, give it back to us, and then they would look at it or we could talk about our letter at that point.

Q. Did you later hear a response from them?

A. Yes, we later got a proposal from them, as I recall, the following day in which they were responding to our letter.

Q. Now, if we can then turn to 11A, the draft management transition plan, could you tell the arbitrator what this document is and what caused you to -- to bring it to the Union in negotiations?

A. Yes. Again, as I said, the proposal that the Union gave us back after we gave them the letter was essentially pretty much the proposal that they have on the table in this arbitration. And we expressed our concern about that proposal because, from our point of view, it did not reflect a full understanding of what we were trying to communicate our intent was in our response to that -- that letter. And, therefore, when we were discussing their proposal, we attempted to go through an explanation of some of the issues that we had in mind, and we spent some time illustrating on the board our process that we were doing, but it was kind of a disjointed process.

So at that point -- as I recall, this was on the 29th of April. Now, we had previously agreed when we started the negotiation, that we would negotiate for the full month of April up through the 29th and, failing reaching an agreement at that point, we would then proceed to arbitration. But on the 29th we felt that we were having productive discussions, and we asked for those discussions to continue into the following day on -- on that Saturday. And the Union took that under consideration, and we had an off-the-record -- off-the-record meeting with Glenda and International Vice President Sneed, who had joined the talks in that previous week. And without getting into details as to who said what or -- who said what, we did not proceed with the negotiations on Saturday. And so again, that's where we stopped.

We -- we had not really prepared Exhibit 11A. Over the weekend I personally became concerned about the fact that we had not been able to give a full explanation of what it was we had in mind.

Q. Excuse me. Before you do that, did MTA decline to meet over the weekend?

A. No, we were asking to meet over the weekend.

Q. Okay. Please continue.

A. All right. But we did not meet. And because I was concerned about that, I spent the weekend myself basically drafting the overview of 11A and came back to work on Monday prepared to discuss it with our team, and it was at that point we learned from Glenda by an email response to a letter that Mr. Sloan had sent to Mr. De Nardo indicating that our understanding was there would be no further meetings. And at that point we learned that the Union was interested in continuing to meet, and we agreed to meet on Monday, whatever day that was. I guess that would be the 2nd.

ARBITRATOR HOH: That would be the 2nd.

THE WITNESS: Since we prepared this document -- I -- I had prepared the document on my own. I had reviewed it with our team after the weekend to make sure my description was okay according to what we had talked about. And when we met on Monday, we presented this document to the Union as a more expansive illustration of what we had in mind about our assignment of work proposal, and we walked them through that extensively.

MR. SLOAN: Q. This was negotiations leading up to interest arbitration. Why did you feel the need despite the circumstances, to walk through this with them extensively rather than just going straight to arbitration?

A. Well, again, as I said, I had been encouraged personally by what I thought were productive discussions we had on the previous Friday and that perhaps, given an opportunity to flesh out more details of what we had in mind, perhaps that could have us lead to an agreement.

Q. Okay. So now let me correlate a few bullet points on 11A -- I'm sorry -- on 11B with your draft management transition plan. If you could go to page 2 of 11B --

A. Okay.

Q. -- we have bullet points under the proposed solution saying, "Our proposal is meant to help MTA meet the goals of Proposition E by --" and then it states three different goals "-- allowing MTA flexibility in assigning and reassigning the most critical personnel, according to their interests, skills and abilities; maximizing the

benefits of individuals' strengths and minimizing the impact of their weaknesses; focusing unit personnel on their own qualifications and development." How do those goals end up getting realized by the draft transition plan that you developed over that weekend?

A. In a number of ways, in our opinion. One of the big concerns expressed by the Union during the negotiations about any process that we might develop was the extent to which they would be involved in it.

Q. Yes.

A. And one of the overriding principles that is embodied in our proposed transition plan here, as it states on page 1, is that we would conduct this process in a purely and totally collaborative way under the auspices of our current union-management meetings.

ARBITRATOR HOH: Where does it say that? I'm now on the first page --

THE WITNESS: Page 1.

ARBITRATOR HOH: -- and I'm trying to find it.

THE WITNESS: Page 1 of 12A.

ARBITRATOR HOH: Oh, it's 12A. I'm sorry. I'm on 11.

THE WITNESS: I'm sorry. Our transition plan.

ARBITRATOR HOH: 11A, then?

THE WITNESS: 11A.

MR. SLOAN: Q. Does 11.82 refers to the UMM Committee?

A. In bold print there.

ARBITRATOR HOH: I see it here. It's not in bold print.

THE WITNESS: No. Right here, this first all capped paragraph.

ARBITRATOR HOH: Yeah, but he's -- Jeff is referring to the second 100A as the UMM, is what I understand he's asking you.

THE WITNESS: Yeah, but I'm saying in bold print up on top it says this entire process will be implemented under the auspices of the UMM. And the reason for that was to address the overall concern that the Union had expressed about, whatever we did in this regard when we were talking about changes, that they would want to be involved. So we were starting out by indicating that this existing committee that we have would be the kind of oversight committee which would involve the Union right up front in terms of the overall planning.

And in each of these subsequent steps of the process, the performance appraisal process, the qualifications appraisal process, the training development phase, the polling of interest phase, the qualifications assessment phase, we would have union responsibility in that -- in the process. And I can explain those in more detail, if you would like, but the point being, it addressed that overriding concern.

The process itself also involves and meets the other objective of capturing the individual strengths and minimizing the impact of their weaknesses by allowing employees to express interest in the specialty, whichever one they wanted to work in, and to provide a training -- minimum qualifications that would be jointly developed with union involvement in the process and would involve an assessment panel process with union involvements with the Union in the assessment panel, that is, evaluating employees who expressed interest in the specialty unit as to how well they met those qualifications, developing the training program that would enhance employees' ability to get training if they did not meet those requirements or, if they had future interest in them, we would specify what the training requirements could be or would be, and that would allow them an opportunity to do that.

