

Espailat v Foye

2021 NY Slip Op 30252(U)

January 28, 2021

Supreme Court, New York County

Docket Number: 161335/2020

Judge: W. Franc Perry

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. W. FRANC PERRY PART IAS MOTION 23EFM

Justice

-----X

ADRIANO ESPAILLAT, MICHAEL SCHWEINSBERG, ROBERT KELLY

Petitioner,

INDEX NO. 161335/2020

MOTION DATE N/A

MOTION SEQ. NO. 001

- v -

PATRICK FOYE, SARAH FEINBERG,

Respondent.

DECISION + ORDER ON MOTION

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 14, 15, 16, 17, 18, 19, 20, 21, 22

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER)

This is a class action Article 78 proceeding brought by named Petitioners Congressman Adriano Espaillat ("Espaillat"), Michael Schweinsberg ("Schweinsberg"), and Robert Kelly ("Kelly"; collectively, "Petitioners") on behalf of all subway riders, against Respondents Patrick Foye ("Foye"), CEO of the Metropolitan Transportation Authority ("MTA"), and Sara Feinberg ("Feinberg"), the President of the New York City Transit Authority ("NYCTA"). Petitioners seek an order prohibiting certain changes proposed by NYCTA from going into effect on the planned date of January 31, 2021. Petitioners allege that Respondents failed to go through the statutory procedural process required by Public Authorities Law §§ 1204 [5] and 1205 [15], as the proposed changes constitute a reduction in service and public access to the New York City subway.

Motion sequence 001 is Petitioners' order to show cause for injunctive relief, enjoining Respondents from enacting the proposed changes unless and until public hearings are conducted in accordance with the Public Authorities Law. A hearing was held on January 12 and January 15,

2021 to address the threshold issue of whether the proposed changes constituted a reduction in either service or access.

Background

Petitioner Espaillat is the elected Congressional Representative for the 13th Congressional District in New York. Petitioner Schweinsberg is the President of the 504 Democratic Club, an association comprised of, and advocating for, persons with disabilities. Finally, Petitioner Kelly is Vice President of the Stations Department of the Transport Workers Union of Greater New York, Local 100 (“Local 100”), a labor union representing 36,000 employees of the MTA and NYCTA. (NYSCEF Doc No. 1, Petition at ¶¶ 3(a)-(c).)

Petitioners bring this action against Respondents Foye and Feinberg in their capacities as CEO of the MTA and President of NYCTA, respectively. The MTA is a New York public authority which coordinates mass transit throughout southeastern New York. NYCTA is a subsidiary of the MTA and provides subway service in the City of New York. There are approximately 470 station booths in the New York City subway system, which are staffed by approximately 2479 station agents.¹

Pursuant to a collective bargaining agreement between Local 100 and the Respondents, station agents pick their job assignments every six months in order of seniority. The selection process as a whole is referred to as a “pick” and each year the MTA conducts a “Summer Pick” and a “Winter Pick”. During each pick, station agents consult a “pick book” to select their jobs and schedules from five job categories, which are explained below.

¹ In Winter 2020, there were a reported 2542 station agents, while in Winter 2021, there were 2479. (Respondents’ exhibits 3 and 4.)

Most station booths are attended to by station agents in 3 separate eight-hour shifts, the AM, PM, and Night shifts (collectively referred to as “station jobs”), each of which are afforded a 30-minute lunch period. Also available are Vacation Relief jobs, wherein an agent covers for an agent taking his or her vacation time; Regular Days Off (“RDO”) jobs, wherein an agent covers for an agent taking his or her scheduled two days off per week; and Extra jobs, wherein an agent is instructed to call a central coordinator each day to be staffed on an ad hoc basis.

Last, and most relevant to this case, are Lunch Relief jobs, a job shift wherein a Lunch Relief agent arrives at a subway booth to replace an agent working a station job for a 30-minute period so that the booth can remain open while the station agent takes his or her lunch period. Each Lunch Relief agent covers 6-8 booths per day. (Petition at ¶ 26.)

The proposed changes at issue in this case were first outlined to Petitioner Kelly in a September 28, 2020 letter. In that letter, Respondents indicated that for the Winter 2021 Pick:

- All Lunch Relief jobs are eliminated (185 jobs)
- Summer Jobs were eliminated (2279 - 2288) from the Station Agents' 2021 Work Program.
- EEU01 & EEU02 were eliminated.
- Gain Sharing have been eliminated.
- The hours for the Booth Operations will be as follows.
 - o 0700-1500 AM
 - o 1500-2300 PM
 - o 2300-0700 NITE
- All booths were assigned a specific lunch time.
- Booth R166 (860' Street '1' line) was operated by LR-2045 & LR-3045 will be cover by OSAC.

