

Straphangers: MTA Protests Too Much on Rollback

By Glenn Thrush
STAFF WRITER

The Straphangers Campaign is accusing the Metropolitan Transportation Authority of fudging the numbers yet again, this time by overstating the impact that rolling back the recent fare hike would have on stores that sell MetroCards.

The MTA has argued that rescinding the \$2 bus and subway fare would cause financial hardship for 3,000 stores and organizations.

But in court papers filed yesterday, the straphangers said the MTA's lawyers have failed to "produce affidavits from even one merchant, public agency or

nonprofit organization" that sells or distributes the fare cards.

"Not a single one of these people has broken down the courthouse door to provide any evidence that these claims are true," said Tom Shanahan, the campaign's attorney.

MTA spokesman Tom Kelly said a fare reduction would cost the agency \$2 million to recalibrate machines and maintained that it would create problems for merchants who sell the cards.

On May 14, State Supreme Court Justice Louis B. York ordered the fare rollback, saying the MTA provided the public with misleading financial informa-

tion prior to the May 4 fare increase.

But the court froze the fare at \$2 pending the outcome of the MTA's current appeal. The Straphangers Campaign has filed motions to cut the fare immediately and called for the creation of an escrow account for possible refunds for riders.

Arguments in the MTA appeal of York's decision are scheduled to be heard June 10.

In a separate action, the Automobile Club of New York sued the MTA, MTA Bridges and Tunnels, Triborough Bridge and Tunnel Authority and officials to halt toll increases. A decision in that case is expected soon, auto club attorney Anthony Genovese said.

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MAY 22, 2003

West Siders Behind MTA Suit Schneiderman, Shanahan lead charge on fares

By Christopher Moore

The landmark lawsuit against the new subway fare took flight during a conversation between a pair of West Siders.

State Sen. Eric T. Schneiderman, a longtime critic of the Metropolitan Transportation Authority, was eager to fight the \$2 fare. He called Tom Shanahan, a political ally who earlier this year success-

fully sued the MTA for failing to provide health benefits to employees' domestic partners.

Schneiderman explained to Shanahan the argument he would use on behalf of his client, the Straphangers Campaign, the official plaintiff in the lawsuit.

Schneiderman's case: The fare hike was illegal because the MTA

CONTINUED ON PAGE 8

Schneiderman, Shanahan Lead Charge on Fare Hike

CONTINUED FROM PAGE 1

did not comply with its legal obligation to provide, at public hearings, clear and accurate information about the agency's financial standing.

"It's brilliant," Shanahan remembered telling Schneiderman. "It's really brilliant. But Eric, how are we going to do this in a week?"

They did it. And soon they scored a headline-grabbing victory: State Supreme Court Justice Curtis York — another West Sider — agreed

with Schneiderman's thesis and ordered the state's transit agency to roll back its subway and bus fare increases of 50 cents for a single ride and varying amounts for MetroCard users.

Straphangers haven't seen the decrease yet, and some suggest they never will. Still, Schneiderman and Shanahan spoke enthusiastically after their court victory about their strategy, past and future, and their hope for what will happen in the courtroom and during a new round of MTA fare-hike hearings.

Schneiderman and Shanahan were preparing to argue in court that the stay — keeping the fare rollback from happening immediately — should be lifted.

Next month, the case automatically heads to an appeal. Appellate Division judges are to hear oral arguments June 10. After the Appellate Division's decision, Schneiderman said, "We could end up conceivably" at the Court of Appeals in Albany, the state's highest court.

"We won the court victory," Shanahan said, "and we will win the appeal. We're

right on the facts, we're right on the law and we will succeed."

The MTA maintains that its behavior during the hearings was above-board and that the agency was well within its rights to increase the cost of a subway or bus ride.

Meanwhile, the two attorneys for the plaintiff said there's another step they remain concerned about — and it's the part that happens outside a courtroom.

They hope to apply political pressure against a fare hike during upcoming MTA hearings, which have yet to be scheduled.

Shanahan said the general public needs to "come out to these hearings."

Schneiderman did acknowledge, though, that the \$1.50 fare may be inadequate.

"I think there's enough money in the MTA's coffers to roll the fare back to \$1.75," he said.

A single gay man, Shanahan, 34, has lived for four years at the Alden on Central Park West, between 82nd and 83rd streets. At Shanahan and Associates, a firm on Fifth Avenue at 45th street, he specializes in employment law and civil rights. He's part of what Schneiderman called "a courageous team" of volunteer attorneys, including Anthony Lopresti and Lisa deLinsey.