And for those who felt they met the qualifications, that they would then be interviewed, assessed by a qualifications assessment panel, as provided for in section E, which would involve union participation on that panel. And that panel would be charged with the responsibility of determining from among those who expressed interest and had felt that they were qualified -- identifying those that seemed to meet those

Qualifications. And once that group had been identified, that would be then determined to be the qualified group, for whatever the specialty area that they had expressed interest in. And it would be from that

group of candidates that management would then have a right to choose employees for the assignments based on assessments of qualifications and the needs of the service. And it was at that point, in my best recollection, as to where Mr. Sneed said he let go of my hand and -

MR. SLOAN: Q. Could -- that's an interesting metaphor. Could you explain?

ARBITRATOR HOH: Mr. Sneed is the Union's --

THE WITNESS: He's the international --

ARBITRATOR HOH: -- vice president?

THE WITNESS: -- vice president. As I walked through the process, he had an interesting metaphor. In fact, I'll probably use it myself from now on. He says, "Okay. I'm holding your hand." And I would take --

MR. SLOAN: Q. Meaning what?

A. Meaning I was sounding okay. Everything seemed to be okay.

MS. LAVIGNE: You're agreeing, but --

ARBITRATOR HOH: No other comments. It's his testimony. Let's wait.

MR. SLOAN: Information is always okay.

ARBITRATOR HOH: I think I understand the concept. I don't think you have to explain it. It was fine if -- he was there with you up until that point; he wasn't thereafter.

THE WITNESS: Until we got to point F, is where he let go of my hand.

MS. LAVIGNE: So did we.

MR. SLOAN: Q. And in letting go of your hand, didn't say anything about why he was letting go?

A. Because the basic problem was, from his perspective -- as I understood it, is that that would be the point at which seniority would no longer be important and we would have the right to choose employees based on qualifications.

And from their perspective, it would have to be based on seniority.

Q. Why is it important from MTA's standpoint that once you go through this collaborative process with the Union and with employees, that the ultimate decision about who was selected for these specialty assignments would be based on an assessment of qualifications?

A. A number of reasons. First of all, as I explained in our discussions -- and I can't remember whether this is before or after Mr. Sneed left -- I explained that even among a group of qualified applicants there are some applicants who may have more attributes that are among the qualification criteria or better attributes, both personal and/or objective, than the minimum qualifications.

And so from a management perspective, we wanted to preserve the right to choose from among the employees on the qualified panels those who we felt were best suited in terms of the overall background, experience, interest and/or qualifications, taking into account the needs of the service. And that was a management prerogative we felt we had to choose in selecting those employees, and so we felt we could match -- better match the qualifications of the employees to actual assignments.

But we also pointed out that a part of our proposal includes that -- as long as we had qualified individuals on any of these qualified panels, that we would continue to use that panel to fill future vacancies as they existed in the future until such time as that panel was exhausted. If we got to a point where we either had no names or no list, then we would result to using the civil service list for that respective classification.

And I also pointed out and used as an example to illustrate the way in which this process would work a previous similar process that we had used when we had transitioned a program in the training department called the ambassador program where we had used a similar collaborative process where we had moved away from going outside by hiring a set of consultants to moving into the training department. And I gave them copies of the memorandum of understanding that the Union and the MTA or Muni at that time had reached in making that transition as an illustration of making this process work similar to that.

Q. Does MTA propose any particular financial incentive to 9139s who would be interested in bidding on the -- in qualifying for and getting into a specialty assignment?

A. Yes.

Q. What is that?

A. In each of the units, those specialty units now, there's a preview attached to that in our current proposal, and these arbitration proceedings propose to increase that from one fifty an hour to \$2 an hour.

Q. Now, to frame the information that we're going to be getting from others today and to make this as concrete as possible, I want you to tell us briefly what it is about each of these specialty units that makes it important that management have a right of assignment.

A. Okay. Again, it gives us the ability to --

Q. And go through them one by one.

ARBITRATOR HOH: Go through specifics. You've already given me general. Give me specifics. That's what he's asking for.

THE WITNESS: In central core, it is the central core hub or nerve control. It controls the dispatching on the street in both rail and cable car and bus and everything -- well, not cable car necessarily, but any others. But they're involved, and it involves a highly technical utilization of computerized equipment in the dispatching radio transmissions and communicating with operators in terms of dealing with emergency and other operational issues.

So like I said, it is the strategic air command center of the railway. And so the employees in those areas -- it's a -- it's a very confining environment, one might say highly stressed environment, and I think the Union and we agree that it's probably of the -- of all of the four specialty units, it might be considered the least desirable area.

And employees now get into that area as a result of inversely being assigned there because that's where other people don't choose to go, and they end up being forced to there on an inverse assignment basis as opposed to their choosing to go there in the training area.

ARBITRATOR HOH: Let me catch up.

THE WITNESS: Sorry.

ARBITRATOR HOH: Okay. Go ahead.

THE WITNESS: In the training area, again, I think union and management agree that this is a very, very critical and important area, and it's an area where the operators are trained when they're initially hired to be operators; so, therefore, the quality of training they get and the training skills that are needed by the trainers in there are critical. And they also do training in the other operations areas with even the other employees in the organization with regard to operational issues.

And so in the training area it requires skills other than just being an expert operator or expert technician, for lack of a better word. It requires interest in training. It requires the ability to deliver and develop curriculum and prepare programs and deliver those programs. It requires the ability to be effective in the classroom in imparting that knowledge, et cetera. In fact, one of the reasons that we use the Ambassador Program outline as an example is because they have developed criteria of all the personal qualifications and all the other attributes that they felt were necessary to be a good trainer.

And again, as I said, union and management generally agrees, and it's one of the areas that we generally get a lot of complaints from union people, about the quality of trainers not be as good as it used to be in the good old days they describe because a large number of the people who are in training there are there as a result of you inversely being -- ending up there as a function of being inversely assigned on their low seniority as opposed to choosing it.

In the schedules area I'm less familiar with that personally, but that function has changed over time where it used to be a highly manual process involving the old -- whatever. Anyway --

MR. PACULBA: Visor.