(NYSCEF Doc No. 4, proposal). In addition, Respondents proposed eliminating 47 eight-hour shifts across 20 stations and eliminating an additional eight-hour shift at 7 other stations. (Proposal at 9-11.)

Most pertinent to this case is the proposed elimination of the 185 “Lunch Relief” jobs.² Petitioners allege that the elimination of the Lunch Relief jobs will result in most booths being locked and closed for between 1,110 and 1,480 half-hour periods per week (Petition at ¶ 26), thus constituting a reduction in service and access and triggering the public hearings requirement, pursuant to PAL §§ 1204 [5] and 1205 [15].

Respondents oppose the petition, arguing that the elimination of Lunch Relief jobs is merely a reallocation of staff, which does not constitute a reduction in public access, but rather increases Respondents’ flexibility to ensure continued public access. (Opposition at 6.) Respondents further allege that, if the changes were enacted, there would be “very limited circumstances where a rider may experience a minor additional delay in Station Agent service as compared to current service . . . [which] does not constitute a closure contemplated by PAL § 1205 [5].” (*Id.* at 7.)

During the hearing held on January 12 and 15, 2021, the court took the testimony of: Ms. Yvette Bassknight, a supervising station agent working for NYCTA; Petitioner Robert Kelly, Vice President of the Stations Department of Local 100; and Mr. David Santoro, Chief Stations Officer for NYCTA. The hearing was specifically intended to address the threshold issue of whether the elimination of the 185 Lunch Relief jobs would constitute a reduction in service or access.

Analysis and Conclusion

Based upon the testimony adduced at the hearing and evidence presented therein, the Court finds that the elimination of the duties of those transit workers who provided lunch relief for station

² The gainsharing issue was resolved in an arbitration between the parties (NYSCEF Doc No. 7). Regarding the elimination of certain booths and conversion of other full-time booths to part-time booths, Respondents represent that they intend to go through the necessary statutory procedural requirements before enacting those changes. (NYSCEF Doc No. 19, opposition at 5-6.)

agents will result in significant token booth closures within the City of New York. Such closures clearly constitute a reduction of services and a reduction of access to the system by the general public. The Court further finds that these closures trigger the requirement for public hearings pursuant to Public Access Law (“PAL”) § 1204 (5) and 1205 (5).

Respondents assert that their decision to eliminate lunch relief is merely a “reallocation of staffing” which does not violate the PAL. However, that assertion is not correct.

The evidence shows that each Lunch Relief Station Agent covers 6-8 booths per day. According to petitioners the elimination of the 185 Lunch Relief jobs means that for between 1,110 and 1,480 half hour periods each week booths in every subway station will be locked and closed. This locked and/or closing of the booths is not only a staffing change but is also a reduction of services, which, as the statute mandates, must be taken to the communities affected by the closures for analysis and comment.

Respondents also argue that the lunch relief issue was previously addressed and resolved in the grievance proceeding brought by Local 100 which alleged a violation of the and collective bargaining agreement between Local 100 and the New York City Transit Authority (“NYCTA”) and the Metropolitan Transit Authority (“MTA”). However, in that proceeding the arbitrator, while restoring the right of 65 Station Agents in “Gainsharing Booths” to take lunch in the booth in return for pay, found that the elimination of lunch relief did not violate the collective bargaining agreement. That award did not address the statutory violations alleged here.

Respondents have alluded that the lunch period booth closings are a “mere closing” or that such closing would constitute a “minor inconvenience” to passengers. There is no such thing as a “mere” closing or that a closing is a “minor inconvenience”, because any disruption caused by the

NYCTA or MTA has the potential to severely impact the thousands of customers/riders who rely on the subway system as their only mode of transportation.

The elimination of lunch relief, as outlined by respondents, automatically triggers section 5 of PAL 1205. That statute has been held to be remedial in nature and thus “should not be subject to unduly restrictive constriction”. *NY Public Interest Research Group Straphangers Campaign v. Reuter*, 293 AD2d 160 (1st Dept. 2002).

Reading the statute as written, together with the facts herein, it must be concluded that the respondent’s elimination of lunch relief are “partial closings” of passenger stations and a reduction of the means of access to passenger stations within the City of New York under the Public Authorities Law. It is therefore

ORDERED that the respondents are hereby enjoined from failing to replace Station Agents during their lunch periods, and it is further

ORDERED that pursuant to PAL 1205(5), the Transit Authority must provide formal written notice to the Community Boards in the affected neighborhoods and hearings must be held no less than thirty days after the notice is provided to permit public comment.

This is the decision and Order of the Court.

01/28/21
DATE


W. FRANC PERRY, J.S.C.

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED

NON-FINAL DISPOSITION
 GRANTED IN PART OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE