

Management Audit of the
**Rhode Island Public
Transit Authority**



**ANALYSIS OF
TRANSFER OF RIPTA TO RIDOT**

Prepared for the
**Rhode Island
State Budget Office**

By
Abrams-Cherwony & Associates
with

Mundle & Associates, Inc.
The Risk Management Center, Inc.
Thompson-Coburn, LLP

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EXECUTIVE SUMMARY

Article 16 of Chapter 117 of the Rhode Island Public Laws of 2005 states that the State Budget Office shall have a management audit performed of the Rhode Island Public Transit Authority (RIPTA) that includes an assessment of the feasibility of transferring RIPTA into the State Department of Transportation. This report describes the key findings with regard to the assessment of the potential transfer of RIPTA to the State Department of Transportation herein after known as RIDOT.

Five key components have been addressed in order to make this assessment including:

- Labor issues associated with the transfer including 13(c)
- Labor benefit comparison
- Pension benefit comparison
- Opinions from leader interviews
- Review of state agency (Delaware) where Transit is a part of the DOT

Detailed reports for each section are included in the next section of this report. The remainder of this section includes a summary of the finding from each assessment.

Labor Issues

The detailed report reviewed two specific areas: (1) Section 13(c) labor protection issues specifically those issues that may arise under the existing 13 (c) Agreements between RIPTA, RIDOT and the unions representing transit employees; and (2) labor issues, specifically those issues relating to the existing labor agreements between RIPTA and the unions and the status of those agreements in the event of a transition to RIDOT. Key finding from this review include:

If upon the transition of RIPTA employees to RIDOT, the existing RIPTA employees are fully protected, with assurances of comparables jobs and guaranteed replication of existing wages, benefits and pension rights – then the 13 (c)/labor could be relatively minor and should not prevent the transition from occurring. If, on the other hand, the transition is viewed by the State as an opportunity to achieve economies in the size of the transit workforce, or if the State desires to negotiate or put in place different wages, benefits, pension plans or other terms of employment for the transit workforce, then the issues will inevitably get more complicated, not to mention contentious and the unions might try to use 13 (c) to prevent the transition from being carried out and still dismiss some RIPTA employees. First, if existing employees are not hired in a RIPTA-RIDOT transition, there will undoubtedly be claims for 13(c) *dismissal allowances* and other worsening protection. Employees are eligible to receive up to six years of dismissal allowances if they are laid off as a result of a Federal project. Full 13(c) labor protection for dismissal allowances can be costly -- for example, if 20 RIPTA employees were not hired by RIDOT, and their average wages and benefits equaled \$50,000, they would have 13(c) claims in the amount of \$6,000,000.

Second, there could be worsening claims by employees who do get a job with RIDOT but believe that they have lost earnings or rights or benefits. Employees may be eligible for *displacement allowances* (also payable for up to six years) if they suffer a loss of wages or benefits (such as lower pay in a new or restructured position) as a result of a Federal project. Typical claims could be for lost overtime, diminished levels or types of benefits, or increased employee cost, such as a higher health insurance co-pay. In a RIPTA-RIDOT transition, health care co-pay could certainly be a major issue if the transition results in the imposition of equalization of co-pay obligations on the transit employees. Based on the latest agreement between RIPTA and Local 618, a co-pay obligation exists but the co-pay is less than that for RIDOT employees. Although it is not as costly as paying dismissal allowances, 13(c) labor protection in the form of displacement allowances can also create significant financial exposure for the responsible Public Body. For example, if 40 RIPTA employees with average wages and benefits of \$50,000 experienced an average 10% loss in compensation, they would have 13(c) claims in the amount of \$1,200,000.

Further, even where the basic wages and benefits are carried over, employees in other transition cases have filed 13(c) claims for more incidental benefits or “rights” they believe they have lost (i.e., rail passes, safety glasses, banked sick leave, etc.).

Another key issue is the transit unions and represented RIPTA employees currently have the right to binding interest arbitration. State law, however, provides a different mechanism for the resolution of interest disputes involving State unionized employees, as set forth in Chapter 36-11 of the Rhode Island statutes. This could become a troublesome issue. It is complicated by the fact that the current obligation to submit RIPTA labor disputes to binding interest arbitration is sourced in two places: the RIPTA State enabling legislation (Section 39-18-17(c)) and the 13(c) agreements. The state legislative can obviously change the RIPTA legislative provisions or replace them with the existing statutory procedure for State employees, but the State has no legal authority to unilaterally change the interest arbitration provisions in paragraph (11) of the 1975 and 1979 13(c) Agreements. That provision can only be changed through the DOL 13(c) certification and dispute resolution process, which would involve an objection by RIPTA or RIDOT to the continuing use of the existing interest arbitration process in the 13(c) agreements and a request to negotiate an alternative interest dispute resolution method.

In summary, Section 13(c) labor protection presents a broad array of issues in any significant organizational or operational change such as a potential RIPTA to RIDOT transition. If these issues are addressed early and handled through negotiated agreements and for mutually acceptable State legislation, the issues can be manageable. If, on the other hand, employees and their unions see the status quo threatened, they will inevitably attempt to use 13(c) (through litigation, arbitration, and the DOL 13(c) certification process) to protect their jobs and their existing terms.

Labor Benefit Comparison

A comparison was made between 17 contract components of the RIPTA and the RIDOT labor agreements. These components included wages, holidays, vacation, sick days, bereavement and others. An assessment was made regarding a “better”, “worse” or comparable rating from the perspective of the employee receiving the benefit. The assessment was based on a comparison in terms of cost. In nearly all cases, the “better” rating results in a greater cost to that agency. The State contract(s) received a rating of “better” for nine items. Six are viewed as comparable – neither better nor worse, while the RIPTA contract is viewed as better (i.e., more costly) for two of the contract components. The majority of RIPTA employees receives a more favorable sick leave accrual and can ride the bus system free of charge. For the latter, while it may not be a true cost since service would operate anyway; there is a lost revenue component that should be considered.

In summary, the labor contract benefits of the RIDOT contract are more favorable in terms of the employee. Therefore, it is likely that if RIPTA employees were transferred to RIDOT, the RIPTA employees would eventually obtain the RIDOT contract benefits and therefore would increase the cost of mass transit services.

Pension Benefit Comparison

There are a myriad of different scenarios that could be developed with various wage rates and lengths of service for pension benefits. In most cases where an employee at RIPTA and an employee at RIDOT were to retire making the same annual wage and if the pension is collected for 4 or more years, the Title 36 expenditure (refers to RIDOT employees) is greater and as salaries and length of employment increase it is substantially more expensive.

In summary, because of the COLA received by Title 36 State employees in their pension payments, the pension benefits of the RIDOT are more favorable and therefore would increase the cost of mass transit services.

Opinions from Leader Interviews

The people that were interviewed regarding the performance of RIPTA and RIdE as well as their opinions regarding the transfer of RIPTA to the DOT included:

- Political Leaders
 - Governor Donald L. Carcieri
 - Senator Stephen D. Alves, Chairman Senate Finance Committee
 - Representative Stephen Costantino, Chairman House Finance Committee

- State Officials
 - James R. Capaldi, PE, Director DOT
 - William “Chuck” Alves, Chief of Staff DOT
 - Russell C. Dannecker, Senate Fiscal Advisor
 - Michael O’Keefe, House Fiscal Advisor
 - RoseMary Booth Gallogy, State Budget Officer
 - Frank Karpinsky, Executive Director Employee’s Retirement System
 - Jane Hayward, Secretary Health and Human Services
 - Corinne Russo, Director Department of Elderly Affairs
 - John Young, Interim Director MHRH
 - Ron Lebel, Director DHS

- RIPTA Board Members
 - William Kennedy
 - Sharon Wells
 - Thom Deller, Chairman
 - Robert D. Batting, Vice-Chair
 - James R. Capaldi

- RIPTA Staff/Union Leadership
 - Alfred J. Moscola, General Manager
 - Stephen Farrell, President/Business Agent (ATU Local 618/618A)
 - Senator Frank Ciccone, Business Manager (LIUNA Local 808)

In many cases the interviews were held with only the individual listed above. In several instances two or more people participated in the interview. This occurred in four joint meetings: Director and Chief of Staff of the DOT; Chairman Senate Finance Committee and the Senate Fiscal Advisor; Chairman House Finance Committee and the House Fiscal Advisor; and, Director of DHS, Director of Department of Elderly Affairs, Secretary Health and Human Services and Interim Director of MHRH.

In summary, most of those interviewed were questioned regarding their opinion of a transfer of RIPTA to RIDOT. In many cases the interviewees stated that it was a bad idea and should not be pursued further. In other cases the interviewees stated that it would be interesting to find out the impact of such a change. Finally, a few people indicate that such a change should be considered as a serious option. It was pointed out that the experience of other places where transit is part of the state department of transportation should be reviewed, including Delaware.

Review of State Transit Agency in Delaware

In 1994, all public transportation services in the State of Delaware were merged into the Delaware Department of Transportation (DelDOT). Under this re-organization, the state passed legislation creating the Delaware Transit Authority (DTA), which allowed for the creation of the Delaware Transit Corporation (DTC) in mid 1995. Under the DTC, the four state agencies that provided public transportation services in the state, the Delaware Administration for Regional Transit (DART), the Delaware Administration for Specialized Transit (DAST), the Delaware Railroad Administration (DRA), and the Commuter Services Administration (CSA), were consolidated under the DTC to create one agency responsible for providing all public transportation services in the state. As a result, the State of Delaware is one of the few states in the nation that operates statewide public transportation service.

This report described how public transportation services are organized and delivered in the State of Delaware, and included an analysis of how the consolidation affected the financial support for public transportation in the State as well as how this merger affected employee benefit and welfare programs. In addition, the report also examined the differences and similarities in transit services operated by an agency under state control (i.e., DTC) versus an agency that is under its own authority (i.e., RIPTA) through the use of performance measures.

The report showed that the State of Delaware realized a number of advantages by creating a state transportation authority:

- Bringing the four transportation agencies under one authority resulted in creating a brand identity for public transportation throughout the State.
- The new organization gave DTA and DTC the benefit of operating as a division of the State Department of Transportation, while at the same time having the autonomy to negotiate with labor unions outside of the State government.
- Employees of DTC are able to participate in the State's health and medical insurance coverage program.
- The new organization structure brought more financial support to public transportation from the State.

The key findings from this Delaware experience related to the transfer of RIPTA to the Rhode Island DOT are:

- The only economies of scale in the Delaware example is the fact that the IT functions are performed by the Delaware DOT for DTC as well as other DOT organizations. All of the functions associated with operating a transit system are included in the DTC organization.

- Since the health and welfare programs at RIPTA are more economical, the financial benefit that was obtained in the consolidation of DTC into the DOT in Delaware would not be a benefit under the transfer of RIPTA to the DOT.
- The new organization did benefit the DTC in that it brought more state financial support for public transportation. However, this may or may not be a benefit under a transfer of RIPTA to the DOT. It is unknown whether the transfer of RIPTA to the DOT would result in more funding for public transportation. It is likely that funding for any type of transportation in Rhode Island will continue to be an issue.

LABOR ISSUES ASSOCIATED WITH TRANSFERRING RIPTA TO RHODE ISLAND DOT

The purpose of this portion of the Management Study is to review and discuss the labor issues associated with transferring the Rhode Island Public Transit Authority (RIPTA) to the Rhode Island Department of Transportation (RIDOT). This review will focus on two specific areas: (1) Section 13(c) labor protection issues, specifically those issues that may arise under the existing 13 (c) Agreements between RIPTA, RIDOT, and the unions representing transit employees; and (2) labor issues, specifically those issues relating to the existing labor agreements¹ between RIPTA and the unions and the status of those agreements in the event of a transition to RIDOT.

The most critical labor issues associated with any potential RIPTA to RIDOT transition arise out of Section 13 (c) labor protection generally and the specific 13(c) Agreements that apply to RIPTA and RIDOT and provide protection for area transit employees. While the existing labor agreements may, in and of themselves, give rise to certain transition or successorship issues, those agreements are also relevant because of the critical “link” between Section 13(c) and the labor agreements. Specifically, Section 13(c) requires that the rights and benefits in existing labor agreements be “preserved and continued”, and this requirement gives the terms and conditions in a labor agreement (in a federally funded transit system such as RIPTA/RIDOT) elevated or enhanced significance and the potential for more permanent status.

Background

In considering 13(c) and labor issues, it is important to first provide some overview regarding the roles and responsibilities of RIPTA and RIDOT, particularly as those two entities relate to the transit unions.

Employment Relationships/Labor Agreements - RIPTA is the employer of the transit employees, both the employees represented by unions and the non-represented employees. RIPTA is also party to labor agreements with its transit unions. The largest union at RIPTA is Amalgamated Transit Union (ATU) Local 618, which represents operators and mechanics. There are also two other RIPTA unions -- ATU Local 618A, which represents RIPTA supervisors, and Rhode Island Judicial, Professional, and Technical Employees, Local Union 808 (LIUNA), which represents RIPTA clerical employees.

RIDOT has no current employment relationship with any of the transit employees and is not a party to the above-referenced labor agreements with the transit unions.

¹ The term “labor agreements” is used herein to refer to the agreements, often referred to as collective bargaining agreements, that set forth wages, benefits, work rules, working conditions, and related terms and conditions governing the employment relationship.

Section 13 (c) Protections - As described in more detail below, both RIPTA and RIDOT are signatories to a number of 13 (c) labor protection agreements with the unions representing RIPTA employees, ATU Locals 618 and 618A and Local 808 (LIUNA). The impact of 13(c) on any potential transition is complicated by the fact that in this case there are multiple, and somewhat inconsistent, 13(c) protections in place. In many transition cases, the existing public operator/transit agency is the only management party to the single applicable 13(c) agreement, and the issue presented in those cases is whether the entity taking over as the new operator becomes a “successor” to the obligations under that 13(c) agreement. In this case, while RIDOT may be required to assume or “inherit” certain 13(c) obligations if it has the status of a successor to RIPTA, the fact is that RIDOT itself is a party to more than one 13(c) agreement and as a result it has *direct* obligations under those agreements.