THE WITNESS: Green visor type of operation, pencil, paper operation. Now, it's evolving into much more of an automated commuter process, which requires employees to be very computer literate, to have skills and interest in doing that kind of work, to be able to see big pictures with regard to the interrelationships between schedules and operations, et cetera.

And the last one is the dispatch area, which, again, as I recall, the Union may have indicated that in their opinion this may be the area most -- the area needing the most change. But these are the individuals who operate out of each of the respective operating divisions.

We have seven operating divisions, and that's where the vehicles are dispatched from to service. And these individuals are responsible for working with the operators, being sure that they are dispatched and assigned, tracking their attendance, going and coming, giving their instructions, dealing with any issues of absence and miss-outs and stuff like that. And in effect, basically they're like second in running the division as compared to the division manager.

So these are some of the attributes, some of the various aspects of those four areas that are critical. And as I say, they are largely areas where we have ended up with a number of people in those areas, not based on their qualifications, but based on inverse assignment.

MR. SLOAN: Q. Anything further on the subject?

A. No, I don't think so.

MR. SLOAN: That concludes the direct examination.

ARBITRATOR HOH: Cross-examine?

MR. DE NARDO: Yes, I have several questions, but I first need to just -- I have my own questions, but I want to --

ARBITRATOR HOH: Five minutes enough?

MR. DE NARDO: Not even five, unless they're going to take five.

ARBITRATOR HOH: No, I'm not letting them out of the room.

(A recess was taken from 2:54 p.m. to 2:15 p.m.)

ARBITRATOR HOH: Back on the record. In the off-the-record discussion, we have had marked and generally described a number of union exhibits which I will attempt to describe briefly for the record. Union Exhibit 62 is the general sign-up announcement. Union Exhibit 63, a 9139 Transit Supervisor job description.

Union Exhibit 64, what we have denoted as the 9139 G.S.U. choice slip. Union Exhibit 65, the general duties of the 9139 Division Dispatcher. Union Exhibit 66, the general duties of the 9139 Operation Control Dispatcher. Union Exhibit 67, the Cable Car division 9139 responsibilities and duties. Union Exhibit 68, the 9139 Instructor duties. And Union Exhibit 69, the 9139 Schedulemaker duties.

Is that basically correct? And I'll just ask the Union first.

MR. DE NARDO: Yes.

ARBITRATOR HOH: And from an authentication perspective, is there any dispute on these, just out of curiosity?

MR. SLOAN: I think not.

ARBITRATOR HOH: Okay. Thank you.

MR. DE NARDO: I can start with --

ARBITRATOR HOH: Okay.

MR. DE NARDO: I can -- I can start --

ARBITRATOR HOH: Let's do it.

MR. DE NARDO: And when they come in -- I'm going to do one portion, and if I stop, you know why.

ARBITRATOR HOH: All right. Fair enough.

RECROSS-EXAMINATION BY MR. DE NARDO

MR. DE NARDO: Q. There was some testimony that you gave --

ARBITRATOR HOH: Here it is, Scott, for what it's worth.

MR. DE NARDO: Well, we'll wait on it.

ARBITRATOR HOH: Yeah.

MR. DE NARDO: Okay. Thank you. I guess we'll do it right now. Okay. This is Union 70.

ARBITRATOR HOH: Okay.

MS. LAVIGNE: Okay. Larry.

MR. DE NARDO: Yeah.

ARBITRATOR HOH: And what do we call this?

MR. DE NARDO: This we would just call memo -- memorandum regarding the ambassador training, the training program.

ARBITRATOR HOH: Okay. We're still on the record. That's in as the description at this point. Go ahead, then.

MR. DE NARDO: Yeah, and that's 70.

ARBITRATOR HOH: And that's 70.

MR. DE NARDO: I guess the first thing is I'll offer Exhibit 70.

Q. Larry, can I have you look at --

A. You're starting off with Exhibit 70?

Q. I'm starting off with Exhibit 70. Can I have you look at page 2 of Exhibit 70? And if you could take a moment and read over page 2.

A. Are you referring to literally page 2 or page 2 of the memo?

Q. Page 2 of the exhibit, which is actually not denoted by any page number.

A. Is that the page where the signatures are?

Q. That's correct.

A. Okay.

Q. It starts off, "Memorandum of Understanding between TWU Local 200, the Municipal Transportation Agency and the Muni Improvement Fund."

A. Right.

Q. And if you'd just take a moment to read that MOU.

A. Yeah.

Q. Okay. This MOU states that the -- correct me if I'm wrong. This MOU states that the Ambassador Training the Trainer program, quote, shall not be cited as precedent by either

party in future negotiations, end quote, from the second paragraph there. Is that what it states?

A. Yes.

MR. SLOAN: Objection. Well, never mind.

MR. DE NARDO: Q. And what is your understanding of the meaning of this paragraph?

A. That we will not attempt to use this as a basis for implementing another program similar to this.

Q. Did -- this agreement, does it not -- this agreement -- is it not your understanding that this agreement is -- regarding the Ambassador Training the Trainer program is not to be entered into the context of this environment, these negotiations here, pursuant to this paragraph, as precedent?

A. That is not my understanding, no.

Q. Okay. Because you had cited to the Ambassador Training the Training -- the trainer program as precedent and/or an example of a way to implement your proposed G.S.U.

A. That mischaracterizes the way I presented it. In fact, we had this discussion at the table. I can't remember whether you were there or not. And I indicated very clearly that I was aware of that statement, but we were simply using this as an illustration of how our program could operate, and I was trying to use this as an example of -- to explain what we meant by qualifications panel, assessment of criteria, et cetera, not using this as an example or a precedent for doing that.

It was simply -- I thought it made sense since the Union was aware of this -- or I assumed the Union was aware of this, and it addressed an approach to choosing employees based on qualifications and whatever, that by the fact that we had done that in this program when we had had to specify -- identify criteria, et cetera, that it might be helpful and illustrative to them in understanding the concept and the approach that we were thinking about using at this time.