It's been a high-profile success. The Straphangers Campaign, part of the New York Public Interest Research Group, a nonprofit, heralds the case on its Web site, www.straphangers.org. And the attorneys, especially Schneiderman, have netted media attention.

The senator was featured in a "Public Lives" profile on the second page of the Metro Section of the May 15 New York Times. The writer, Robin Finn, mentioned Schneiderman's "careful hairdo" and called him "rigorously boyish at 48."

Of the Times piece, the senator said it comes with the territory when one's written about.

"I think it made me look a little jerky," he said. "I think it made me look a little less serious than I am." He added he would have preferred a weightier report on his work.

"That's why the newspaper of record is the Spirit," he noted, or perhaps joked.

His ally, Shanahan, won the January decision that forced the MTA to offer benefits for people registered with the city as employees' domestic partners.

"That was my case," Shanahan said. "So I beat the MTA twice in six months. I'm pretty proud of that."

He said he had friends in common with Schneiderman before the two teamed up on the latest MTA-inspired legislation.

Apart from the legal maneuvering, both Schneiderman and Shanahan say their first-round victory means that government agencies in the future will feel obligated to open their books for public hearings.

"That was the argument that he [Schneiderman] was making to me when we first got into this," Shanahan said. "He was saying if the MTA gets away with this, there will be no accountability."

Schneiderman hit a similar theme.

"I think an agency is going to think long and hard," he said, "before it plays around with its books the way the MTA did." ■

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Not Just A Token Victory

Gay civil rights attorney takes on transit authority—on domestic partnership... and fares

BY PAUL SCHINDLER

Thomas D. Shanahan, a Manhattan attorney in private, civil practice, is probably best known in New York's queer community for his civil rights work on behalf of lesbian, gay, and transgendered plaintiffs—including a number of landmark victories for the rights of transsexuals, in the workplace, at nightclubs, in retail establishments, and even in the yellow pages.

This past January, Shanahan maneuvered a significant victory for the rights of public sector employees, in a case in which a subway motorman was seeking domestic partner benefits from the Metropolitan Transportation Authority (MTA), the government body that over-

Shanahan was well-positioned to step up for a key role in what may prove to be one of the most decisive legal determinations affecting New York government and public policy in decades—the ongoing battle over rolling back the 50 cent increase in subway and bus fares.

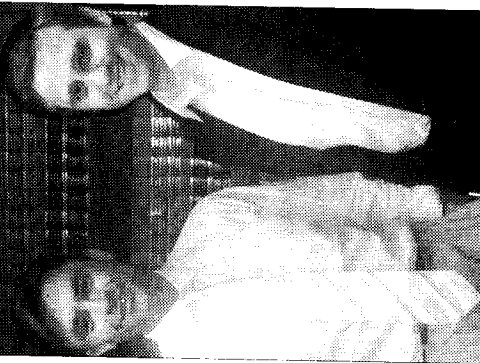
Along with State Senator Eric Schneiderman (D-Upper West Side) and Anthony A. LoPresti, another civil litigator with whom he shares office quarters, Shanahan serves pro bono as one of the lead attorneys representing the Straphangers Campaign, the transit watchdog group that took the MTA to court.

In a stunning ruling on May 14, Justice Louis York, finding that the MTA had misled the public about the size of the deficit facing the transit system,

ordered that the new \$2 fare be rolled back to \$1.50 by May 28. That order has been stayed until an appeal is resolved sometime after oral arguments are made June 10.

According to LoPresti, who was also co-counsel with Shanahan on the motorman's domestic partner challenge, the expertise the two have gained about the responsibilities of government bodies was useful in taking on the 33 percent transit fare hike.

The January victory against the MTA, in a case in which James Reilly, a 57-year-old motorman, seeking domestic partner benefits for his partner, George Brennan, 50, came when a New York State Judge ruled that the transit authority is subject to New York City local



■ **ATTORNEYS** Shanahan and LoPresti

sees underground, bus, and commuter rail service in metropolitan New York.

As the result of his experience in challenging the MTA,

law.

In oral arguments in October, the MTA had claimed that as a special governmental body, it is not required to provide its employees with partnership benefits under the New York City human rights law in the same way that the city has done for its employees since the Gay Teachers Association won a landmark case in 1993.

Shanahan said that after a year of pressing the MTA and the Transport Workers Union to move forward voluntarily on granting gay and lesbian employees partnership benefits, the oral arguments spurred both sides in heated contract talks—that threatened a strike in December—to add such ben-

► MTA, from p.8

efits to the standard employee package. Though the MTA denied that Reilly's suit made the difference on the issue, it continues to deny that domestic partner benefits are a civil rights entitlement for its employees, insisting instead that they resulted from a collective bargaining process and are always subject to negotiation.