Federal Grant Funds - Prior to the mid-1990’s, RIDOT was the primary recipient/grantee of Federal transit funds from the Federal Transit Administration (FTA). This appears to be the primary historical reason that RIDOT is a party to the various 13(c) agreements discussed below. Most of these grant funds were passed through to RIPTA. In the mid-1990’s, RIPTA began receiving Federal grant funds directly, and is currently the recipient of Section 5307 urban formula funds.² RIDOT remains the recipient of Section 5309 fixed guideway modernization funds (often referred to as “rail mod” funds). Both public entities are eligible as “grantees” to receive Federal Section 5309 discretionary funds.

Review of 13(C) Labor Protection Issues

The 13(c) labor protection issues that may arise in any type of organizational or service transition are both significant and complicated. Transitions in the transit industry, whether simply a change in the contractor providing a particular service or the transfer of overall responsibility from one public agency to another, are often contentious. Transitions threaten the status quo, and in many ways Section 13(c) was designed to protect the status quo.

There are two particular elements of 13(c) labor protection that can come into play in a transition: (1) the preservation of jobs and existing terms and conditions of employment (the “carryover” issue); and (2) the protection against an adverse impact for employees who may be affected by the transition (the “worsening” issue). Both elements of 13(c) could be triggered in a RIPTA to RIDOT transition.

Since 13(c) can be a rather esoteric area of the law, these issues can best be understood by first reviewing the purpose and intent of Section 13(c), and then describing considering the specific 13 (c) protections in place for RIPTA and RIDOT that may be relevant to a transition.

² There is an agreement between RIPTA, RIDOT, and the Rhode Island Department of Administration (March 2005) that, *inter alia*, recognizes that RIPTA has been designated as the direct recipient of FTA funding and may receive Federal grant funds directly.

The Basics of Section 13(c)

Legislative History and Statutory Provisions - The Urban Mass Transportation Act of 1964³ established the initial Federal program of grants and loans for mass transportation, which has evolved over time into the extensive Federal transit program administered today by the Federal Transit Administration (FTA). In the congressional debate leading to the enactment of the 1964 Act, organized labor raised two principal concerns about the proposed legislation. The first was that the introduction of Federal grants for public transit agencies could adversely impact transit employees through the funding of technological advances or automation that would lessen the need for transit workers. One example cited was the possibility that Federal grants would finance driverless buses or cars and thereby reduce the need for transit operators. See House Hearings, Committee on Banking and Currency, 88th Cong., 1st Sess., on H.R. 3881, at 628.

The second and more complicated concern of organized labor related to collective bargaining. At the time the 1964 Act was being debated, it was contemplated that the financial assistance under the new Federal transit grant program would be used, in large part, to finance the public takeover of private transit companies (many of which were financially troubled and experiencing declining levels of employment). Since bargaining collectively with public sector employees was unlawful under State law in many states, there was concern that the private transit employees would lose their collective bargaining rights and benefits, including their pension rights, in any federally funded transition from private to public ownership. See H. Rep. No. 204, Committee on Banking and Currency, 1964, U.S. Cong. & Admin. News at 2583.

The Congress responded to these two concerns by requiring, in Section 13(c) in the 1964 Act, that “fair and equitable” labor protections be in place prior to the granting of Federal transit funds. In response to the first issue (adverse impact), the Congress provided that any employee adversely affected or worsened *by a Federal project* would be entitled to specific compensatory benefits. These benefits, which were based on labor protection provided to employees in the railroad industry,⁴ include dismissal allowances, displacement allowances, and moving expense benefits for employees found to be adversely affected by a Federal project. (The specific benefits are described in more detail below). These protective benefits remain today a core element of 13(c), and many 13(c) disputes involve the issue of whether or not a particular harm suffered by an employee occurred “as a result of” a Federal project.

In response to the second concern (collective bargaining rights), the Congress required that 13(c) protections include provisions that assure the preservation of existing collective bargaining rights (i.e., wages, benefits, pensions, work rules, etc.) and the continuation of the process of collective bargaining. In most States, the grantee receiving Federal transit funds is

³ This Act, as amended, is now codified in 49 U.S.C. § 5301 et seq. The Federal transit program, and the applicable statutory and regulatory requirements, are administered by the FTA, which was formerly known as the Urban Mass Transportation Administration (UMTA).

⁴ The legislative history indicates that Section 13 (c) was modeled after rail labor protection under Section 5(2)(f) of the Interstate Commerce Act (later codified at Section 11347 of title 49, United State Code) which provides protective benefits to employees affected by transactions such as rail mergers or consolidations.

also the employer, and is thereby directly responsible for protecting the collective bargaining rights of its public sector transit employees. To address the related concern about the public takeover of private transit operations, the Congress required in 13(c)(4) that “assurances of employment” be provided to employees of acquired transit systems. As applied by the Department of Labor (DOL), these protections mean that when a public transit agency “buys out” or otherwise acquires a transit system with Federal grant funds, it must hire the existing workforce and “carryover” their existing wages and benefits, as set forth in the applicable labor agreement.

The statutory language of 13(c) has remained relatively unchanged over the years. It requires, as a condition precedent to a Federal grant, that the Secretary of Labor find that “fair and equitable” labor protections are in place to protect the interests of employees who may be affected by the Federal assistance. The essential elements of “fair and equitable” protections are set forth in the statutory language of Section 13(c), now codified in 49 U.S.C. § 5333(b), which reads in relevant part as follows:

“(b) Employee Protective Arrangements - (1) As a condition of financial assistance [under specified sections of the Federal Transit Act], the interest of employees affected by the assistance shall be protected under arrangements the Secretary of Labor concludes are fair and equitable . . .

- (2) Arrangements under this subsection shall include:
 - (A) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise;
 - (B) the continuation of collective bargaining rights;
 - (C) the protection of individual employees against a worsening of their positions related to employment;
 - (D) assurances of employment to employees of acquired mass transportation systems;
 - (E) assurances of priority of reemployment of employees whose employment is ended or who are laid off; and
 - (F) paid training or retraining programs.
- (3) Arrangements under this subsection shall provide at least equal to benefits established under Section 11347 of this title [railroad labor protection].”

In most cases, the specific protections are set forth in a 13(c) agreement between the grantee and the local transit unions. (See discussion of RIPTA/RIDOT Agreements below). It should also be noted that while this analysis focuses primarily on transit employees who are

represented by a union, Section 13(c) protection extends to all transit employees in the RIPTA service area, which means it also applies to non-represented employees at RIPTA (other than top management) as well as to transit employees of other mass transit employees in the area.

Substantive 13(c) Protections - Section 13(c) protections as fall in two primary areas: (1) the protection against harm or worsenings as a result of a Federal project; through 13(c) compensatory benefits; and (2) the preservation of collective bargaining rights and the right to bargain collectively. Both categories of labor protections are likely to come into play in any transition from RIPTA to RIDOT.

Protection Against Worsening - As noted in the above discussion, 13(c) protects employees from any harm that might be caused by a Federal grant. For example, if a grantee received a Federal grant to obtain “high tech” bus maintenance equipment and thus needed fewer bus mechanics, those mechanics who were laid off or who lost hours or work *because of* this grant may be eligible for 13(c) benefits. Conversely, if the harm to an employee results from other causes (i.e., decline in funding for transit because of decreases in local sales tax revenue), then the employee would not be eligible for 13(c) protection.

The basic types of Section 13(c) benefits are as follows:

- **Displacement Allowance** - An employee who is placed in a lower paying position or otherwise suffers a loss of compensation as a result of a Federal project may be eligible for a monthly displacement allowance. This provides an allowance in an amount basically equal to the difference between the employee’s prior compensation (measured over the 12-month period prior to the harm) and his or her new compensation. This allowance is payable for the employee’s “protective period,” which is 6 years for an employee who has been employed for at least 6 years and the length of service for an employee employed for less than 6 years.
- **Dismissal Allowance** - An employee who is laid off as a result of a Federal project can be eligible for a monthly dismissal allowance (basically equal to the employee’s average monthly compensation during the 12-month period prior to the dismissal). The dismissal allowance is payable for the employee’s protective period as described above.
- **Lump Sum Separation Allowance** - A dismissed employee may elect a lump sum separation allowance, the amount of which is based on prior compensation and length of service, in lieu of all other Section 13(c) benefits.
- **Moving Expenses** - An employee who is required as a result of a Federal project to change the point of the employee’s employment and move his or her residence in order to retain or secure a job with the grantee is eligible to be compensated for moving expenses, which include certain expenses of moving a household, some traveling expenses, and specified wage losses incurred during the move.

- **Home Sale** - An employee who loses money as a result of having to sell his or her home because of a change in residence as a result of a Federal project is entitled to compensation for that loss and related costs.
- **General “Worsening” Protection** - Under some current Section 13(c) agreements, an employee whose rights, privileges, or benefits are adversely affected as a result of a Federal project is entitled to have those benefits restored or to receive offsetting or compensatory benefits.

The Causation Requirement - These 13(c) benefits are not available for all types of adverse impact on employees -- there must be a causal connection, or nexus, between the employee harm that occurs and a federally funded project. The critical issue in most 13(c) disputes is whether or not a particular harm suffered by an employee was a “as a result of” or caused by a Federal project. If the harm was caused by a federally funded project, there may be entitlement to 13(c) benefits. If the harm was caused by other factors and not by a Federal project, then there is no entitlement to 13(c) benefits and no 13(c) liability. This principle is based on the specific statutory language of Section 13(c) and the legislative history; and it has generally been followed in Federal court decisions and arbitration awards, including 13(c) claims decisions of the DOL. This basic causation principle was articulated in United Transportation Union v. Brock, 815 F.2d 1562 (D.C. Cir. 1987) as follows: “the only interest protected by Section 13(c) are those affected by the financial assistance.” 815 F. 2d at 1564 (emphasis added).

Most 13(c) arbitration cases (both DOL and private arbitrators) have followed this causation analysis. For example, in ruling on 13(c) claims, the Department has emphasized that “[i]t is not sufficient for a claimant to merely identify an UMTA [FTA] project and a worsening of position . . . The claimant must also show that there is a causal connection between the UMTA [FTA] project and a worsening of his employment position.” Smith v. Mid Mon Valley Transit Authority, OSP Case No. 91-13c-19 (1992). Moreover, the Department has ruled that the use of federally funded buses does not create the causal connection necessary to sustain a 13(c) claim, Local 103, ATU v. Wheeling, W. Va., DEP Case No. 77-13(c)-5 (1977), and that the receipt of Federal capital and operating funds is not, in and of itself, a sufficient basis to establish a 13(c) claims.

There are, however, a few arbitration decisions which take a much more liberal view of the causation requirement. One notable case is Massachusetts Bay Transportation Authority v. Alliance of all MBTA Unions, October 16, 1988, A. Zack, Arbitrator. That case found that impacts on employees which occurred in connection with the 1987 change in MBTA commuter rail operators (from Boston & Maine Railroad (B&M) to Amtrak) were “as a result of” a 1976 Federal grant, because the termination of the B&M contract was “traceable to, reasonably related to, and a direct consequence of” the MBTA’s receipt of Federal grant funds in 1976 to acquire the B&M right of way and other assets. In effect, Arbitrator Zack adopted a type of broad “but for” causation test -- the MBTA could not have changed contractors in 1987 if it had not acquired the rail assets with Federal funds in 1976. The Zack decision appeared to rely in part on the expansive “traceable” language in the definition of the term “project” in the MBTA 13(c) agreement. This language (not found in most 13(c) arrangements) is unfortunately included in

paragraph (13) of the 1975 RIPTA and 1979 RIDOT 13(c) Agreements (see discussion below). However, it should be noted that there is a recent decision in a 13(c) arbitration between the MBTA and the rail unions in which the arbitrator, applying the same MBTA 13(c) agreement as at issue in the Zack case, followed a more traditional causation analysis, and denied 13(c) claims for the loss of a free rail pass in a transition in commuter rail operators. The arbitrator found that the claimants were not entitled to 13(c) protections because the loss of the rail pass “benefit” did not occur “as a result of” a Federal project. Rail Unions v. MBTA, October 17, 2005, H. Fishgold, Arbitrator.

Preservation of collective bargaining rights: the carryover issue - One of the most complicated and controversial 13(c) issues to arise in recent years is whether section 13(c) requires, in a transition from one service provider to another,⁵ that the existing employees be given a guarantee of employment or a preference in hiring with the new operator, and whether that new operator must assume the terms and conditions of the existing collective bargaining agreement. The general topic has become known in the 13(c) discussions as the “carryover” issue.

As an initial matter, it is clear under the statutory language that when a public agency uses Federal grant funds to acquire a private mass transportation company and take over its transit operations, the existing employees must be given assurances of employment, in accordance with Section 13(c)(4) (now codified at 49 U.S.C. 5333(b)(2)(D).) Since Section 13(c) also requires the preservation of collective bargaining rights and benefits, the acquiring public agency in an acquisition case also has an obligation to assume the terms and conditions (i.e., wages and benefits) of the existing collective bargaining agreement. Thus, in direct federally funded acquisitions (most of which occurred in the early days of the Federal transit program), there is a 13(c) duty to provide employment for the existing workforce and to honor their existing terms and conditions of employment. As discussed below, it appears that the RIPTA system was started with federally funded acquisition, and thus these 13(c) carryover obligations would have been applicable at that time. See Paragraph (5) of the 1975 and 1979 13(c) Agreements, discussed below. Where the carryover requirements attach, this does not mean that wages and benefits are preserved indefinitely; they can be changed, but it must be through the collective bargaining process.

However, beyond those cases that have the clear factual characteristics of a 13(c)(4) acquisition (federally funded buyout of a private transit system), the carryover issue becomes considerably less clear-cut. For example, the DOL has ruled that in certain factual circumstances where services are operated by a private contractor for a public agency grantee because of State law restrictions on public sector collective bargaining (known as “Memphis Plans”),⁶ a new

⁵ The transition could arise through situations such as a transfer of responsibility for transit service from one public agency to another; a consolidation of two or more transit operations into a regional authority; or a change (usually through a competitive procurement process) in the private contract providing transit services for a Public Body.