But I was not using it as a precedent because I, quite frankly, cannot imagine that we would do it precisely this way. It was an example of how a previous program was done in similar situations -- situation, and we talked about that openly at the time I introduced it. In

fact, as I recall, Mr. Sneed was the one who pointed that paragraph out.

Q. Okay. What I want is to ask you about Proposition E for a little bit. There's -- you testified as to the importance of Proposition E, and nobody here can -- you know, all of us here at the table agree that Proposition E is important to the MTA and to the citizens of San Francisco.

Do you -- you're aware that management, as one of the members of the management team, has been proposed -- proposing to bring in Proposition E language into the collective bargaining agreement that is before this arbitrator, and I have a couple of questions for you concerning Proposition E and concerning language in the contract, and that's what I'm going to ask you about first, and then I'm going to move on to the general sign-up items.

ARBITRATOR HOH: I'd appreciate no objection dealing with scope of direct. Let's move forward.

MR. DE NARDO: Q. All right. The -- does management produce documents, such as an EEO document or a sexual harassment document, that employees have to sign, such as guidelines or rules or regulations regarding such topics?

A. When employees are employed, they sign certain documents, like confidential documents, depending on where they're working. They sign an agreement and acknowledgment of violence in the workplace policy so they'll be aware of that. Those are two that I can think of offhand that they acknowledge their understanding and acceptance of the terms and conditions of those documents which are part of City policy.

Q. Could management not produce a document similar to those documents and distribute them to the employees and have them sign the documents, as you indicated, so that they have read them, understand them?

A. Are you asking me could we do that?

Q. Yes.

A. Of course. I assume we could.

ARBITRATOR HOH: Dealing with proposition E; is that the question you're asking?

MR. DE NARDO: Q. Dealing with Proposition E?

A. Yes, I assume we could do that.

Q. I'm going to move on to the G.S.U. stuff. You had stated in your direct that Local 200 is an entirely service critical class union, and as part of the rationale behind the general sign-up language that management is proposing, a lot of that has to do with Proposition E and the fact that these individuals are service critical. Are the -- the members of TWU Local 250A a service critical class?

A. Yes.

Q. Are there not mechanics, car cleaners and engineers who are a service critical class?

A. Yes.

Q. Do those folks, meaning those that I have just mentioned, TWU Local 250A, the mechanics, car cleaners and engineers -- they have -- do they not have general sign-ups?

A. The operators have a general sign-up. I'm not sure whether the mechanics have a, quote, general sign-up. Maybe they do sign up for different jobs, but I think the answer would be, generically, yes.

Q. And those units also have seniority rights, do they not?

A. Yes.

Q. Are you proposing something similar with any of those service critical units other than 2 -- Local 200 --

A. Well, those contracts --

Q. -- involving --

A. -- those contracts are not open for negotiation at this point, and the Local 1414 contract, which was just completed, is a contract of mechanics and technicians. The reason we're proposing the language here is -- as I previously stated, is because of the criticality of the role and responsibilities that the members of this union play in directing and supervising the work of those types of employees in carrying out the

Proposition E goals. The role and responsibility here is vastly different than a mechanic or an operator, who's functioning as an individual.

Q. Okay. I'd like to turn your attention to Exhibit -- Union's Exhibit 60 -- let's see. 60 -- let's start with 62. If you could just review that document for a second.

A. Okay.

Q. Okay. Have you seen this document before?

A. No --

Q. Okay.

A. -- not prior to this meeting here.

Q. Okay. What -- what is your understanding of what this document is?

MR. SLOAN: Objection. Lack of foundation.

ARBITRATOR HOH: Is there somebody else who is going to testify who is better to answer that question? You've got two people.

MR. DE NARDO: Well, what I'd like to know -- why don't I just turn his attention to -- I would like to get Larry's testimony as to how number 2 on page 1 works. I want to sort of have Larry walk us through how assignment choices are handled.

ARBITRATOR HOH: If he knows.

MR. DE NARDO: If he knows.

ARBITRATOR HOH: Fair enough.

THE WITNESS: I do not know how that works.

MR. DE NARDO: Okay.

Q. Can I have you turn to Exhibit -- Union Exhibit 64?

A. 64?

Q. Yes. So this is the G.S.U. choice slip. Do you know how the G.S.U. choice slip works?

A. Not specifically, no.

Q. Okay. Can you turn to Exhibit 65 through 69? There are various job duties and responsibilities of various 9139 positions within the MTA organization. And just generally speaking about these general duties that are Exhibits 65 through 69, do you know why the general duties and responsibilities of each of these positions is indicated separately rather than as a general classification?

A. I could give you my understanding of why, if that's the question you're asking.

Q. Well, what I'd like to know is, Are these general duties and responsibilities used in the G.S.U., the general sign-up, yes or no?

A. I accept your representation that they are. I do not know that of my own personal knowledge.

Q. Okay. Who would know how the G.S.U. works and how these documents play a role?

MR. SLOAN: We will be calling a witness on that.

ARBITRATOR HOH: He's asking who will know.

MR. DE NARDO: I'm asking Larry who would know.

THE WITNESS: One of the operations superintendents or supervisors.

MR. DE NARDO: Okay.

Q. Larry, how long have you been with the MTA here?

A. A little over five years.

Q. Okay. I'd like everybody to look at the current collective bargaining agreement, which appears multiple places in the record.

ARBITRATOR HOH: Okay. I'm using this one, for what it's worth, the green one.

MR. DE NARDO: Q. And turn to -- hang on a sec -- paragraph 96 and 97, and if you could take a moment, Larry, and read those paragraphs.

A. Do you want me to read them out loud?

Q. No, just to yourself.

A. Oh, okay. 96 and 97?

Q. Yes, 96 and 97.

A. Okay.

Q. Paragraph 96 states that employees changing work assignments to another group or division will be trained. Do you know of any training that occurs when individuals transfer to other groups or divisions within the 9139 classification?

A. Do you mean once they sign into a --

Q. Once they sign into a group. Let's say they're going from dispatch to Central Control, if they are trained on what their job duties would be in Central Control.

A. If you're asking me do I know what specifically they are trained on and how they're trained, the answer is no.

Q. Right. And what I'm asking you is, Generally, does MTA provide training to 9139s when they move within the 9139 job classification to other units or divisions within that classification?

A. The answer would be, yes, I know there's some training going on. But if you're asking me specifically what it is, I cannot answer.

Q. Okay. If an individual does not work out within a group or a division -- let's say if they don't work -- if they go to central control and they don't work out, they don't qualify for the job, doesn't management have three months to kick the person back?

A. Yes.

Q. Okay. Are you aware if MTA has ever removed a person from a position because they haven't worked out within the three-month period in which MTA has?

A. Well, you add "within the three months." I do not know specifically the answer to that. But the answer to the first question is, yes, I do know we have not accepted employees who are not doing satisfactory jobs.

Q. But you have three months to move them out --

A. So I do not know whether or not the situations that I have in my mind are relevant to this process.

Q. Okay.

ARBITRATOR HOH: It sounds like the operations people might be better people to ask that question of --

MR. DE NARDO: Right, that's true.

ARBITRATOR HOH: -- which is not that surprising, to me, anyway.

MR. DE NARDO: Q. Are you aware that this union has been requesting to meet with management on several occasions to work out a training program?

A. The answer is yes, and I've been involved in some of those discussions.

Q. And what has been the result of those discussions?

A. We've produced a training program.

Q. I want to go to your Exhibit 11, which is the assignment of work proposals to Local 200.

ARBITRATOR HOH: 11A or B?

MR. DE NARDO: 11A.

ARBITRATOR HOH: All right.

MR. DE NARDO: Q. How long do you realistically think it would take MTA to develop this, well, what's contained in Exhibit 11A, which is, I guess, a proposed outline of how they will implement their G.S.U.?

A. The answer I gave to that question during the negotiation was that would be determined by the group -- union-management group involved in that process, but that it obviously would take months.

Q. Months meaning how many?

A. I do not -- I did not give a specific answer to that because I do not know how many months. I

indicated that obviously it wouldn't take on July 1 of 2005, but it would take a collaborative process some time to develop. I did not attempt to be more specific than that, nor will I here.

Q. You can't give me an estimate?

A. No, because that's to be determined by the group, the collaborative process, which is what we're setting up. That would be a better way for that to be determined, by the people who are making this happen as opposed to me, an individual.

Q. Okay. You are obviously familiar with the Union's proposal on the G.S.U., which also calls for management and union meetings to work on improving the general sign-up system?

A. You're talking about the current proposal?

Q. The current proposal, yes.

A. Yes, it provides for 18 months.

Q. Correct. Do you feel that that's not sufficient time, or is that too long, too short? What's wrong with 18 months?

A. My generic response would be that's too long in terms of what we have in mind here because, as I explained to the Union, a number of these phases would go on simultaneously, not linearly. So while there are five or six steps here, once the initial appraisal process had been completed, the process of determining qualifications and setting up qualification assessment panels and employees expressing interest, all of that could be going on at the same time. And it -- while it would take some time, personally I feel it could be done in less than 18 months.

But again, I'm not going to put a time limit on myself because the very essence of what we're proposing here is to be a part of the collaborative process to make that happen, but it should be done within a reasonable time, and I think 18 months is more than -- it's too long. It would take that long --

ARBITRATOR HOH: I apologize. I was looking at the proposal itself during the comments about the 18 months. Where does that come from?

MR. DE NARDO: The 18 months comes from the Union's proposal.

MS. LAVIGNE: It's our proposal.

ARBITRATOR HOH: Which one is that? Is that about the training?

THE WITNESS: That's their assignment of work proposal.

MR. DE NARDO: That's our assignment of work proposal.

MS. LAVIGNE: Our counter.

MR. DE NARDO: Q. Your proposal on 11 -- in 11A, it looks like it calls for several different panels and groups. And you had just testified -- you had just stated that you anticipated that this would be simultaneously occurring in order to implement this program as quickly as possible.

A. I said some of the steps could be done simultaneously. 11A is -- would be a critical first part that would have to take place, as well as 11B, before the other pieces could take place. But once that had been done, the remainder of phases could begin and could be going on simultaneously.

Q. Okay. Does MTA budget for these committees and panels? And if so, could you point to me in the budget where this -- this collaborative process you have spelled out --

A. No --

Q. -- appears?

A. -- we don't budget for this. This would be simply a function of people doing this as a part of their regular duties and responsibility. This is not an extra expenditure of time and staff. This is just assigning this to people who might be doing this in lieu of something else they're doing. It's no different than the committees that are operating right now.

Q. How many people are on your committees right now?

A. That would vary depending on the committee.

Q. How many people do you envision being on these committees and panels?

A. It depends on which one you're talking about. The -- the -- each of these panels, probably at maximum, in my opinion, could be composed of probably no more than five people.

Q. Couldn't MTA -- this is a hypothetical. I know it's a hypothetical. I'll get a hypothetical response from you, and that's fine. What is -- I -- I fail to see what the problem is with -- with -- you're calling for UMM meetings on implementing a G.S.U. that you're proposing, yet it seems as if your G.S.U. isn't well thought out because you have this memo that says this document is -- in 11A it says, the very first sentence, this document is a working draft of a management work plan for implementation of the proposed new assignment system.

MR. SLOAN: Is that a hypothetical or a statement?

MR. DE NARDO: Well, this is --

ARBITRATOR HOH: Let's let him --

MR. DE NARDO: Let me finish.

ARBITRATOR HOH: Please.

MR. DE NARDO: Q. So the hypothetical is, What's wrong with going -- hypothetically speaking, what's wrong with keeping the contract with the existing language now and working out the G.S.U. and the new assignment provisions in a UMM in between contracts rather than being time pressured within the context of this environment to force something down the Union and management's throat by a neutral third party?

A. We're trying to do just the opposite, not force something down the Union's throat. We're proposing a collaborative process which would mitigate against it being forced. One of the points I emphasized repeatedly during the negotiations is that the best way to work out this process would be to try and work it together where both sides were committed to making change for the betterment of the organization.

The reason that we want to do it now as opposed -- or do it as a part of the contract as opposed to otherwise is because we want to do it. We want to make the change. We don't want to

have the change subject to your proposal or mutual agreement saying that if you don't agree, we cannot make the change. We feel that we have a management prerogative to determine and assign people how to work and determine classifications and all of that. But I emphasized during the negotiations that the best way for us to do this would be to work it together.

Q. Then why are we here?

A. Because you don't agree with our proposal, and we don't agree with yours.

Q. Then we're not working together, are we?

MR. SLOAN: Objection. Argumentative.

ARBITRATOR HOH: Let's move forward, please, on both sides.

MR. DE NARDO: Okay.

Q. Would it surprise you, Larry, that a process similar to what you're proposing that you brought before this arbitrator was how the general sign-ups worked pre-1981? I guess in 1981 there was a change to the current system.

A. I was advised by the Union of that, yes.

Q. Okay. And do you know why that change was made?

MR. SLOAN: Which change?

MR. DE NARDO: Q. The change to the current general sign-up back in 1981?

A. I know what the representations are, but that's all I know.

Q. Okay. You had stated that management was trying to work out this proposal with the Union. And, you know, because we're here, we're here. But negotiations started April 12th, I think you testified, correct?

A. I would consider that to be the beginning of the negotiations, yes.

Q. And now it's what, May 9th?

ARBITRATOR HOH: May 10th.

THE WITNESS: May 10th, right.

MR. DE NARDO: Q. Less than a month later we're here over G.S.U. language that the Union has had less than a month to consider, drastically altering their unit, correct?

A. Which is why I was proposing a collaborative process to make the change over time in this contract.

Q. How does your proposal protect the seniority of members of the 9139 classification?

A. How does our proposal --

Q. How does your -- show me where in your proposal -- how it protects the seniority of those individuals within the 9139 classification.

A. Once they are in the specialty units, based on implementation of this process, they would exercise their seniority to choose their days off and shifts.

Q. But they would not be allowed to use seniority to move to another unit?

A. Under our proposal, that would not be the -- the emphasis point, right.

Q. That would not be the --

A. That would not be the controlling basis for selecting people into the unit.

Q. And the controlling basis would be...?

A. Qualification and assessment of ability, skills and needs of the services.

Q. Okay. Now, who would determine that?

A. Management.

Q. Solely in the management's prerogative?

A. When it got to that point, yes.

Q. Would it be the immediate supervisor? Would it be a -- the specialty unit head? Who -- who would make that choice?

A. Those decisions have to be made. We don't -- we haven't made those decisions yet. But it would be someone who normally makes

appointments or selections of employees for those units.

Q. Okay. Who hasn't made that decision yet? Management?

A. We -- we have put forward a proposal as to how we might proceed in this, but we have not identified specific individuals as to who would make those decisions once we got to that point.

Q. So your language that you proposed for the contract is technically incomplete because you haven't thought out how it's going to be implemented?

A. We have suggested that we do it together.

Q. Then again I ask you why we're here if we're supposed to be doing this together.

MR. SLOAN: I object on the basis of argument -- that it's argumentative. And do I need to get argumentative in return for this to move ahead?

ARBITRATOR HOH: It is. I understand the point. Let's move forward.

MR. DE NARDO: Q. I believe there was some testimony on individuals not working out within the classification of -- and this being part of the problem. Have -- has the MTA identified who the underperformers are within the department?

A. No, that would be the purpose of starting the appraisal process, which the Union was most interested in.

Q. And what would be done to retrain those individuals?

A. The individuals, as it says in section A of proposal. Transition plan, would be trained -- the supervisors and managers who would be responsible for bringing in appraisals would be sent to training, how to do a proper appraisal, and we proposed and suggested we do that utilizing the City's current system, which is run under the auspices of the City's human resources department.

Q. So you're proposing not getting rid of -- let's say somebody -- you identify somebody as an underperformer in central control. I'm just using them as an example. And you're proposing that

there is an implementation in your proposal that there will be some retraining done if they're an underperformer or not living up to expectations?

A. Our proposal suggests that those employees so identified will be given a performance improvement plan and given some reasonable amount of time to correct any deficiencies that were identified at that time and their performance review evaluated at the end of that interval. And, given they were making progress, obviously I assume they would continue to be allowed to make progress. Given they were not satisfactory, then we would exercise other options, if their performance was sufficiently unsatisfactory, to remove them from the unit.

Q. Okay. Can you show me where in your proposal that the --

ARBITRATOR HOH: In the proposal, not in this document. That's -- I mean, that's the question I'm asking. I'm looking for it myself.

MR. DE NARDO: Q. Where is it, I'd like to know.

A. It's not in the proposal. This is -- this is where we specify how we would plan to implement the proposal.

Q. Okay. Well, can you please point out where this language --

A. 8A.

Q. -- is on retraining?

ARBITRATOR HOH: 8A. That's not the proposal, though. That's this.

THE WITNESS: Right.

ARBITRATOR HOH: He's asking the question in the context of the proposal.

THE WITNESS: It is not.

ARBITRATOR HOH: And frankly, I'd like to see it as well.

THE WITNESS: It is not in the proposal. It is in this working draft.

ARBITRATOR HOH: All right.

MR. DE NARDO: Q. This working draft can change, no doubt, correct? Obviously you can delete things, add things?

ARBITRATOR HOH: It's argumentative. Let's move on.

MR. DE NARDO: Q. Is there an appeal process that you have in mind?

A. For what?

Q. For underperformers who have been retrained or individuals that have been identified as underperformers?

A. The current contract provides that performance appraisals are not subject to grievance or disciplinary process -- I mean the appeal process. And that would apply here as well.

Q. So there's currently not a training program that's in place for any of the four specialty units?

A. That is not my testimony. I do not know what they specifically are.

MR. DE NARDO: Okay. Can we go off the record?

ARBITRATOR HOH: Yeah.

(Discussion off the record.)