Having won a ruling from the presiding judge that Reilly's claims can be made under city law, and strengthened by the fact that New York State now also has a gay rights law, Shanahan plans to continue to seek a judicial declaration that transit workers have a right to domestic partner benefits. He has expanded the case to also include allegations that Reilly has faced official retaliation on the job for filing his lawsuit.

Unlike his protracted battle against the MTA over domestic partner rights, Shanahan and his colleagues have faced a veritable sprint on the transit fare issue.

The basis on which the Straphangers Campaign filed its lawsuit were audits of the MTA budget by New York State Comptroller Alan Hevesi and New York City Comptroller William Thompson released on April 23. The comptrollers alleged that by working off two different budgets, one public, the other private, the MTA was able to move—effectively hiding—nearly half a billion dollars in funds and more effectively argue the need for a major fare increase. The Straphangers Campaign's suit maintained that by misrepresenting its true financial picture, the MTA denied the public of its right to respond to the proposed fare hike at hearings held this winter.

The problem facing the Straphangers Campaign was that by the time the comptrollers' audits were released, there were only 11 days remaining before the fare increase was going in place. Any lawsuit challenging the increase would have to be filed by April 30. When Schneiderman contacted Shanahan on Thursday, April 24, the deadline was just six days away.

"I told Eric that the audits would provide for a legally brilliant argument, but I asked, 'How do we get it done?'" Shanahan recalled. "Schneiderman said, 'We'll get it done.'"

There was method and some madness to Schneiderman's pledge. He, Shanahan, LoPresti, and a few other volunteer attorneys worked 36-hour stretches, and Shanahan recalled, "We sent the filing to the printer at 4:30 a.m. on the day we filed at 11 a.m."

On May 1, Justice York heard arguments on the plaintiffs' request for a

temporary restraining order blocking the fare increase three days later. The MTA successfully argued that reversing the increase at the eleventh hour in a system now based in electronic metro-cards, rather than tokens, would cost millions. But York allowed the case to proceed to a determination on merits.

The result two weeks later was a bolt of lightning—a decision that the MTA must rescind its fare hike and start the public hearing process over again. According to Shanahan, during oral arguments, transit officials admitted for the first time that the MTA board was unaware of the funds transfer when it voted to increase fares. Should the rollback, which faces at least one, possibly two rounds of court appeals that could drag out through the summer, be sustained, it would be the first time that a public authority in the U.S. has been forced to rescind a price increase over issues of disclosure and public accountability, Shanahan and LoPresti maintained.

The MTA challenged the assertion that it failed in its duty to offer the public a fair hearing on the proposed fare increase and it even challenged the jurisdiction of the court over the matter. For York, that argument perhaps was the straw that broke the camel's back.

"By presenting information that misled the public and the board about the financial status of the respondent, the respondent undermined public confidence in the MTA," York wrote. "If this court did not declare this notice and the vote invalid, it would exacerbate the harm and undermine the public's confidence in the judiciary as well."

What had started as a challenge to the credibility of the MTA had turned into a test of the court's integrity. That could not have been a happy outcome for the transit officials.

LoPresti conceded that when he and his colleagues began their challenge, they were upbeat about winning new public hearings, but did not hang too much hope on the possibility that the new fare would be increased. He and Shanahan said that the MTA's arrogance in court may well have spelled its undoing.

"They overplayed their hand," said Shanahan.

Having won the first round, however, the attorneys are confident going into appeals.

"I feel strongly about the appeal. When the board finally voted, there is now an admission that they had no knowledge of the transfers," Shanahan said. "I don't see how [the MTA] can argue that a board that takes a vote without that knowledge is not acting in an arbitrary and capricious manner."

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Judge Orders N.Y. Transit Fare Hike Canceled

The agency in charge of subways, buses and trains misrepresented its financial records when it imposed a 50-cent raise, jurist rules.

By JOHN J. GOLDMAN
Times Staff Writer

NEW YORK — A judge on Wednesday ordered the nation's largest public transit system to roll back fare increases for millions of New York subway, bus and train riders, ruling that the agency had deliberately misrepresented its financial records.

State Supreme Court Justice Louis B. York told the Metropolitan Transportation Authority to cancel the 50-cent fare hike that more than 7 million daily riders began paying May 4.

York's 19-page decision was in response to a lawsuit filed by a commuter group called the Straphangers Campaign.