⁶ At the time the UMT Act of 1964 was enacted, State law in many States prohibited public entities from bargaining collectively and entering into labor agreements with unions representing public sector employees. In order to comply with these State laws and also to comply with the 13(c) duty to bargain and preserve collective bargaining rights, public agencies set up private management companies to employ the transit workforce and bargain with the unions. One of the original organizational structures of this type was in Memphis, Tennessee.

incoming contractor has an obligation to hire the existing employees and preserve their existing wages and benefits. (In Memphis Plan cases, the private company managing the transit system may change over time, but the employees are essentially viewed as employees of the “system” who have a more permanent status.) However, in other fact situations that do not constitute a “Memphis Plan”, the DOL and private arbitrators have reached an opposite conclusion, holding that the new contractor has no 13(c) carryover obligations to the existing workforce, primarily based on the determination that no 13(c)(4) acquisition has occurred. *See DOL certification decision for the Regional Transportation Commission of Clark County, Nevada*, September 21, 1994 at 4-5.

One key arbitration decision that considered the applicability of 13(c)(4) in a private to public transition is *Amalgamated Transit Union Local 610 v. City of Charleston*, AAA Case No. 31 30000072 97 October 7, 1998. In that case, the City of Charleston, a FTA grantee, took over the transit operations previously provided by a private utility, South Carolina Electric and Gas (SCE&G), pursuant to its Franchise Agreement with the City. SCE&G had used federally funded assets in providing service (which were being returned to the City), but the operating subsidies it received from the City were all non-Federal dollars. Although the City was assuming responsibility for the entire transit system, no Federal grant funds were being used to acquire the existing transit operations. After reviewing the facts presented and the legislative history of 13(c)(4), the arbitrator ruled as follows:

For purposes of Section 13(c), the transfer at issue is not an acquisition because no federal funds are being used to acquire assets or to otherwise take over a private system. The Union’s argument that a takeover or change in control, without more, triggers the application of Section 13(c) protections is misplaced. Either an “acquisition” or a “change in control” can trigger 13(c) but only if federal funds are involved and the use of those federal funds “affects” employees. (emphasis in original)

A RIPTA to RIDOT transition would be factually distinct from both a Memphis Plan situation and the change in private contractors and other transition cases discussed above -- it would be a “public to public” transition that would be more factually analogous to cases where two public agencies are merged into a new public entity or where responsibility is transferred from one public entity to another. Examples would be where a regional transportation authority is established to consolidate transit responsibility in a county or multi-county area, or where a city transfers its transit responsibility to a new public transit authority. The historical practice in these types of public transitions has been for the new public agency taking over responsibility for transit to provide employment for the existing workforce and to continue existing wages and benefits, at least until labor agreements are negotiated between the new agency and the affected transit unions.⁷

⁷ For example, when the Southern California Rapid Transit District (SCRTD) and the Los Angeles County Transportation Commission (LACTC) were merged into the large regional operator, the Los Angeles County Metropolitan Transportation Authority (MTA), the existing transit employees’ jobs and their rights and benefits were protected. Similarly, when the Transportation District Commission of Hampton Roads, Virginia (HRT) was created, it acquired the assets of two prior agencies, the Peninsula Transportation District Commission and the

The practice of preserving the status quo in “public to public” transitions appears driven more by policy and political considerations than by judicial or arbitral decisions. However, since the transfer of responsibility for transit operators in mergers or other transitions of this type often requires specific State legislation, it is not uncommon for that State legislation to specifically address the carryover of existing employees and the protection and continuation of their collectively bargained wages and benefits. See, e.g., Los Angeles County MTA enabling legislation, California Public Utilities Code § 130051.13 and 130051.16.

The Successorship Issue - A 13(c) issue closely related to the “carryover” protection discussed above is the issue of successorship under 13(c) agreements. Section 13(c) agreements routinely contain successor clauses which purport to bind successors and assigns of the parties to the terms of the 13(c) agreement. (See discussion of RIPTA/RIDOT Agreements below.) These clauses also usually provide that any entity, whether public or private, which undertakes the management or operation of the transit system, shall agree to be bound to the 13(c) agreement and accept responsibility for full performance of the 13(c) terms. In 13(c) disputes before the DOL, transit agencies have challenged whether successor clauses impose a binding obligation on contractors which manage or operate transit services for the public agency. Read literally, successor clauses attempt to bind contractors to the terms of the 13(c) agreement and to require their “full performance” of the obligations of the 13(c) agreement. However, contractors are typically not signatories to 13(c) agreements; it is usually the public transit agency which is the grantee and the signatory to the 13(c) agreement. As a result, it has been argued, both before the DOL and in court cases, that a party which is not signatory to the 13(c) agreement is not bound by its terms, as a matter of contract law, and that a successor clause does not effectively bind a non-signatory third party to the underlying contract, unless that party expressly agrees to be bound. There is ample legal authority to support this argument -- basic contract law in most states, including Rhode Island,⁸ holds that a person cannot be bound to a contract to which it is not a party.

This argument has had mixed results in the context of 13(c) agreements. The DOL continues to take the position that successor clauses do in fact bind non-signatory successors. As stated in DOL’s February 7, 1996 13(c) Certification for Montgomery County Government (Maryland) at page 2, “any entity providing or contracting for the provision of [transit] services under a grant project must assume a measure of these [13(c)] responsibilities in order to ensure the effective delivery of [13(c)] protections.” In that decision, the DOL included language in the successor clause which “clarifies that entities which provide or contract for the provision of federally assisted transportation services must assume responsibility for employee protections.” Id. A similar result was reached in DOL’s decision for the Los Angeles County MTA, dated August 13, 1997 at 14. See also DOL’s 1989 decision for the Utah Transit Authority (UTA) at

Tidewater Transportation District Commission, and assumed the existing labor contracts between those public agencies and their ATU local unions.

⁸ As a general rule, an action on a contract cannot be maintained against a person who is not a party to that contract. Similarly, a non-party is not bound by the terms of a contract. See, e.g., *Kelly and Heslop v. Tillotson-Pearson, Inc.*, 840 F. Supp. 935 (D.C. RI 1994).

6, stating that “a new contractor undertaking ‘operation of the transit system’ should be bound by the commitments which UTA made in its 13(c) Agreement.” DOL’s expressed rationale was that “[a]ny other interpretation would have the effect of circumventing the requirements of the Act by passing along Federal assistance but not the corresponding obligations to an alter ego of the transit system”. Id.

Despite DOL’s position on the successorship issue, a different result may occur if there is judicial review of the issue of whether a 13(c) agreement can be legally enforced against a non-signatory third party. For example, in *Transport Workers Union v. MBTA*, No. SJ-1999-0513, the Massachusetts Supreme Judicial Court (SJC) held that an incoming equipment maintenance contractor for the MBTA’s commuter rail system, Bay State, was not bound to the MBTA’s 13(c) Agreement. In that litigation, Bay State argued that it was not signatory to the MBTA’s 13(c) Agreement and was not obligated to its terms. The SJC agreed, stating at page 10: “Bay State is not a signatory to the Agreement and, as a matter of law, has no contractual obligations under it”. Further, since the MBTA had not bound Bay State to the MBTA’s 13(c) Agreement in the MBTA’s equipment maintenance contract with Bay State, the court concluded that Bay State was not bound by the successor clause or the obligations under the MBTA’s 13(c) agreement. Id. Thus, even though DOL had included a successor clause in the MBTA’s 13(c) protections, it was ruled unenforceable against a non-signatory contractor.

RIPTA/RIDOT 13(c) Protections

The issue of the scope of 13(c) protection applicable to RIPTA transit services and the protected employees is complicated by the fact that there are seven different 13(c) documents.⁹ They are as follows:

- (1) The January 10, 1975 13(c) Agreement between RIPTA and ATU Local 618.
- (2) The February 14, 1979 13(c) Agreement between RIDOT, RIPTA, and ATU Local 618, ATU Locals 988, 1363, and 1382.¹⁰
- (3) The July 23, 1975 National (Model) 13(c) Agreement entered into by the American Public Transit Association (APTA) and the major transit unions.
- (4) DOL’s 13(c) Warranty.

⁹ Sections 13(c) protections executed by the local parties (the public agency grantee and the unions) are normally referred to as “13(c) agreements”; 13(c) protections imposed by the Department of Labor are normally referred to as “13(c) arrangements”.

¹⁰ ATU Locals 988, 1363, and 1382 represented employees of Bonanza Bus Lines, an intercity operator in the Rhode Island service area.

- (5) The November 20, 1987 13(c) Agreement between RIDOT and ATU Local 618, ATU Local 1363, and ATU Local 1382.
- (6) The October 3, 1997 13 (c) Operating Agreement between RIDOT, RIPTA and the Rhode Island Judicial, Professional and Technical Employees Local Union 808 (LIUNA).
- (7) The December 17, 1986 RIDOT Side Letter.

The following discussion will address the key provisions in these 13 (c) protections that could be relevant in any transition from RIPTA to RIDOT.

1975 and 1979 Agreement - The 1975 Agreement, which was executed by RIPTA, and the 1979 Agreement, which was executed by RIDOT, are discussed together because they include essentially the same substantive labor protection terms. Both of these agreements were entered into in the era in which many 13(c) agreements went beyond the minimum statutorily required 13(c) protections described in subpart A above, and provided “extra” or more extensive protection for employees. The provisions in the 1975 and 1979 Agreements that merit special attention are as follows:

- **Preservation of Collective Bargaining Rights** - Paragraph (2) preserves existing collective bargaining rights and benefits of the represented employees, including their pension rights. It also provides that such rights and benefits may be modified by collective bargaining to substitute “rights, privileges, and benefits of *equal or greater economic value*”(emphasis added). This language appears to place an economic “floor” on collective bargaining terms and conditions. By contrast, most current 13(c) protections allow existing collective bargaining agreements to be modified through bargaining to substitute “other” rights, privileges, and benefits, thereby providing for the possibility of reductions or modifications in wages and/or benefit levels or types. In disputes as to whether this “floor” language is a mandatory requirement of 13(c), DOL has determined that 13(c) does not *require* an economic “floor” on collective bargaining rights and benefits. However, if the language is included in a 13(c) agreement, it is contractually binding on the parties thereto. As a result, this language could be used by the RIPTA transit unions to argue that their wage and benefit levels cannot be *reduced* in any RIPTA to RIDOT transition, even in the context of the negotiation of new or revised labor agreements.
- **Acquisition and Carryover** - Paragraph (5) is a buyout or takeover clause that provides that all of the employees of the “Company” (which was Transit Lines, Inc., a private provider apparently acquired by RIPTA) must be provided employment positions on the publicly owned system, and that the public operator must assume the wages, hours, working conditions, benefits, and related employment terms of those employees. This type of provision is not a

standard term in 13(c) agreements, but it is sometimes included to satisfy the requirements of Section 13(c)(4) in connection with Federal grants to fund the acquisition of private transit systems.¹¹ Although designed for a specific prior fact situation, this provision could be used as a precedent for arguing that if RIDOT takes over or acquires RIPTA's operations, it must provide these same type of carryover rights to existing RIPTA employees.

- **Burden of Proof/Payment of Claims** - Paragraph (7) addresses the issue of the burden of proof in 13(c) disputes, and provides that the Public Body (RIPTA) shall, throughout the 13(c) claims handling and arbitration process, “have the burden of affirmatively establishing that any deprivation of employment, or other worsening of employment position, has not been a result of the project, by proving that only factors other than the project affected the employee.” If read literally by an arbitrator in a 13(c) dispute, this language places a very significant evidentiary burden on the public body/respondent. Moreover, paragraph (7) does not include the language found in most 13(c) agreements (including the Model Agreement discussed below), which places an initial burden of proof on the 13(c) claimant to identify the adverse impact and to specify the Federal project that allegedly caused that impact. Paragraph (7) also provides that RIPTA (the “Public Body”) shall be financially responsible for the application of the 13(c) protections, which means that RIPTA has financial responsibility for the payment of claims under both the 1975 and 1979 Agreements. By contrast, under the 1987 Agreement (discussed below), financial responsibility for the 13(c) protections resides with RIDOT (the “Recipient”) or with an “other legally responsible party designated by the Recipient”. See paragraph (5) of the 1987 Agreement.
- **New Jobs Clause** - Paragraph (9), referred to as the “new jobs” clause, grants employees of the Public Body the “first opportunity for employment” in any new jobs “included in the bargaining unit or comparable to those included in the bargaining unit” created as a result of the Federal project. Although the DOL has ruled that new jobs rights are not required by Section 13(c), this type of language is sometimes found in 13(c) agreements, where it may be applicable to grants to start up new operations such as rail service. This provision could be used as the basis for arguing that existing employees have the right to any new jobs on the RIPTA/RIDOT system that are “created by” a Federal project (i.e., jobs on new commuter rail service).
- **Notice and Implementing Agreements** - Paragraph (10) requires the Public Body to give “reasonable written notice” to the union regarding any change in its organization or operation which may result in the dismissal or displacement of employees, or in a rearrangement of the working forces, as a result of a Federal

¹¹ As noted above, section 13(c)(4) requires that employees be provided assurances of employment in federally funded acquisitions of private transit companies. This is the only fact situation in which the statutory language of 13(c) expressly requires a job guarantee.

project. Within 30 days after this notice, the Public Body and the Union are required to meet to negotiate an “implementing agreement” regarding the application of the 13(c) protections to the proposed change -- that is, to establish how the affected employees will be protected from the consequences of the proposed change and/or placed into positions in the new organization.¹² This provision is very important because it is often the first 13(c) issue to arise in any change in service providers or other restructuring, such as that contemplated in this case. In anticipation of restructuring or reorganization involving a RIPTA to RIDOT transition, it is quite likely that the ATU would demand that it be provided paragraph (5) notice and the opportunity to negotiate an implementing agreement to address the proposed change (i.e., what positions ATU employees will assume at RIDOT, how wages and benefits will be protected, etc.). One problem for the Public Body is that initiating the paragraph (5) process could be viewed as an acknowledgement that the upcoming change will be “as result of” a Federal project. (Normally, the transit agency would want to take the position that change did not result from a Federal project.)

- **Binding Interest Arbitration** - Paragraph (11) establishes binding arbitration as the means for resolving “labor disputes” between RIPTA and the labor unions, which includes disputes arising under the 13(c) agreement as well as disputes over wages, benefits, and working conditions and the “making and maintaining” of a collective bargaining agreement. Specifically, if RIPTA and the unions are unable to agree on the terms of a new labor agreement, the dispute is submitted to binding interest arbitration. Under paragraph (11), the arbitration is heard and ruled on by a three-person panel – one representative from each party and a third (neutral) private arbitrator chosen by the parties, or if they cannot agree, select from a list provided by the American Arbitration Association. The requirement for interest arbitration means that the “interest” issues in dispute in a collective bargaining impasse (i.e., normally wage and benefit issues) are resolved by the private arbitrator, whose decision is final and binding, with very limited scope of judicial review in most states. (Interest arbitration is distinct from grievance arbitration, which involves disputes over the interpretation of an existing labor agreement). While interest arbitration is used for many transit systems, it has generally not been favored by transit management because it confers on a private arbitrator the right to determine wages and benefit levels of public sector employees.¹³ DOL and the Federal courts have determined that 13(c) does

¹² The notice and implementing agreement requirements in paragraph (10) are a carryover from railroad labor protection, where implementing agreements have historically been used to effectuate the consolidation of workforces (addressing issues such as dovetailing of seniority rosters, etc.) in transactions such as a merger or acquisition involving two or more rail carriers.

¹³ In some States, binding interest arbitration for public sector employees has been found to be an unlawful or unconstitutional delegation of legislative authority to a private person. The basic theory underlying these cases is that private arbitrators cannot be given the authority to make binding decisions regarding public policy issues such as the wages and benefits of public sector employees and the allocation of public resources. *See, e.g., Salt Lake City v. International Association of Firefighters*, 563 F.2d 786 (Utah 1978).

not *require* binding interest arbitration, but that it does require some means for the resolution of interest disputes that will not allow management to have unilateral control over the terms and conditions of employment. See *Amalgamated Transit Union v. Donovan*, 767 F.2d 939 (D.C. Circuit (1985)).

The current state of the law is that interest arbitration is a permissible means for the resolution of interest disputes for purposes of 13(c) (and enforceable if included in a 13(c) agreement), but it is not required and it is not the exclusive means for satisfying 13(c). Where the right to strike exists, it is considered to be a legitimate means under 13(c) for the resolution of interest disputes¹⁴. In addition, a non-binding fact-finding procedure that satisfies certain established criteria is legally acceptable mechanism under 13(c) for the resolution of interest disputes. *ATU v. Donovan* at 956. As established by the court in the *Donovan* case and followed by DOL, these criteria are (1) good faith bargaining to the point of impasse; (2) mandatory fact finding at the request of either party; (3) full and fair airing of disputes and equitable recommendations for settlement from the neutral fact finder; (4) publication of the fact finder's recommendations and consideration of those recommendations in the "full eye" of public scrutiny; and (5) mandatory explanation by the employer of any failure to adopt the fact finder's recommendation.

In addition to paragraph (11) of the 1975 and 1979 Agreements, the RIPTA State enabling legislation (discussed in Part III below) includes a provision requiring "labor disputes" (defined essentially the same as in the 13(c) Agreements) between RIPTA and the unions to be resolved through binding interest arbitration by a three-person panel using neutral private arbitrator. (Rhode Island statutes 39-18-17(c)).

- **Definition of "Project"** - Paragraph (13) defines the term "project" to include any changes, whether organizational, operational, technological, or otherwise, which are *traceable* to the assistance provided. This is broader than the corresponding definition in the 13(c) Warranty or the Model Agreement. This definition is important because it provides the framework for determining what actions are "as a result of" a Federal project and thereby give rise to 13(c) benefits. The use of the word "traceable" could be argued to establish a very broad causation test, and thereby could create problems in the event of any future 13(c) arbitration or other dispute addressing the issue of whether particular adverse employee impacts are "a result of" a Federal project. (See discussion of *Zack* arbitration *supra*.)
- **Successor Clause** - Paragraph (14) provides that the 13(c) agreement is binding on the successors and assigns of the parties to the Agreement, and further states

¹⁴ In the private sector, each side to a collective bargaining dispute is viewed as having economic weapons at its disposal; for unions, that weapon is the right to strike. Id. at 953.

that any person or agency (public or private) that undertakes management and operation of the transit system shall agree “to be bound by the terms of this agreement” and shall accept “responsibility for full performance of these conditions.”

As discussed above, while successor clauses purporting to bind a non-signatory third party are generally unenforceable, DOL has generally taken the position that 13(c) successor clauses do operate to impose 13(c) obligations on a successor operator. To address the enforceability issue, more recent 13(c) successor clauses impose a duty on the public body to require, as a *condition precedent* to a transfer of operations or contracting out, that the new operator of the services agree to be bound to the 13(c) agreement.

The question of successorship is often a contentious issue in 13(c) disputes, and the precise scope and meaning of successor clauses in 13(c) agreements remains to be clarified in future arbitration or court decisions. The issue would be somewhat less critical in the context of a RIPTA to RIDOT transition, because even if RIDOT were found to not be a successor under the 13(c) agreements, it is still a signatory to certain 13(c) agreements and thus has 13(c) obligations *directly* as a party to those agreements.

Model Agreement - The Model Agreement serves as the 13(c) arrangement used on a nationwide basis for the certification of operating assistance and preventative maintenance grants from the FTA. It was entered into by the American Public Transportation Association (APTA) and the national transit unions in 1975. The Model Agreement contains a process under which transit agency grantees and local unions can “sign-on” and become a party to the Model (see paragraphs (26) and (27)), and RIPTA and ATU Local 618 apparently have agreed to become a party. As a result, the Model Agreement currently applies to Federal operating and preventative maintenance funds provided to RIPTA.

The Model Agreement contains the standard 13(c) protections against a worsening of employment condition as well as protections of collective bargaining terms and conditions. Two provisions of the Model Agreement merit specific mention:

- **Paragraph (5)** - which is the Model’s version of the notice and implementing agreement provision found in paragraph (10) of the 1975 and 1979 agreements, requires the Recipient to give *60 days advance notice* to the unions regarding any proposed organization or operation change that may affect the workforce. (The 1975 and 1979 Agreements require “reasonable” notice, with no specific timeframe.)
- **Paragraph (23)** - known as the “Sole Provider” clause, states that services to the Project shall be provided exclusively by employees of the Recipient covered by the 13(c) agreement, except for services previously provided through contract. There have been a limited number of arbitrations that have addressed this clause, and the results have been inconsistent. In at least one case,

this clause was found to prohibit a transit authority from contracting out transit work to a private provider.¹⁵

13(c) Warranty - The special Section 13(c) Warranty includes standard terms and conditions found by the DOL to be necessary to satisfy the statutory requirements of Section 13(c), and includes provisions requiring the protection of the collective bargaining rights and the collective bargaining process, as well as the traditional protections against a worsening of employment conditions (dismissal allowances, displacement allowances, etc.). The Section 13(c) Warranty incorporates many of the basic terms found in the Model 13(c) Agreement, but does not include additional or specialized provisions of the type found in negotiated 13(c) protections (such as the 1975 and 1979 Agreements described above).

1987 RIDOT 13(c) Agreement - This Agreement was entered into between RIDOT and ATU Locals 618, 1363 and 1382 in connection with a FTA grant for locomotives and rail cars, and contains standard 13(c) terms and conditions, including worsening and benefit provisions directly from the Model Agreement. RIPTA is not a party to this Agreement. This Agreement contains a notice and implementing agreement provision that could be relevant to any RIPTA to RIDOT transition or organization change. Paragraph 2(b) (which is otherwise comparable to the related provisions in the 1975 and 1979 Agreements) states that the negotiation of an implementing agreement, including dispute resolution of any issues that cannot be agreed upon, must be “complied with and carried out” *prior to* the institution of the intended action. This is sometimes referred to as the “preconsummation” requirement, i.e. the negotiation and implementing agreement process must be completed before the action or change may occur. This requirement, if applicable to a RIPTA/RIDOT transition, could mean that the 13(c) protection issues would have to be fully resolved before the transition would be allowed to be completed.

1997 Operating Arrangement - This Arrangement is actually the standard 13(c) protections developed by DOL for operating assistance and preventative maintenance grants. (It is not a locally negotiated agreement). The 1997 Agreement applies to RIDOT, RIPTA, and the Professional and Technical Employees Local Union 808 (LIUNA), and contains standard 13(c) protections. The 1997 Arrangement includes a successor clause that may be more effective, as a matter of contract law, in actually imposing obligations on a successor operator, because it includes language (now standard in DOL-imposed arrangements) that expressly states that the recipient (public body) must require a successor operator to agree to the 13(c) agreement *as a condition precedent* to entering into any agreement with that successor.

December 1986 Side Letter - This 13(c) letter executed by RIDOT in December 1986 relates specifically to paratransit operations. The letter provides, *inter alia*, that the recipient will ensure that all paratransit project services are operated in such a manner that “they will not

¹⁵ Other decisions involving the Sole Provider clause have found that the clause must be interpreted in light of the applicable collective bargaining agreement, and if that agreement does not prohibit contracting out, then the Sole Provider clause will not be interpreted as imposing an absolute prohibition.

replace, displace, or compete with fixed route services now or hereafter provided by the Rhode Island Public Transit Authority.”¹⁶

Review of State Legislation

The enabling legislation for RIPTA is set forth in Chapter 39-18 of the Rhode Island statutes. A review of this legislation reveals a few provisions that could be relevant to a transition from RIPTA to RIDOT.

- The “Authority” is defined in Section 39-18-1(1) to mean RIPTA, or if RIPTA is abolished, to mean “the board, body, or commission succeeding to the principal functions thereof, of upon whom the powers of the authority given by this Chapter are given by law.” Accordingly, it appears that in a transition RIDOT could become the statutory successor to RIPTA, unless the transition was specifically structured to override or avoid this result. As the statutory successor, each of the powers and obligations of RIPTA under Chapter 39-18 would become powers and obligations of RIDOT (including the obligation to engage in binding interest arbitration under Section 39-18-17(c) described below).
- The RIPTA legislation includes a statutory acquisition and carryover provision similar to the contractual provision in paragraph (5) of the 1975 and 1979 13(c) Agreements. This statutory provision, found at Section 39-18-17(a) and (b), applies whenever RIPTA acquires transit facilities and property, and requires that (1) RIPTA shall continue payment of all pension and retirement allowances; (2) “qualified and necessary” employees shall be transferred to and become employees of the Authority; and (3) transferred employees shall not be lowered in rank or compensation or be placed in any worse position with respect to pension or other benefits or allowances. RIPTA is also authorized to abolish “any office or post” of any existing executive officer if RIPTA determines it is “an unreasonable addition” to the staff of the Authority. Like the carryover provision in the 13(c) agreements described above, this statutory language applies to acquisitions by RIPTA, and does not directly cover any future RIPTA to RIDOT transition. However, it does reflect a governmental policy of protecting employees’ jobs and their wages and benefits in an acquisition or other transition, and certainly could be looked to as a model and a precedent for any future transitional event.

¹⁶ This side letter was executed before the enactment of the Americans with Disabilities Act (ADA), which establishes the requirement for complementary paratransit services that must meet specific service criteria. Given the requirements of the ADA and the necessary geographical overlap between ADA paratransit services and fixed route services, there is a question as to whether RIPTA or RIDOT could be in full compliance with the ADA and still strictly comply with the requirements of this side letter.

- The RIPTA legislation includes a statutory requirement for binding interest arbitration that is similar to the labor disputes/arbitration provisions in paragraph (11) of the 1975 and 1979 Agreements. This statutory provision, found at Section 39-18-17(c), requires that in the case of any labor dispute where collective bargaining does not result in an agreement, RIPTA shall offer to submit the dispute to a three-person arbitration panel (with one representative from RIPTA, one from the union, and one agreed upon by the parties or in the absence of agreement selected from a AAA list). The decision of the majority of the board is “final and binding” on the matters in dispute. Similar to the language in the 13(c) Agreements, the term “labor dispute” is broadly construed and includes disputes over wages, hours, and working conditions and the making and maintaining of a collective bargaining agreement. Given this statutory interest arbitration language and the arbitration provisions in the 13(c) agreements, it would appear that RIDOT, as the successor to RIPTA, would be required to use binding interest arbitration as the method for the resolution of interest disputes. However, the State of Rhode Island already has a State statutory procedure, in Chapter 36-11, that governs the resolution of interest disputes between State agencies and their represented employees. This State procedure includes a series of steps for the resolution of interest disputes-- specifically, voluntary mediation, compulsory mediation, conciliation or fact-finding, and final and binding arbitration. Under the arbitration procedure applicable to State disputes (Sec. 36.11-9), the decision of the arbitrator is final and binding on both the bargaining agent and the chief executive, *except for* issues involving wages, where the decision is advisory in nature.¹⁷ As a result, the transition to RIDOT could result in a conflict between the binding interest arbitration process in RIPTA’s 13(c) Agreement and its enabling legislation and the interest dispute resolution process for State employees set forth in State law. (See discussion in Part IV below.)
- Section 39-18-18.1 contains language that could be read as passing on certain RIPTA financial obligations to the State. This Section provides that RIPTA is an instrumentality and political subdivision of the State, and that it shall pay all benefits “required by law” until it ceases to exist, and thereafter “the payments shall be the obligation of the State”. If this language were broadly construed, it might extend to 13(c) payments or benefits that RIPTA is found to be obligated to pay to employees covered by 13(c). Additional research of State law would be needed to ascertain what specific payments and benefits are covered by this provision.

¹⁷ The State statute also provides a list of factors to be considered by the arbitrator, such as a comparison of wages and working conditions of the State employees involved with employees in the same or similar work; the interests and welfare of the public, etc. (See Sec. 36-11-10.)