ARBITRATOR HOH: Back on the record. In an off-the-record discussion, the arbitrator asked the parties for a -- ideally a stipulation on the number of dates on which the parties had met in negotiations for this contract. We have now done that with a -- in joint Exhibit 8, which is a originally printed document from Mr. Sloan to the arbitrator and Ms. Lavigne and Mr. Williams, and we have added some additional dates to that consistent with when the parties met subsequent to the date of this letter. Is that correct, gentlemen?

MR. SLOAN: Yes.

MR. DE NARDO: Yes.

ARBITRATOR HOH: Thank you. That's joint Exhibit 8. Any redirect, Mr. Sloan?

MR. SLOAN: Yes.

ARBITRATOR HOH: Go ahead.

REDIRECT EXAMINATION BY MR. SLOAN

MR. SLOAN: Q. Mr. Williams, was the Union supportive of your entire proposed approach except for the issue of seniority?

A. It was our understanding that they liked essentially -- as I said, Mr. Sneed said they were holding my hand until we got to that point, and we took that to mean that otherwise things were okay up to that point.

Q. Based on your experience in management and on your overall life experience, is it a good idea to attach an 18-month time frame for completion of an important project?

A. No.

Q. Why not?

A. Again, it is -- first of all, I think it's too long to get the work done, as well as the fact that in order to move the project, the quicker you can do that, the better, and it lends to implementing the change as quickly as possible in getting along with the change.

Q. Now, in terms of the questions from Mr. De Nardo about couldn't you distribute this proposition and the information via some sort of unilateral distribution to employees rather than through the collective bargaining agreement, do you think that doing it through the collective bargaining agreement is better than a unilateral distribution by management?

A. Yes.

Q. How so?

A. Because it represents the collective bargaining agreement between the Union and management, which is an agreement between the leadership of the two organizations committing themselves to the terms and conditions of the contract. The members will have copies of the contract, and by that way they get knowledge of the agreement and the basis on which management agreed and agreed to work together.

Q. Could you affect the change in bidding procedures that are reflected in your proposal without collective bargaining?

A. No.

Q. Could you affect a change in premiums reflected in your proposal without collective bargaining?

A. No.

ARBITRATOR HOH: I'm sorry. How is that different than the first question? Maybe I just missed it.

MR. SLOAN: One was bidding procedures and one was premiums.

ARBITRATOR HOH: Thank you.

MR. SLOAN: Q. Is three months, in your view, enough time to determine whether someone newly assigned to one of these specialty areas is going to cut the muster or not?

A. It's early enough -- well, the three months I referred to here was based on the assessment of the current people who are doing it now --

Q. Okay.

A. -- and have been doing it for the last two-plus years.

Q. Okay. Excuse me just one second. Can I ask you to turn to Exhibit 97?

MR. DE NARDO: Exhibit No. --

MR. SLOAN: Q. I'm sorry. Paragraph 97 in the collective bargaining agreement.

A. I'm looking for the contract.

ARBITRATOR HOH: Here. You want this one?

THE WITNESS: Thank you. Which paragraph?

MR. SLOAN: Q. Paragraph 97.

A. All right.

Q. The status quo is paragraph 97 in connection with accepted performance levels, correct?

A. Yes.

Q. So 97 dictates what happens -- what your limitations are when employees who have signed up for a changed work assignment do not meet performance levels within three months?

A. Correct.

Q. And it indicates that such employees, if they've worked satisfactorily in a previously assigned work site, may be allowed to return to the previously assigned work group or division?

A. Correct.

Q. Okay. Now, do you consider that language to be sufficient to protect MTA's interests when it's dealing with an employee who is not doing well enough in the assignment?

A. No.

Q. Why not?

A. Because it simply returns them to another job as opposed to requiring them to perform satisfactorily in their current position, and we then are left with a hole to fill under the current system. And the way we would fill the hole under the current system is to essentially inversely assign someone back into that slot, probably against their will, who also will have not a good chance of probably being successful either.

Q. Is the limitation in paragraph 97 indicating that if the employee is not working out in one place, that the employee will return to the previously assigned work group or division appropriate from your standpoint?

A. No, we -- we would think that the person should be held -- well, in the sense that if they are not working out where they are and they had previously had satisfactory performance in another area, it's releasing them from probation, and they return back and perform satisfactorily.

Q. And there might be circumstances where you would -- where you would prefer to have that employee try another work site?

A. Yes.

Q. What about the three-month limitation; do you view that as being problematic?

A. Yes, it's probably in the specialty unit areas not sufficient, quite frankly, to do a total comprehensive assessment of whether or not they are capable of performing satisfactorily.

Q. In your years of experience in management, have you seen people who have had good performance over the years suffer severe laxness in performance thereafter?

A. Yes.

Q. Does this address that phenomenon?

ARBITRATOR HOH: "This" being what?

MR. SLOAN: Q. In other words, the language - the limitation in paragraph 97 giving you three months to determine whether someone is able to perform or not, does that address the phenomenon that we just talked about?

A. No, it does not.

Q. Thank you. Now, in terms of joint Exhibit No. 8 --

A. Okay.

Q. -- maybe we could just walk through the chronology here a moment.

MR. DE NARDO: You know, objection. Exhibit 8 is a document that is a joint exhibit. It speaks for itself. We don't really need to go through it. It lists the negotiation dates. I had asked the arbitrator whether or not he -- off the record, whether or not he wanted me to get into this he said/she said stuff over negotiation dates, and I really don't think it's relevant.

ARBITRATOR HOH: He's -- he asked a question about chronology, and I'm going to assume that's the scope of the question. You're right, because I'm not interested in he said/she said. And if that's the testimony, I'm going to cut him off.

MR. SLOAN: Q. As of -- as of Friday night, April 30th, it was your understanding that the Union was declining further negotiations?

A. Yes.

Q. As of April 30th -- on April 30th your counsel sent the Union a letter saying, "Geez, we understand that we're not going to continue negotiations"?

A. Correct.

Q. The first page of joint Exhibit No. 8, as of Monday, May 2nd, Glenda Lavigne responds by saying, "There was a misstatement. Let us continue meeting"?

A. Correct.

Q. Yet the last page, a leaflet from TWU, which bears the date on the bottom left of May 1st, indicates that there was an impasse declared on Friday, April 29th?

A. Correct.

Q. Did you declare an impasse on Friday, April 29th?

A. No.

MR. SLOAN: No further questions.

ARBITRATOR HOH: Redirect -- excuse me. Recross?

RECROSS EXAMINATION BY MR. DE NARDO

MR. DE NARDO: Q. Larry, you're not familiar with the City charter impasse procedure? Are you familiar with them?

A. Yes, I'm familiar with them.

Q. Okay. When we selected an arbitrator and had begun these proceedings, were we not at impasse?

A. We selected an arbitrator in anticipation of the fact that we did not -- were not successful in the negotiation avoiding an impasse, yes.

Q. Did you not state at any point during the negotiations that you were at impasse?

A. I indicated that per the City chart --

Q. I mean, yes or no, did you or did you not state that we're in impasse during negotiations?

A. And the answer is yes, and I want to --

Q. "Yes"; that's all. Just as a yes or no.

MR. SLOAN: Excuse me. But counsel doesn't have the --

MR. DE NARDO: You did it yesterday. I'm doing it today.

MR. SLOAN: Excuse me.

MR. DE NARDO: You can follow up.

MR. SLOAN: That's because I asked genuine yes-or-no questions.

MR. DE NARDO: This is a yes or no.

ARBITRATOR HOH: I want to move on, please.

MR. DE NARDO: Q. Did you state there was an impasse? You followed it up --

ARBITRATOR HOH: The objection is noted. I don't want to go too far in this because I really don't care, and it's only his opinion, in any event. I'm getting more surly as the day goes on. I recognize that, and I'm only pointing it out in that I recognize it.

THE WITNESS: I understand that.

MR. DE NARDO: Q. Larry, why didn't MTA come up with a proposal to change the three-month probationary period with -- with -- that MTA has to assign -- you know, to reassign somebody in a unit if it's such a problem, as you testified on direct?

A. Because that was not the only part of our problem.

Q. Right. But why didn't you remove it? It's a part of your proposal. It's still in there.

A. What do you mean, why didn't we remove it?

Q. It's still in your -- your G.S.U. language, accepted performance level an employee who -- it's now your paragraph 97 -- an employee who has signed up for a changed work assignment in another group or division, and it talks about the

three months. Why -- if that was such a problem as you testified on direct, why didn't you cross -- strike it in your proposal?

A. Because we feel that, given the opportunity to better choose and determine and selecting employees going into those units, we'll have a better chance of getting people who might be successful, and, therefore, we will have -- there will be less of a problem for us to determine whether they're satisfactory or not.

Q. Do the employees have any say over which unit they would like to go in?

A. Under our proposal?

Q. Correct.

A. Yes, they have an opportunity to express their interest in those areas in which they would be evaluated to go into under section --

ARBITRATOR HOH: It looks like it's 2C1.

THE WITNESS: No, it's D, under section D.

MR. DE NARDO: Q. Just as a clarification, this is not your proposal, correct? This is your outline of your working draft of implementation?

ARBITRATOR HOH: I'm -- this is what we're talking about, I think, isn't it?

THE WITNESS: No.

ARBITRATOR HOH: I understand, but he's asking about the contract and proposal.

THE WITNESS: No, it's not in the proposal.

MR. DE NARDO: Q. Right. It's not in there.

A. Right.

Q. Isn't there an easier way to do the G.S.U. sign-up that you have proposed?

A. I don't understand your question.

Q. Are you familiar with the Civil Service Commission rules?

A. Some of them, yes.

Q. In those rules is there not a procedure spelled out for reclassification of employees who are service critical?

A. Yes.

Q. Why isn't MTA following the Civil Service Commission rules and classifying 9139s into four specialty groups?

MR. SLOAN: Objection. Mischaracterization.

MR. DE NARDO: How is it mischaracterizing?

ARBITRATOR HOH: He's asking a question. You're not doing it pursuant to the Civil Service Commission, at least at this point.

MR. SLOAN: Okay. He said, Why isn't MTA following civil service rules relating to reclassification?

MR. DE NARDO: I don't believe that's what I stated.

MR. SLOAN: Oh.

ARBITRATOR HOH: Let's try it again, then.

MR. DE NARDO: Q. Why isn't MTA -- I believe I said -- stated, Why aren't they using the Civil Service Commission -- I'll rephrase the question. Why isn't MTA using the Civil Service Commission or the Civil Service Commission rules in establishing the four --

A. Because under this proposal we're not proposing to reclassify the positions. We're trying to work within the confines of the existing positions within the contract.

Q. But aren't -- isn't that what you're doing by creating four specialty units; you're actually creating a 9139A, B, C, D?

A. No, it's no different than what it is now.

Q. Well --

A. We have specialty units now, three of them.

Q. If it's no different, then why are -- why are there different -- why is seniority only within the specialty units? Why isn't 9139 wide in a bidding process?

A. Because we have determined that the four specialty units are the ones that are most critical and the ones where we're feeling we're having the most difficulty getting the right fit for people in those units under the seniority process. The other -- the general supervision units, we're feeling, have not had that problem in those areas.

Q. Did MTA consider using the procedures that were spelled out in the civil service commission rule?

A. In terms --

Q. At any point did you consider using those rules in reclassifying employees in the 9139s?

MR. SLOAN: Objection to the extent that it calls for information covered by the attorney-client privilege.

ARBITRATOR HOH: Let's go off the record.

(Discussion off the record.)

ARBITRATOR HOH: The Union is done with this witness. Any redirect, Mr. Sloan?

MR. SLOAN: No, sir.

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

MR. SLOAN: May we have a two-minute break?

ARBITRATOR HOH: Two minutes and no more.

(A recess was taken from 4:11 p.m. to 4:16 p.m.)

ARBITRATOR HOH: Back on the record. Next witness. Ready to go, Mr. Sloan?

MR. SLOAN: Yes. Calling Pacifico Paculba, also known as Paco.

(Whereupon, the witness was sworn.)