The judge said that the MTA had created a "false and misleading premise" about its budget when it hid more than \$500 million in surpluses from the public.

The agency, he added, had acted in "blatant disregard" of the principle that it did not have the right to "misinform the public."

The judge said that because public hearings on the new fare were "fundamentally flawed," the decision to institute an increase "must be considered arbitrary and capricious, and, thus, it cannot stand."

New York state Comptroller

Alan Hevesi and city Comptroller William Thompson had charged that the MTA kept two sets of books in order to hide the surplus and stifle public debate.

In his ruling, the judge cited both comptrollers' contention that the agency had created a "fictitious" budget gap of \$2.8 billion.

York said that the authority had "wrongfully relegated the public" to the role of helping close a budget gap it knew did not exist.

MTA officials said they would appeal the decision.

During a hearing last week,

MTA lawyers argued that rolling back fares would be a logistical nightmare, requiring 12,000 pieces of equipment — including the city's 4,500 buses — to be refitted to accept the old \$1.50 fare instead of the new \$2.

The MTA said the adjustments would cost \$2 million.

The decision Wednesday said the fare rollback must take place within two weeks.

Gene Russianoff, a lawyer for the Straphangers Campaign, called the decision "a victory for truth and government."

"Clearly the court saw that the MTA was misleading the riding public," he said.

Guide Details Perils of 'Prehypertension'

From Associated Press

WASHINGTON — About 45 million Americans with blood pressure levels once considered normal or borderline actually have "prehypertension," say new government guidelines that urge them to exercise, avoid salt and make other changes to stave off full-blown high blood pressure.

It's a major change that affects people with blood pressure as low as 120 over 80 — once thought to be a good level but now considered not good enough.

Scientists now say that damage to arteries from the pressure of blood pounding through them begins to increase at levels as low as 115 over 75. Even a small jump from that low — to 130 over 85, a level previously considered in the normal range — means a doubling of the risk of later death from heart disease, say the guidelines by the National

Heart, Lung and Blood Institute.

Hence the new emphasis on at least delaying the gradual rise in blood pressure that so many Americans see with age. Still, the report promises to be a shock for people told for years their blood pressure was healthy, only to learn they're now considered "prehypertensive" unless their level is below 120 over 80.

"We don't want to frighten the public, we want to get action," said Dr. Aram Chobanian, dean of Boston University's Medical School and chairman of the government-appointed committee that drafted the guidelines.

The guidelines say most people with high blood pressure need at least two medications to control it.

The new guidelines classify normal blood pressure as below 120 over 80 — and readings anywhere from 120 over 80 up to 140 over 90 as prehypertensive.

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Pataki vetoes aid, tax hikes

Legislators vow to start overturning governor's actions this morning

Yancey Roy
and Jay Gallagher
Albany Bureau

ALBANY — Wielding a blunt political ax, Gov. George Pataki delayed on a promise yesterday to veto much of the money legislators tried to add to the state budget, saying their plan was built on "false promises" in shaky economic times.

Lawmakers promised to start overturning the vetoes this morning.

Pataki axed aid for schools, health care, libraries and community colleges. He eliminated prekindergarten. He even took away legislators' pet proj-

Westchester parkway patrol jobs in jeopardy, SB

ects, eliminating \$200 million in "pork-barrel" spending.

And with it, Pataki at least temporarily rejected legislators' plans to raise an array of taxes to pay for it: all-sales taxes statewide and income taxes on big earners. The governor called it potentially the largest tax increase in state history, pegging it at about \$2.5 billion.

Undaunted, Senate and Assembly leaders vowed to overturn the governor's vetoes — beginning as early as 10 a.m. today. They say their budget, which at \$93 billion is \$2 billion more than his, would prevent trickle-down taxes in the form of massive school and municipal property-tax increases.

Please see BUDGET, 11A

Sampling of vetoed items

- \$700 million in aid to schools.
- An income tax increase on couples whose taxable income exceeds \$150,000, and on singles whose taxable income exceeds \$100,000.
- One-quarter of 1 percent increase in sales tax
- Reducing the increase in SUNY tuition from \$1,200 to \$950 a year.

Judge to MTA: Slam brakes on higher fares

Ruling gives agency 2 weeks to comply, orders new hearing

Caren Halbfinger
The Journal News

Roll back the fare hike, a state Supreme Court justice ordered the Metropolitan Transportation Authority yesterday, in a ruling hailed by a transit advocacy group as a victory for 7.4 million transit and rail riders.

MTA spokesman Tom Kelly said the agency disagreed with Justice Louis York's decision and would appeal.