Review of Labor Agreement Issues

RIPTA is party to three labor agreements: an agreement with ATU Division 618, which represents operators and mechanics; an agreement with ATU Division 618A, which represents supervisors, and an agreement with the Rhode Island Laborers' District Council, on behalf of Local Union 808 of the Laborers' International Union of North America, AFL-CIO, which represents clerical personnel (certain clerks, customer service personnel, and other administrative personnel).

Contents of Labor Agreements - The RIPTA labor agreements address the subjects normally covered by a collective bargaining agreement, such as wages, overtime, vacations, pensions, sick leave, health and welfare benefits, life insurance, holidays, grievances, selection of runs, reductions in force, uniforms, etc. None of the labor agreement includes any express successor clause purporting to bind a successor to RIPTA to the terms and conditions of the agreement. Two particular areas in the labor agreements are worthy of note -- both in terms of their significance and treatment in a transition -- pensions and health care.

- **Pensions** - On the issue of pensions, the labor agreement with ATU Local 618, the largest union, provides a pension plan for hourly employees. (See Section 1.25 of the ATU Labor Agreement.) The plan is administered by a Joint Pension Board consisting of 6 (six) individuals, three appointed by the Authority and three appointed by the unions. The Board has full responsibility for the investment of plan assets. Under the labor agreement with ATU Local 618A, employees appear to be covered by the same pension plan administered by the Joint Pension Board for Local 618. The Agreement with Local Union 808 (LIUNA) provides for a salaried Employee's Retirement Pension Plan, also administered by a Joint Pension Board with management and union representatives. (See Article XX Local 808 Labor Agreement.)
- **Health Care** - Regarding health care, the labor agreements with ATU Local 618 and 618A provide health care coverage for full time employees "under the same terms and conditions as provided by the State of Rhode Island to its employees". (See Sec. 1.28(a) ATU Labor Agreement.) The health care provisions in the labor agreement with Local 808 differ slightly in language, stating that RIPTA agrees to provide a health insurance plan "consistent with the health insurance plans offered to employees of the State of Rhode Island". (See Article XIX, Local 808 Labor Agreement.) The State health care plan referred in the RIPTA labor agreements (which is apparently the product of negotiation between the State and the various unions representing State employees) has evolved from a structure offering different plans from which employees could chose to the current single plan, a Preferred Provider Organization or PPO, that is administered by United Healthcare.

One of the most controversial health care issues currently affecting transit agencies and their employees, driven primarily by the rising costs of health care and coverage, is the issue of "co-pay" -- that is, the amount (if

any) that a covered employee must contribute to the cost of health insurance provided by the employer. In the State of Rhode Island, the issue of the health coverage co-pay is both controversial and a bit muddled, for State employees as well as for employees represented by the RIPTA unions. In the August 2004 award in the interest arbitration dispute between RIPTA and ATU Local 618, Arbitrator O'Brien elected to not rule on the dispute regarding co-pay, instead deferring the issue to resolution "in the larger context of the negotiations between the State and its employees". See *Interest Arbitration Award, RIPTA and ATU, Division No. 618*, August 7, 2004, R. O'Brien, Arbitrator, at 15. Consistent with the labor agreement language, Arbitrator O'Brien apparently believed that RIPTA and its represented employees should follow the practice or approach adopted at the State level on the issue of health coverage co-pay. Unfortunately, the State currently does not have a single consistent way of administering health insurance co-pay. In the past few years, the State has proposed a couple of options for co-payment by State employees on the co-pay issue -- one based on a percentage of salary and another based on a percentage of premiums. The State has reached agreement with some State unions using these co-pay options, but is still negotiating with several unions.

This situation has left RIPTA without a uniform State benchmark and as a result RIPTA has negotiated its own co-pay structure with the Local 618. There is not yet a similar agreement with by RIPTA with Local 618A.

Successorship Principles - There is a considerable body of Federal case law, including Supreme Court decisions, regarding the issue of successorship in private sector labor relations. RIPTA and RIDOT, as public entities, are exempt from the National Labor Relations Act (NLRA) and thus the case law interpreting that Act is not directly applicable. However, since there is little or no case law on the issue of successorship in public sector transitions, the labor law principles articulated in the Federal/NLRA cases provide useful guidance.

Under the NLRA, in determining whether a new company is a "successor" the primary focus is on whether that company acquired substantial assets of its predecessor and continued, without interruption or substantial change, that predecessor's business operations. *Golden State Bottling Co. v. NLRB*, 414 U.S. 168 (1973) at 184. As a general principle, even if a new company is found to be a "successor", it is not bound by the substantive provisions in a predecessor's collective bargaining agreement, but rather "is ordinarily free to set initial terms on which it will hire the employees of a predecessor" *NLRB v. Burns International Security Services, Inc.*, 406 U.S. 272 (1972) at 294. Further, the successor company is under no obligation to hire employees of its predecessor, provided that it may not discriminate against union employees in its hiring. *Id.* at 280. However, if the successor hires a majority of its employees from its predecessor, then it has an obligation to bargain collectively with the union

representing those employees, *Fall River Dyeing and Finishing Corporation v. NLRB*, 482 U.S. 42 (1987)¹⁸

Thus, if 13(c) were not a factor, the rights of RIPTA employees would be much more limited in a RIPTA-RIDOT transition, even if the RIPTA employees were able to successfully argue that the policy of the *Burns* and *Fall River Dyeing* cases should apply to a public employee transition situation. The only guarantee afforded the employees under Federal/NLRA labor principles would be that RIDOT would have an obligation to bargain with the ATU and LIUNA if it hired a majority of its transit workforce from RIPTA.

Key Issues in RIPTA-RIDOT Transition

The decree and complexity of the 13(c) and labor issues that may arise in any RIPTA to RIDOT transition will depend to a large extent on the approach taken by State Government in effectuating the transition. If the status quo is maintained -- that is, the existing RIPTA workforce is fully protected, with assurances of comparable jobs and guaranteed replication of existing wages, benefits, and pension rights -- then the 13(c)/labor issues could be relatively minor, and should not prevent the transition from occurring. If, on the other hand, the transition is viewed by the State as an opportunity to achieve economies in the size of the transit workforce, or if the State desires to negotiate or put in place different wages, benefits, pension plans, or other terms of employment for the transit workforce, then the issues will inevitably get much more complicated, not to mention contentious, and the unions might try to use 13(c) to prevent the transition from being carried at all. The following discussion will review the most significant potential issues.

Notice and Implementing Agreements - The first 13(c) issue that could arise in a RIPTA-RIDOT transition is the matter of notice and implementing agreements. As noted above, standard 13(c) terms impose a duty on the public agency grantee to give advance notice of organizational or operational changes resulting from a Federal project that may impact the workforce. While a good argument can be made that any RIPTA to RIDOT transition would not be occurring “as a result of” a Federal project, it is nonetheless likely that the transit unions would seek such a notice and, more importantly, demand the right to negotiate an implementing agreement to address the employees’ transition to new jobs at RIDOT.

Carryover of Jobs and Terms and Conditions of Employment - The most critical issue presented by a RIPTA-RIDOT transition is the question of employee and labor agreement “carryover”. From a legal perspective, there is no express term in the applicable 13(c) agreements mandating a carryover under these facts (i.e., a transition from one public agency to another) and, strictly speaking, it would not appear that there would be any federally funded acquisition of a transit system as contemplated under the requirements of Section 13(c)(4).

¹⁸ The NLRB and Federal courts have ruled that the *Fall River Dyeing* doctrine should apply to circumstances where a private company takes over functions or responsibilities of a public agency and the public employees become private employees.

However, this certainly does not mean that there will be no 13(c)(4) carryover issues in a RIPTA to RIDOT transition. The unions may argue that this is the type of transition that 13(c) carryover protection was intended to cover, and that employees could lose jobs and rights and benefits if such protection is not provided. If RIDOT acquires the federally funded assets of RIPTA, the union's argument that a 13(c) acquisition is occurring would be strengthened. Also, as discussed above in Part II, the historical practice in merger or consolidations of public transit agencies, and in transitions from one public entity to another, has been to retain essentially the same transit workforce and to protect their wages, benefits, and pensions. In addition, a RIPTA to RIDOT transition would probably involve a transfer of assets, and a transfer of federally funded assets will ordinarily require a FTA grant amendment and 13(c) certification by the DOL. This would provide the unions with a forum to object to the grant and seek to revise the 13(c) agreements to specifically include carryover protections applicable to a RIPTA to RIDOT transition.

As a practical matter, there is likely to be significant political pressure to protect existing RIPTA jobs and preserve the wages and benefits of the unionized workforce. As a result, it is certainly possible that the entire issue of employee carryover and protection of wages and benefits in a RIPTA to RIDOT transition would be addressed in State legislation, particularly if such legislation is otherwise needed to implement the transition.

Worsening Issues - There are two general types of worsening claims that could arise in a transition: claims of employees who are laid off in the transition, and claims of employees who obtain a RIDOT job but believe they have been financially harmed.

- **Types of Claims** - First, if existing employees are not hired in a RIPTA-RIDOT transition, there will undoubtedly be claims for 13(c) *dismissal allowances* and other worsening protection. As noted above, employees are eligible to receive up to six years of dismissal allowances if they are laid off as a result of a Federal project. Full 13(c) labor protection for dismissal allowances can be costly -- for example, if 20 RIPTA employees were not hired by RIDOT, and their average wages and benefits equaled \$50,000, they would have 13(c) claims in the amount of \$6,000,000. (20 x \$50,000 x 6)

Second, there could be worsening claims by employees who do get a job with RIDOT but believe that they have lost earnings or rights or benefits. As described above, employees may be eligible for *displacement allowances* (also payable for up to six years) if they suffer a loss of wages or benefits (such as lower pay in a new or restructured position) as a result of a Federal project. Typical claims could be for lost overtime, diminished levels or types of benefits, or increased employee cost, such as a higher health insurance co-pay. In a RIPTA-RIDOT transition, health care co-pay could certainly be a major issue if the transition results in the imposition of new or additional co-pay obligations on the transit employees. (As noted above, ATU employees do not currently make a co-pay, but as State employees it is likely they would have such an obligation.) Although it is not as costly as paying dismissal allowances,

13(c) labor protection in the form of displacement allowances can also create significant financial exposure for the responsible Public Body. For example, if 40 RIPTA employees with average wages and benefits of \$50,000 experienced an average 10% loss in compensation, they would have 13(c) claims in the amount of \$1,200,000 (40 x \$5,000 x 6).

Finally, even where the basic wages and benefits are carried over, employees in other transition cases have filed 13(c) claims for more incidental benefits or “rights” they believe they have lost (i.e., rail passes, safety glasses, banked sick leave, etc.).

Analysis of Merits - Under the causation analysis followed in most 13(c) cases, employees filing claims based on a RIPTA to RIDOT transition should not be found to be eligible for 13(c) benefits because the transition would not appear, as a factual matter, to be caused by, or result from, a Federal grant. It is more reasonable to assume that the transition would be caused by a political/policy decision at the State level, based on public policy or budgetary reasons to make the change. However, there is always a risk of a *Zack* type arbitration ruling, and that risk is increased in Rhode Island because of the open-ended causation language (i.e., traceable) in the applicable 13(c) protections. In addition, if the transition were accompanied by Federal grants that assisted in or facilitated the transition (i.e., funding for a new maintenance facility to be available when RIDOT took over operations), the nexus to a Federal project and the likelihood of success on the merits would be increased.

It should be noted that in most 13(c) arbitrations involving “worsening” claims, the initial issue presented and adjudicated is whether the alleged employee harm occurred “as a result” of a Federal project. If the claimants win on that causation issue, the next phase of the arbitration is used to determine the actual financial harm incurred and the specific 13(c) relief.

Pension Issues - One of the most significant benefit issues that could arise in a RIPTA to RIDOT transition is that of pension rights. As discussed, RIPTA employees currently have a Pension Plan under their labor agreements, administered by a Joint Board. Pension rights provided under a labor agreement are clearly protected by 13(c); in fact, the legislative history of Section 13(c) indicates that concerns about the potential loss of pension rights was one of the underlying reasons for the enactment of the labor protection provisions.

One of the fundamental factual issues in a RIPTA-RIDOT transition is what pension or retirement plan will cover the existing RIPTA employees if they become employees of the State. If the existing RIPTA pension plans can be transferred to the State, or if the RIPTA employees can become participants in a comparable State plan or retirement program -- with full credit for years of service, full vesting, retirement at the same age or years of service, and no loss of benefits -- then there may not be any pension-related harm for purposes of 13(c). If, however, there are potential changes in pension benefits or coverage, or different years in service requirements, then there will be significant 13(c)/labor issues on this topic. As a practical and political matter, few issues are as sensitive as pension and retirement rights. Furthermore, even if individual employees’ pension rights are essentially replicated, it is still possible that the union

would object and claim harm if it no longer has representation on the pension or retirement board after the RIPTA-RIDOT transition.

Interest Arbitration - As described above, the transit unions and represented RIPTA employees currently have the right to binding interest arbitration. State law, however, provides a different mechanism for the resolution of interest disputes involving State unionized employees, as set forth in Chapter 36-11 of the Rhode Island statutes. This could become a troublesome issue. It is complicated by the fact that the current obligation to submit RIPTA labor disputes to binding interest arbitration is sourced in two places: the RIPTA State enabling legislation (Section 39-18-17(c)) and the 13(c) agreements. The state legislative can obviously change the RIPTA legislative provisions or replace them with the existing statutory procedure for State employees, but the State has no legal authority to unilaterally change the interest arbitration provisions in paragraph (11) of the 1975 and 1979 13(c) Agreements. That provision can only be changed through the DOL 13(c) certification and dispute resolution process, which would involve an objection by RIPTA or RIDOT to the continuing use of the existing interest arbitration process in the 13(c) agreements and a request to negotiate an alternative interest dispute resolution method.¹⁹

In addition, in order for the existing State procedure in Chapter 36-11 to be adopted for purposes of 13(c) compliance, the DOL would have to find that those statutory provisions provided a satisfactory interest dispute resolution process under existing Federal court and DOL precedents. (See discussion in Part II.A. above regarding publication, etc., of non-binding recommendations.)

Conclusion

Section 13(c) labor protection presents a broad array of issues in any significant organizational or operational change such as a potential RIPTA to RIDOT transition. If these issues are addressed early and handled through negotiated agreements and for mutually acceptable State legislation, the issues can be manageable. If, on the other hand, employees and their unions see the status quo threatened, they will inevitably attempt to use 13(c) (through litigation, arbitration, and the DOL 13(c) certification process) to protect their jobs and their existing terms and conditions of employment.

¹⁹ Under the DOL 13(c) certification process, the existing 13(c) protections for a transit agency grantee are routinely applied to FTA grants unless the grantee or the union objects to a particular provision. If an objection is filed with DOL, DOL must first determine whether the objection is “sufficient”, under DOL guidelines, to justify the negotiation of revised 13(c) terms. If DOL finds the objection to not be sufficient, it will certify the pending grant on the basis of the existing protections. If DOL finds the objection sufficient, it will direct the parties to negotiate alternative terms. If they fail to agree, DOL will review the positions of the parties and will determine the appropriate terms to be applied on the issue in dispute.

RIDOT BENEFITS COMPARISON

This section presents a comparison of various contractual obligations for both the State of Rhode Island regarding Rhode Island Department of Transportation (RIDOT) employees and the Rhode Island Public Transit Authority (RIPTA). The comparison for the most part, contrasts the agreements with several bargaining units including State contracts with Rhode Island District Council 94, A.F.S.C.M.E.; Union Local 808 (RIDOT and RIPTA Administrative/Clerical); Local 1033 of the Laborers International Union of North America (LIUNA); and Local 400 International Federation of Professional and Technical Engineers with those RIPTA has entered into with Local 618 and Local 618A of the Amalgamated Transit Union (ATU).

A few points are noteworthy at the outset. Several of the State contracts were not available for review in their present or proposed final form. To the extent changes are made to the “drafts” reviewed, information contained in this memo would be revised.

In general, the agreements with the State tend to be consistent among the various Locals in terms of major components. Similarly, the RIPTA contracts with the two unions also tend to “piggyback” one another.

Based on the Memorandum of Agreement between RIPTA and Local 618 dated June 8, 2006 compared with the most recent State agreements, the State and latest Local 618 agreement result in comparable wage increases. There has not yet been a recent agreement reached with RIPTA Local 618A. It should also be recognized that RIPTA agreement employees are paid according to a set wage progression. In nearly all classifications, it takes from three to five years to earn the full (top) hourly rate. Generally, the State contracts indicate a pay grade with increments above the base step or a set hourly wage.

As shown in Table 1, the State agreements call for Longevity raises. These increases are added to an employees base wage rate at various service anniversaries and range from five percent at the completion of five years, to 20 percent at a 25th anniversary. In contrast, no such provisions are contained in the RIPTA contracts.

**Table 1
Comparison of Various Contract Components – Rhode Island State and RIPTA**

Category	Locals 400 & 94 (RIDOT)	Locals 618 & 618A (RIPTA)
Work Day	3 Classes; 7 hour daily, 8 hour daily and non-standard (35 or more hours per week)	Transportation employees as per run Assignments(s); Flexible service operators may have a 4 day work week; Maintenance employees and Local 618A employees typically scheduled for an eight-hour day
Wages	Increases of 4% For FY 06, 3% in FY 07, and 3% in FY 08.	For Local 618, increase of 4.0% for 2006, 3.0% for 2007 and 2008 and 1.5% for 2009
Longevity Raises	5% at 5 th anniversary, 10% at 11 th anniversary, 15% at 15 th anniversary, 17.5 % at 20 th anniversary, 20% at 25 th anniversary.	None
Holidays	12 (11 for Local 94) not including any additional day designated as such by the Governor or General Assembly.	10
Sick Days	35 hour week and non-standard week employees accrue 4 hours bi-weekly (13 annually), 40 hour week employees accrue 5 hours bi-weekly (about 15 days annually).	12 annually
Sick Day Accrual	Maximum of 125 days	Unlimited
Sick Leave Payoff	35 hour and non-standard week employees get full pay for 50% of hours from 390 to 629 and 75% of hours from 630 to 875. 40 hour week employees get full pay for 50% of hours from 468 to 720 and 75% of hours from 721 to 1,000.	Upon retirement only, 50% if availability was 85% or greater; 100% if had perfect attendance during entire term of employment. (100% perfect attendance never accomplished)
Vacation	10 to 28 days annually based on service time, with a year-to-year carryover of not more than time credited for a 2-year period.	5 to 35 days based on service time and date of hire. Two days vacation time carried over from the prior year must be used by June 30 th or lost.
Vacation Payoff	Full pay at present rate for each hour credit to date of termination.	Full pay at present rate for each hour credit to date of termination
Personal Leave	3 days annually for 35 hour employees, 4 days for 40 hour week employees.	None (Local 618); 2 days for Local 618A with a 3 rd day if having perfect attendance in the prior year.
Overtime	Time and one-half for hours in excess of typical work week. 35 hour employees may elect to take compensatory time in lieu of cash.	Time and one-half for daily hours over 8 and/or weekly hours over 40.
Bereavement	1 to 4 days paid leave depending on relation to deceased.	1 to 3 days depending on relation to deceased
Tuition Reimbursement/ Education Incentive	Tuition reimbursed up to \$1,500 annually. Upon completion of an approved four course curriculum, employee receives a one-step increment to their current base step.	None
Shift Differential	Employees on evening (3 PM to midnight) and night (11 PM to 8 AM) hours are paid an additional \$0.70 per hour.	None
Health & Welfare	Employees contribute 2.5 % of base wages and 0.5% of other wages (if any).	Effective July 2006, Local 618 employees contribute \$6.00/week for individual and \$17.00/week family growing to \$9.50/week for individual and \$24.00/week for family in July 2008. There is no recent agreement for Local 618A employees
Pension	1.6% to 3% depending on years of service as Provided under Title 36 plus a cost of living adjustment	\$34 a month for each year of service prior to 1987 and 2% of base salary for each year of service thereafter.

All the State contracts provide more paid (or payment at overtime rates) holidays than those of RIPTA. Similarly employees whose unions are under contract with the State accrue more paid sick leave annually than their RIPTA counterparts. However, RIPTA employees can accrue unlimited sick time while State contract employees are “maxed out” at 125 days. There are also very specific guidelines at both agencies for payment of sick leave balances at time of termination.

Vacation time granted also varies as does Personal Leave time. State contracts allow for an additional Bereavement day depending on the employees’ relation to the deceased.

The State contracts provide for tuition reimbursement, generally up to \$1,500 per year. The contracts with Locals 94, 400 and 808 (not RIPTA’s 808) also provide for a one-step increase in the salary of an employee that has successfully completed an approved four-course curriculum. No such provisions exist for RIPTA Local 618 and 618A employees.

State contracts call for a \$0.70 hourly wage differential for those working the “evening” and “night” tours of duty. RIPTA employees are not paid any shift differential.

State contract employee pension benefits are set as provided for under Rhode Island Title 36. In the case of RIPTA employees, the Joint Pension Board oversees the administrative and investment activities of the fund but cannot amend the Pension Plan or increase benefits without the consent of RIPTA’s Board of Directors. Employees covered under agreements between the State and LIUNA (Locals 808 and 1033) may receive both the union pension and that provided for under Title 36.

RIPTA employees (after 30 days of service) and their spouses both active and retired can use the bus system at no cost. Each is provided an “Employees Pass”.

The previous discussion contrasted various agreement provisions between State and RIPTA contracts with the unions representing employees. Table 2 presents a comparison rating for various contract elements of the State and RIPTA contracts. Again, it should be noted that Locals 808 (not RIPTA’s 808) and 1033 are covered by a master agreement regardless of for which operating entity they work. The comparison is based on a “better” (worse) or comparable rating from the perspective of the employee receiving the benefit. Another way to view this comparison is in terms of cost. In nearly all cases, the “better” rating results in a greater cost to that agency. There is a total of 17 contract components contained in the review. The State contract(s) received a rating of “better” for eight items. Seven are viewed as comparable – neither better nor worse, while the RIPTA contract is viewed as better (i.e., more costly) for two of the contract components. The majority of RIPTA employees receives a more favorable sick leave accrual and can ride the bus system free of charge. For the latter, while it may not be a true cost since service would operate anyway; there is a lost revenue component that should be considered.

**Table 2
Rating of Various Contract Components -- Rode Island State and RIPTA**

Category	R.I. State	RIPTA
Work Day	Comparable	Comparable
Wages	Comparable	Comparable
Longevity Raises	Better	
Holidays	Better	
Sick Days	Better	
Sick Day Accrual		Better
Sick Leave Payoff	Comparable	Comparable
Vacation	Comparable	Comparable
Vacation Payoff	Comparable	Comparable
Personal Leave	Better	
Overtime	Comparable	Comparable
Bereavement	Better	
Tuition Reimbursement/Education Incentive	Better	
Shift Differential	Better	
Health & Welfare	Comparable	Comparable
Pension	Better	
Free Transportation		Better

Costs associated with wages and fringe benefits tend to validate the review of benefits discussed above. For FY 2006, the Department of Transportation Agency Summary listed \$42.3 million in salaries and an additional \$18.9 million in benefits. Overall, fringe benefits were projected at 44.7 percent of salaries. At RIPTA, the benefit rate was 38 percent. In addition, the average cost per full-time employee at the Department of Transportation for FY 2006 is presented at \$75,529. At RIPTA for FY 2006, the cost per full-time employee is budgeted at an amount of \$59,313.

RIPTA – RIDOT PENSION COMPARISON

This section presents a review of the pension components at RIPTA (for Local 618) and those at the State Level as provided under Rhode Island Title 36.

There are certain key aspects of the two pension programs that substantially impact the “base” funds received by retirees. At RIPTA, individuals must be at least 62 years old or have fulfilled ten years of credited service to qualify; under RI Title 36, the retirement age is 60 with ten years of contributory service. For RIPTA retirees, the initial pension benefit is computed based on the base wages (excluding overtime or other payments) of the last 60 months actually worked divided by five to determine an average annual base salary. Under Title 36, the base is computed as the wage average of the highest three consecutive years of employment. Also, there is no automatic “cost of living adjustment” (COLA) increase to pensions provided RIPTA employees (except as expressly negotiated during collective bargaining) whereas there is a three percent COLA afforded State pensioners. Finally, at RIPTA the overall pension computation is based on two percent for each year of service for service after 1987 and \$34 per month for each year of service prior to 1987. Under Title 36, the payment allowance ranges from 1.7 percent for years one through ten to three percent for years 21 through 34.

To indicate the differences in the two separate pension programs, an example is prepared for two employees, one from RIPTA and one from the state that each earned \$42,139 the last year of employment. As noted above, the “base” wage rate for RIPTA is computed over a five-year period compared to three for employees covered under RI Title 36. Assuming an average three percent increase in hourly wage rates (at 2080 hours per year) during the past five years, an example of the pension computation is shown in the chart below.

Year	Hourly Rate (\$)	Annual Salary (\$)
2002	18.00	37,440
2003	18.54	38,563
2004	19.10	39,720
2005	19.67	40,912
2006	20.26	42,139

The pension base for the RIPTA employee would be \$39,755 (average of last five years) while the pension base under Title 36 (highest three consecutive years) would be \$40,924. As shown in the chart below, assuming retirement in 2006 with a “final” year salary of \$42,139, a 10-year RIPTA employee would receive nearly \$1,000 more during the first year of retirement. The RIPTA employee would receive a higher pension amount until after 30 years. However, this computation does not consider the fact that State employees receive a COLA whereas RIPTA employees do not unless specifically negotiated during collective bargaining.

Initial Pension

Years of Service	Local 618 (\$)	Title 36 (\$)
10 Years	7,951	6,957
12 Years	9,541	8,512
15 Years	11,926	10,845
20 Years	16,310	14,733
25 Years	22,325	20,871
30 Years	28,341	27,010
35 Years	30,381	32,739

When considering the COLA received by State employees, the pension of the State employee will gradually exceed that of a RIPTA retiree. As shown in the chart below, the pension paid for a RIPTA and State employee that retired with 10 years of service is listed with the Title 36 employee’s pension increasing due to COLA. The State employee will receive a higher pension payment in the sixth year of receiving a pension payment.

Impact of COLA – Lower Range

	Local 618 (\$)	Title 36 (\$)
Year 2	7,951	6,957
Year 3	7,951	7,136
Year 4	7,951	7,602
Year 5	7,951	7,830
Year 6	7,951	8,065

Similar results are observed for “Mid-“and “Upper” management positions with greater annual salaries. The chart below and the chart on the following page show similar results for the greater salary ranges. The middle range assumes a “final” year salary of \$61,903 and the upper range a salary of \$73,158 each with 25 years of service.

Impact of COLA – Middle Range

	Local 618/618A (\$)	Title 36 (\$)
Year 1	29,200	27,353
Year 2	29,200	28,174
Year 3	29,200	29,019
Year 4	29,200	29,890
Year 5	29,200	30,787
Year 6	29,200	31,710

Impact of COLA – Upper Range

	Local 618/618A (\$)	Title 36 (\$)
Year 1	34,509	32,327
Year 2	34,509	33,297
Year 3	34,509	34,296
Year 4	34,509	35,324
Year 5	34,509	36,384
Year 6	34,509	37,476

The higher salaries along with the increases provided by the COLA shorten the length of time required for the Title 36 pension payment to exceed that provided by RIPTA. Generally, the Title 36 pension payments tend to “even out” in comparison to those of RIPTA during Year 3 and become greater during Year 4.

The pension computations are a function of the percentage allowance, years of service and annual wage. However, it should be recognized that the comparisons above represent “equal” final compensation as defined by the plans at time of retirement for both the RIPTA and Title 36 pensioners. This ignores another major impact on both the wages paid and subsequent pensions to State agreement personnel – the longevity increases given to State employees at key milestones of their work career.

For example, assume two persons began their careers in 1971, one at RIPTA and one at RIDOT at an hourly wage of \$10.00. With a constant annual increase of 2.5 percent each year to 2006, the RIPTA employee would have an hourly rate of \$23.73 or an annual salary of \$49,363. The RIDOT employee would have an hourly rate of \$44.45 and annual salary of \$92,448. Under this scenario, the pension base for the RIPTA employee would be \$47,013 while the RIDOT employee would have a pension base of \$90,212.

There are a myriad of different scenarios that could be developed with various wage rates and lengths of service. In most cases where the pension is collected for 4 or more years, the Title 36 expenditure is greater and as salaries and length of employment increase it is substantially more expensive.

OPINIONS FROM LEADER INTERVIEWS

Face-to-face interviews were held with a variety of Rhode Island community leaders. These interviews were conducted in order to obtain insights into certain issues related to the performance of RIPTA. The content and extent of each interview varied depending upon the person being interviewed. In all interviews, the performance of RIPTA was discussed. In many instances, the focus was on the opinion of the interviewee regarding the transfer of RIPTA to the Rhode Island Department of Transportation (DOT). During the interviews with some of the RIPTA Board members, the policy and decision-making practices of the RIPTA Board were also discussed.

This report focuses only on the information obtained from the interviewees regarding the performance of RIPTA and RIDE as well as their opinions regarding the transfer of RIPTA to the DOT. The insights from RIPTA Board members regarding the policy and decision-making process are reviewed in another report.

The people that were interviewed included:

- Political Leaders
 - Governor Donald L. Carcieri
 - Senator Stephen D. Alves, Chairman Senate Finance Committee
 - Representative Stephen Costantino, Chairman House Finance Committee

- State Officials
 - James R. Capaldi, PE, Director DOT
 - William “Chuck” Alves, Chief of Staff DOT
 - Russell C. Dannecker, Senate Fiscal Advisor
 - Michael O’Keefe, House Fiscal Advisor
 - RoseMary Booth Gallogy, State Budget Officer
 - Frank Karpinsky, Executive Director Employee’s Retirement System
 - Jane Hayward, Secretary Health and Human Services
 - Corinne Russo, Director Department of Elderly Affairs
 - John Young, Interim Director MHRH
 - Ron Lebel, Director DHS

- RIPTA Board Members
 - William Kennedy
 - Sharon Wells
 - Thom Deller, Chairman
 - Robert D. Batting, Vice-Chair
 - James R. Capaldi

➤ RIPTA Staff/Union Leadership

- Alfred J. Moscola, General Manager
- Stephen Farrell, President/Business Agent (ATU Local 618/618A)
- Senator Frank Ciccone, Business Manager (LIUNA Local 808)

In many cases the interviews were held with only the individual listed above. In several instances two or more people participated in the interview. This occurred in four joint meetings: Director and Chief of Staff of the DOT; Chairman Senate Finance Committee and the Senate Fiscal Advisor; Chairman House Finance Committee and the House Fiscal Advisor; and, Director of DHS, Director of Department of Elderly Affairs, Secretary Health and Human Services and Interim Director of MHRH.

Performance of RIPTA

All of the people that were interviewed were questioned on their opinions regarding the performance of RIPTA. The opinions that were stated were very mixed. However there were several common points mentioned by several of those interviewed, including:

- RIPTA's performance in terms of their providing vehicle maintenance to a large portion of the Rhode Island DOT's fleet has been very successful and cost effective. This very positive aspect of RIPTA's performance was noted in six separate interview meetings.
- Two of those interviewed noted that the RIPTA fare structure is not equitable in that a person riding on a bus for a short distance pays the same fare as a person riding a very long distance.
- The overall high cost of RIPTA was questioned with three separate comments: RIPTA is "top heavy"; RIPTA could perform a lower quality of vehicle maintenance that may not cost as much yet still may be effective; and, some management positions at RIPTA receive high pay.
- Conversely three interviewees defended RIPTA's cost by noting that they are properly staffed, they spend an excessive amount of time dealing with funding issues and they are underfunded in terms of making appropriate changes and improvements to service.
- Two individuals noted that RIPTA should develop a vision as to what its long-term future should be and then address the activities that should be performed to achieve that vision. One of these individuals also stated that RIPTA should even explore expanding its role into other transportation modes such as rail service.
- Interviewees in three meetings questioned the fact that most of the RIPTA bus riders ride under some form of subsidy or special program that results in their riding bus service free.

There were several comments that were made by only one interviewee. These single person comments are listed below and again indicate that there are very different views that exist regarding RIPTA and its organization.

- There should be wholesale changes in the RIPTA management.
- RIPTA is good at vehicle maintenance.
- Believes that users view RIPTA bus services as reliable while non-users view bus services as a mystery.
- RIPTA operations are properly run with management always interested in making improvements.
- There are good union and management relations at RIPTA.
- Politics have hurt RIPTA from being as effective as it could be especially during the past period when new Board appointments were made.

A number of the interviewees noted ways that RIPTA could improve bus service to Rhode Island residents, including by:

- Providing crosstown service so that riders, for example, do not have to travel into downtown Providence to transfer to another bus to complete their trip.
- Providing more marketing and public information regarding RIPTA's services so as to attract more riders.
- Improving its fare collection equipment so as to become a more user-friendly agency and to provide more reliable ridership information, i.e., number of riders by each rider type, e.g., RIte Care, Senior Citizens, Students, etc.
- Avoiding making changes to its services several times a year without properly informing riders. These changes confuse riders especially those that have developed a habit of just following the times that their bus services have previously been scheduled.
- Reviewing performance and, if need be, changing the operation of the downtown Providence trolleys to be more effective.

Performance of RIdE

The opinions stated by the interviewees regarding the RIdE program were mostly on the unfavorable side. However, there were a few positive comments concerning the RIdE program. Those making positive comments recognized that the condition of the RIdE vehicles is now much

improved since the entire vehicle maintenance program was taken over by RIPTA. A general comment was also made that RIPTA is doing a good job with the RIdE program. The negative comments are listed below:

- Several people noted that the RIdE program is too costly. Several reasons were given for the costly RIdE service including too much “deadhead” travel, high fuel usage and poor scheduling.
- Some of the interviewees noted that the service was more economical when it was done locally. One interviewee also stated that the RIdE service was even operated better when it was done locally.
- Several made general comments that the RIdE program has problems. Service was noted as being poor and not sensitive to the needs of its riders.
- One individual gave examples of service issues related to RIdE service. The person noted the lack of RIdE service on Saturdays for seniors and problems with getting a transportation reservation with a short notice of two or three days. This individual stated that to insure that these riders get transportation, they must make a reservation for RIdE services several weeks in advance.

Transfer of RIPTA to RIDOT

Most of those interviewed were questioned regarding their opinion of a transfer of RIPTA to RIDOT. In many cases the interviewees stated that it was a bad idea and should not be pursued further. In other cases the interviewees stated that it would be interesting to find out the impact of such a change. Finally, a few people indicate that such a change should be considered as a serious option. It was pointed out that the experience of other places where transit is part of the state department of transportation should be reviewed, including Delaware.

Some of the specific comments included:

- RIPTA’s role could be expanded to include other transportation modes such as commuter rail.
- May consider the State forming a new cabinet including the Airport, Ports, Transit and Highway.
- Doubts a RIDOT transit system would work. Better as a separate entity.
- No way should a transfer to RIDOT be done.
- There should not be a transfer of RIPTA to RIDOT but rather a plan to improve RIPTA’s performance.

- It would be a long shot for such a transfer to take place.
- Such a transfer could hurt transit in the long term.
- Likes the fact that such a transfer is being reviewed.

PUBLIC TRANSPORTATION SERVICES IN THE STATE OF DELAWARE

The responsibility to provide public mass transportation services in the United States generally rests with special purpose transit agencies created by the state legislatures. In few states, a statewide agency usually the Department of Transportation, directly operates public mass transportation services. Examples of states in which most of the public transportation services are operated by statewide agencies include Connecticut, Delaware, New Jersey and Maryland.

This case study discusses how public transportation services are organized and delivered in the State of Delaware. This report first presents the current organization of transit services and then discusses similarities and differences in transit services operated in States of Delaware and Rhode Island.

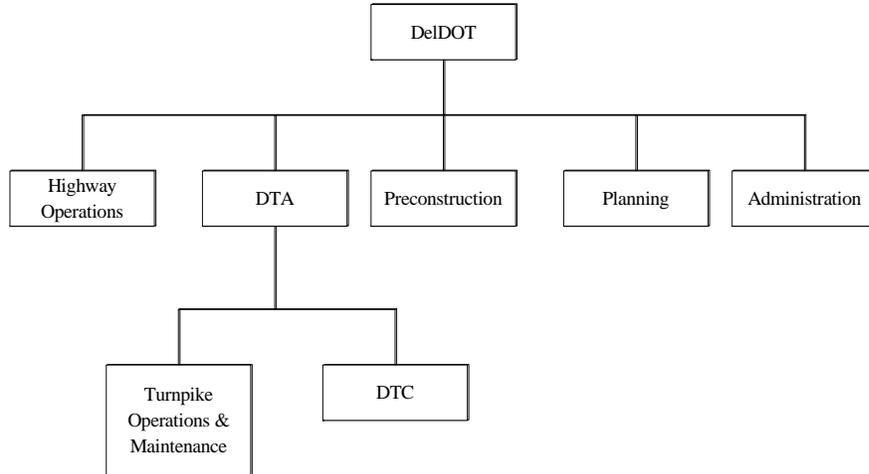
Organization Structure

This section of the case study discusses the changes in the past 15 years leading up to the current organization structure used to deliver statewide fixed route bus and paratransit services in Delaware and commuter rail services in the Wilmington to Philadelphia corridor.

Background - Until the mid 1990s, public transportation services in the State of Delaware were provided by four agencies, the Delaware Administration for Regional Transit (DART), the Delaware Administration for Specialized Transit (DAST), the Delaware Railroad Administration (DRA), and the Commuter Services Administration (CSA). Each of these agencies was created by the State. In February 1993, Governor Thomas R. Carpenter appointed the Commission on Government Reorganization and Effectiveness, known as the “Minner Commission”. The purpose of the commission “was to find ways to improve the effectiveness of state government and to make state government more “user-friendly”, that is, more responsive and accessible to the citizens of Delaware”. The Minner Commission recommended that separate agencies providing public transportation in the state be consolidated under the Delaware Department of Transportation (DelDOT).

In mid 1994, the Delaware State Legislature passed a legislation creating the Delaware Transportation Authority (DTA), under the Delaware Department of Transportation. This legislation allowed the creation of a subsidiary corporation, the Delaware Transit Corporation (DTC), under DTA, as illustrated in Figure 1.

**Figure 1
Delaware Department of Transportation
Organization Chart**

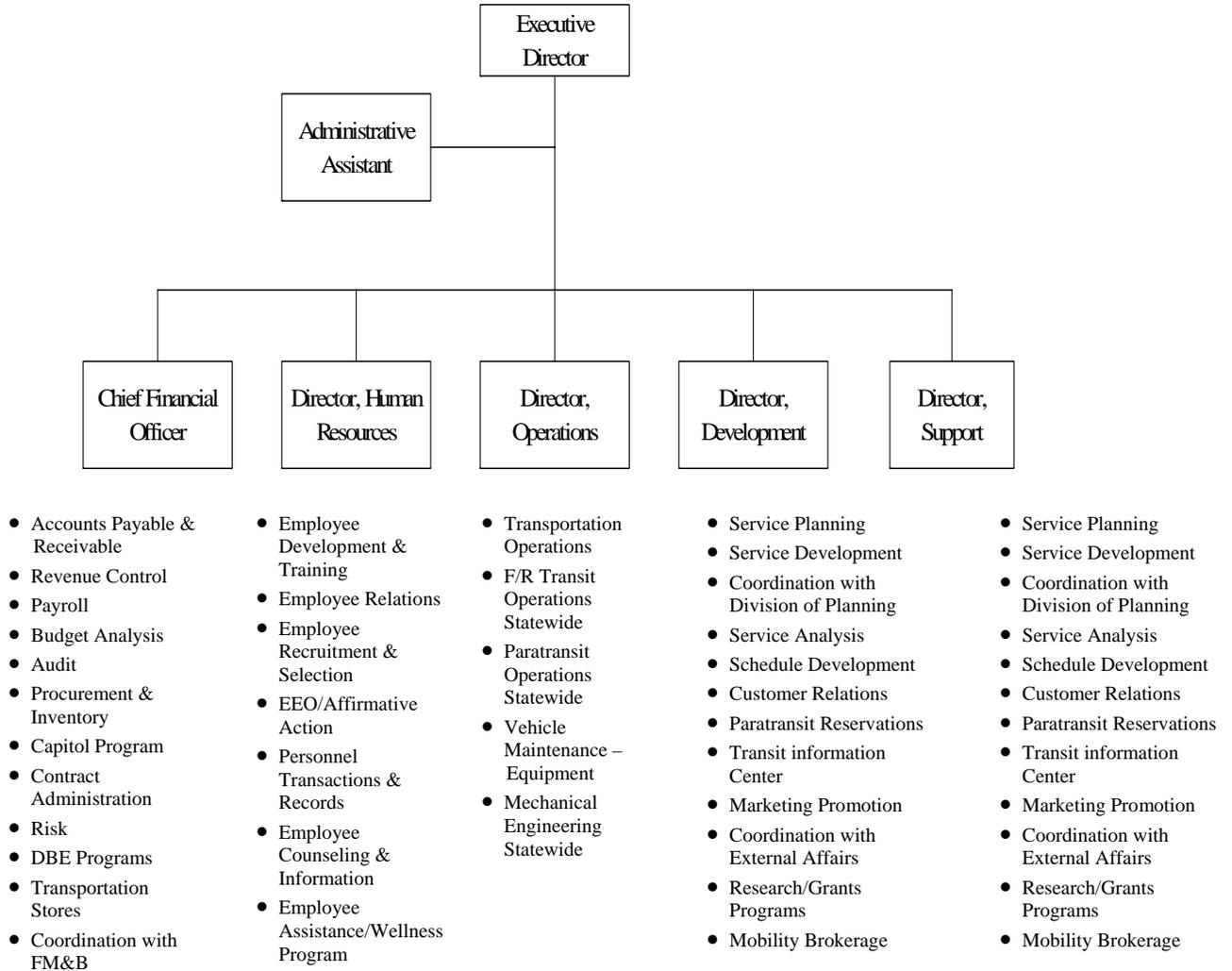


Subsequently, four separate agencies in the state, DART, DAST, DRA and CSA, were merged under DTC to create one agency responsible for providing all public transportation services in the state. All employees and benefit programs of the separate agencies in the state were merged and consolidated under DTC, with a few exceptions discussed later in this report. Most of the operating functions were consolidated under DTC. The information technology functions in each agency were consolidated and integrated in DelDOT. Similarly, responsibility for implementing capital improvements and projects was also integrated in DelDOT. DTA was made responsible for the provision of public transportation services as well as the operation and maintenance of the Delaware Turnpike. DTA was further given the authority to assign operation and maintenance activities for the Turnpike to the Division of Highway Operations.

Current Structure - DTC, a wholly owned subsidiary of DTA, is considered to be a division of DelDOT. DTC is headed by an Executive Director, and reports to the Secretary of DelDOT through the Director of DTA. All actions of DTC are approved, through DTA, by resolution of the Secretary, the Director of the office of Financial Management and Budget, and the Administrator of the Transportation Trust Fund. DTC receives policy direction and input from the state legislature through the Secretary of DelDOT.

DTC is organized by function and not by the modes it operates. An organization chart for DTC is presented in Figure 2. There are five major functions in DTC, Finance, Human Resources, Operations, Development and Support, as illustrated in this figure. DTC operates services throughout the State of Delaware under the brand name of “DART First State”.

**Figure 2
Delaware Transit Corporation
Organization Chart**



Currently, public transportation services operated in the state include fixed-route bus services in New Castle, Kent and Sussex counties; door to door, demand responsive paratransit services in the state; and commuter rail service primarily to and from Philadelphia under a contract with the Southeastern Pennsylvania Transportation Authority (SEPTA).

Financial Support

One of the primary benefits of consolidating transit functions under DelDOT was the creation of stable and predictable funding base for fixed route bus, paratransit and commuter rail services in the state. Prior to this reorganization, predecessor agencies were dependent on most of the funding support from local areas served annually. Now, DTC receives its funding through DelDOT, directly from the state legislature. Much of DTC’s funding comes from state fuel tax

revenue and motor vehicle registration fees. Transit funding in the State of Delaware has increased from around \$20 million before this consolidation in the mid 1990s to around \$80 million today.

The Governor has designated DelDOT to be the designated recipient for Section 5307 formula funds from the Federal Transit Administration (FTA) of the United States Department of Transportation (USDOT). DelDOT also receives Section 5309 funding from FTA for transit projects. DTC provides all day-to-day support to DelDOT to manage and administer Sections 5307 and 5309 grant funded projects.

Employee Benefit and Welfare Programs

DTC was created as a subsidiary of DTA under DelDOT by the State Legislature, as mentioned above. The creation of a subsidiary corporation allowed the State of Delaware to consolidate all transit functions and programs operated by different agencies under DTC in mid 1995. This arrangement allowed keeping most of the employees and programs of the predecessor agencies, DART, DAST, DAR and CSA, separate from the state programs.

Employee Status - All management and administrative employees of the predecessor agencies became employees of DTC. Employees of DTA as of June 30, 2004 who were transferred to DTC before August 31, 1995 retained their status as state employees.

Wages, Salaries and Fringe Benefits - Employees of DTC are not considered to be employees of the state for the purposes of wages, salaries and fringe benefits, such as vacation days, holidays and other absences.

Group Medical Insurance, Workers' Compensation and Deferred Compensation - All employees of DTC are considered to be state employees for the purposes of participation in the group medical insurance, workers' compensation and deferred compensation plans available to state employees. Participation in medical insurance, workers' compensation and deferred compensation programs is not subject to collective bargaining.

Pension Program - Employees of DTC are not considered to be employees of the state for the purposes of participation in the pension program.

Labor Contracts - DTC negotiates and enters in contract with union which represents operators and mechanics. The state does not directly deal with the union related issues. DTC has entered into two separate contracts with the unions that represent the operations and maintenance employees. One contract covers those employees that are employed by Delaware Administration for Regional Transit, a subsidiary corporation of DTC and the other contract covers employees that work for DTC to provide statewide paratransit services and fixed-route services in Greater Dover area. All employees are members of the Amalgamated Transit Union (ATU) Local 842.

Liability Insurance - DTC is required to include funding for liability insurance program in its annual budget. According to the legislation, the insurance protection may be provided through a combination of self-insurance program and commercially procured insurance.

Third-Party Contracting - DTC has the authority to enter into third-party contracts as necessary to provide services and does so for a number of fixed-routes (3 year-round and 7 seasonal routes in Sussex County, the most rural county in Delaware. DTC further has the authority under its contracts to engage third-parties in order to meet demand or provide materials, equipment and services on a temporary basis. The labor agreements require DTC to inform the union of such need and meet with the union quarterly thereafter to discuss the continued need for such contracts. DTC may not lay-off any represented employees as the result of such contracting.

Performance Comparisons

This section is to compare the operating characteristics and performance of DTC and RIPTA. The purpose of this comparison is to determine the similarities and differences between an agency under state control (i.e., DTC) versus an agency that is under its own authority (i.e., RIPTA).

Operating Statistics - A comparison of various operating statistics between DTC and RIPTA is presented in Table 3. Both DTC and RIPTA serve a similar sized population. However, RIPTA provides significantly more service than DTC, operating 56 percent more vehicle hours and 45 percent more vehicle miles. RIPTA's staff also is larger with 665 full time equivalents (FTEs) versus DTC with 351 FTEs. RIPTA carries more than twice the number of passengers annually as DTC. RIPTA's operating costs are nearly 88 percent more than DTC's and operating revenues are 126 percent more.

Table 3
Comparison of Operating Statistics

Characteristic	DTC	RIPTA	% Diff.
<i>Service Area Characteristics</i>			
Population	817,491	846,293	3.5%
Square Miles	1,954	299	-84.7%
Population/Sq. Miles	418	2,830	576.4%
<i>Dimensions – Operations</i>			
Total Vehicle Hours	424,759	660,700	55.5%
Total Vehicle Miles	6,176,727	8,972,000	45.3%
Total Revenue Hours	401,155	605,157	50.9%
Diesel Fuel Gallons	1,337,149	2,082,800	55.8%
Miles Per Hour	14.5	13.6	-6.2%
<i>Dimensions-Staff Size</i>			
Total FTE Employees	351.1	665.0	89.4%
G&A Employees	46.4	91.0	96.0%
Operating Employees	250.7	452.0	80.3%
Maintenance Employees	54.0	96.0	77.9%
<i>Dimensions – Vehicles</i>			
Active Revenue Fleet	209	222	6.2%
AM/PM Peak Vehicles	166	204	22.9%
<i>Ridership</i>			
Unlinked Trips	7,792,571	16,439,168	111.0%
<i>Financial</i>			
Operating Revenue	\$6,160,759	\$13,930,782	126.1%
Operating Cost (a)	\$30,968,126	\$58,189,844	87.9%
G&A Cost (b)	\$7,863,952	\$11,316,554	43.9%
Operations Cost	\$16,468,813	\$34,051,789	106.8%
Maintenance Cost	\$5,594,378	\$11,010,798	96.8%
Non-Vehicle Maintenance Cost	\$1,040,983	\$1,810,704	73.9%

(a) G&A services cost has been subtracted from RIPTA's operating cost

(b) Excludes G&A services for RIPTA, which are mostly attributed to ADA service

Source: 2004 National Transit Database

Revenue Sources - The sources of revenues for both RIPTA and DTC are presented in Table 4. As shown in this table, neither RIPTA nor DTC receive funding directly from local jurisdictions in their service areas. All local support comes from operating revenues (e.g., passenger fares and advertising revenues). State investment for DTC represents a larger share of total revenue than it does for RIPTA. However, RIPTA uses more federal funding for operations than DTC. The total non-local investment for each agency is fairly close, within five percent.

Table 4
Comparison of Revenue Sources

Characteristic	DTC	RIPTA	% Diff.
<i>Revenue Sources</i>			
Local Investment	\$0	\$0	-
Operating Revenue	\$6,160,759	\$13,930,782	126.1%
Total Local Support	\$6,160,759	\$13,930,782	126.1%
State Investment	\$46,510,242	\$39,150,771	-15.8%
Federal Investment	\$3,811,842	\$13,310,500	249.2%
Total Non-Local Investment	\$50,322,084	\$52,461,271	4.3%
Total Revenue	\$56,482,843	\$66,392,053	17.5%

Performance Measures - A comparison of performance measures between RIPTA and DTC is presented in Table 5. The performance measures address five categories: cost measures, per capita measures, investment measures, overall financial measures and general and administrative cost measures.

- RIPTA’s measures of cost efficiency (i.e., cost per vehicle mile, cost per revenue hour and cost per vehicle hour) are higher than DTC’s measures. RIPTA’s cost per vehicle hour of \$88 per vehicle hour is 21 percent more than DTC’s cost of \$73 per vehicle hour. However, in terms of cost effectiveness (i.e., cost per passenger), RIPTA’s cost per passenger is nearly 11 percent lower than DTC’s, \$3.54 per passenger versus \$3.97 per passenger, respectively.
- As shown in the per capita measures, RIPTA provides significantly more service per capita than DTC – 40 percent more miles per capita and 46 percent more revenue hours per capita. Although RIPTA’s cost per capita is 82 percent more, it’s overall productivity is more than twice that of DTC. RIPTA carries more than 19 passengers per capita compared to DTC’s productivity of less than 10 passengers per capita.
- On a per capita basis, DTC’s and RIPTA’s non-local investment is nearly the same. DTC’s non-local investment is \$61.56 per capita whereas RIPTA’s non-local investment is \$61.99 per capita. However, due to RIPTA’s higher productivity, there is a 51 percent difference between each agency’s non-local investment per passenger.

Table 5
Comparison of Performance Measures

Characteristic	DTC	RIPTA	% Diff.
<i>Cost Measures (\$)</i>			
Cost per Passenger	\$3.97	\$3.54	-10.9%
Cost per Vehicle Mile	\$5.01	\$6.49	29.4%
Cost per Revenue Hour	\$77.20	\$96.16	24.6%
Cost per Vehicle Hour	\$72.91	\$88.07	20.8%
<i>Per Capita Measures</i>			
Vehicle Miles per Capita	7.6	10.6	40.3%
Revenue Hours per Capita	0.49	0.72	45.7%
Cost per Capita	\$37.88	\$68.76	81.5%
Passengers per Capita	9.53	19.42	103.8%
<i>Investment Measures</i>			
Local Investment per Passenger	\$0.00	\$0.00	-
Non-Local Investment per Passenger	\$6.46	\$3.19	-50.6%
Local Investment per Capita	\$0.00	\$0.00	-
Non-Local Investment per Capita	\$61.56	\$61.99	0.7%
<i>Overall Financial</i>			
Average Fare	\$0.79	\$0.85	7.2%
Farebox Recovery Ratio	19.89%	23.94%	20.3%
<i>General Administration</i>			
G&A Cost per Total (%) (b)	25.4%	19.4%	-23.4%
G&A Employees per Total (%)	13.2%	13.7%	3.5%

(a) G&A services cost has been subtracted from RIPTA's operating cost
(b) Excludes G&A services for RIPTA, which are mostly attributed to ADA service
Source: 2004 National Transit Database

- RIPTA's average fare of \$0.85 is 7.2 percent more than DTC's average fare of \$0.79. As a result, RIPTA's farebox recovery ratio is 24 percent versus DTC's, which is 20 percent.
- As a percentage of total cost, RIPTA's general administration costs are 23 percent less than DTC's. However, both RIPTA and DTC have a similar percentage of general administration employees, with RIPTA's at 14 percent and DTC's at 13 percent.

As shown in this comparison, DTC and RIPTA are fairly similar in the size of the population that each agency serves. Each agency also receives roughly the same level of non-local support per capita. However, DTC provides less service than RIPTA and also provides less productive service, carrying fewer passengers per hour and mile than RIPTA. Although both agencies have comparable staffing levels (i.e., percentage of total staff) for administrative staff, DTC's general administration costs represent a greater percentage of its total operating costs than does RIPTA's.

Summary of Findings

The State of Delaware's creation of the Delaware Transportation Authority (DTA) and its subsidiary, the Delaware Transit Corporation (DTC), resulted in a number of advantages over the previous organization. These include the following:

- Bringing the four transportation agencies under one authority resulted in creating a brand identity for public transportation throughout the State.
- The new organization gave DTA and DTC the benefit of operating as a division of the State Department of Transportation, while at the same time having the autonomy to negotiate with labor unions outside of the State government.
- Employees of DTC are able to participate in the State's health and medical insurance coverage program.
- The new organization structure brought more financial support to public transportation from the State.

The key findings from this Delaware experience related to the transfer of RIPTA to the Rhode Island DOT are:

- The only economies of scale in the Delaware example is the fact that the IT functions are performed by the Delaware DOT for DTC as well as other DOT organizations. All of the functions associated with operating a transit system are included in the DTC organization.
- Since the health and welfare programs at RIPTA are more economical, the financial benefit that was obtained in the consolidation of DTC into the DOT in Delaware would not be a benefit under the transfer of RIPTA to the DOT.
- The new organization did benefit the DTC in that it brought more state financial support for public transportation. However, this may or may not be a benefit under a transfer of RIPTA to the DOT. It is unknown whether the transfer of RIPTA to the DOT would result in more funding for public transportation. It is likely that funding for any type of transportation in Rhode Island will continue to be an issue.