York said the MTA must restore its lower fares within two weeks and should schedule new public hearings on the increase. He said the March 6 decision to raise bus and subway fares to \$2 a ride "should be vacated because the determination was reached in violation of lawful procedure and not rationally based."

The decision also requires a

Please see MTA, 11A

MTA fare hike may be on hold

MTA, from 1A

rollback of Metro-North Railroad and Long Island Rail Road fares, which went up an average of 25 percent on May 1, and bars the MTA from closing 62 subway station booths.

"The May 2003 fare increases implemented pursuant to the board's March 6 determination will be rolled back to the date of the increase," York said. "In order to allow respondents to implement the changes efficiently, the court will allow them two weeks to roll back the fares."

The judge handed the matter back to the agency to "undertake all necessary procedures, including new hearings."

"Hallelujah," Gene Russianoff, an attorney for the Straphangers Campaign, said at a news conference outside the downtown courthouse. "This is a tremendous victory for the riding public."

"Clearly, the court saw that the MTA was misleading the riding public," he said earlier.

The Straphangers Campaign, a transit-riders group, sued the MTA this month, arguing the fare hikes should be thrown out because the agency doctored its books to make its fiscal picture appear worse than it was before it held public hearings on the fare increases. The Straphangers, joined by state Comptroller Alan Hevesi and New York City Comptroller William Thompson, charged that to make a stronger case for the fare hikes, the MTA had hidden a more than \$500 million surplus from the public by setting it aside for use next year.

The MTA had argued it was not obliged to share that information



Joe Larese/The Journal News

Claudine Ingram, a child-care worker from the Bronx who works in White Plains, was pleased yesterday to hear a state Supreme Court justice ordered a rollback on rail fares. "More power to that judge. Long may he live," she said at the White Plains Metro-North station.

because it was part of a financial decision rejected by the agency's managers. It later said officials had publicly referred to the fact that the agency would use savings to pay off future debt. The MTA argued it needed to raise fares to close a two-year deficit it estimated, at different times, to be \$952 million or \$2.8 billion.

York said the notice the MTA posted for the public hearing process for the transit fare increase was "invalid," supporting the Straphangers Campaign's arguments that the agency's failure to reveal everything about its financial condition made the hearing process meaningless.

MTA lawyers said the rollback would cost \$1.2 million a day in lost revenue, along with \$2 million to retrofit 12,000 pieces of equipment, including all 4,500 city buses, MetroCard turnstiles and restocking private vendors. MTA lawyers argued during hearings earlier this month that it would be a logistical nightmare to reverse fare increases. It was not clear yesterday how riders could seek refunds.

"This is a great day for New

York commuters," Thompson said at a news conference yesterday. "For weeks, I have been calling for the MTA to re-evaluate and roll back its fare hike based on the findings of my audit. I'm gratified that Judge York agrees with our contention that the MTA lied to the public. I ask MTA officials not to appeal Judge York's decision and let the truth prevail."

Roger Toussaint, president of TWU Local 100, which represents the city's transit workers, also cheered the ruling.

"Judge Louis York's decision is a victory for all the people of New York City," he said in a statement. "We hope that this ruling sends a strong message to the MTA that they need to be more accountable and transparent to the riding public by keeping their books open."

The faces of commuters at the White Plains Metro-North station lit up when they learned of York's ruling.

"People have been complaining about the increase left and right," said Claudine Ingram, a child-care provider who commutes to White Plains from her home in the Bronx.

Highlights of judge's ruling

- The MTA has two weeks to roll back fare hikes for bus, subway and commuter-rail riders.
- The MTA must hold new public hearings on the increases.
- The agency's decision to raise fares was "reached in violation of lawful procedure and not rationally based."

"More power to that judge. Long may he live."

"If you want to raise fares, you should show why you need to and you need to be forthright," said Debbie Wasko, who lives in White Plains and commutes to Manhattan for her job as a software saleswoman. "It was a little shady and unfair that they didn't fully disclose their financial situation."

On Tuesday, MTA Executive Director Katherine Lapp announced "sweeping" changes in the agency's financial reporting that would give the public more time to scrutinize its proposed budget and provide more detailed financial information on its Web site. An advisory board also would be appointed to help the MTA restore confidence by developing new reporting procedures, which would mirror the city's budget process. Lapp took pains, however, to say the changes weren't a reaction to criticism, but were an effort to improve the system.

"It's all part of the same effort to reform the MTA," said Assemblyman Richard Brodsky, D-Greenburgh, who is pushing for legislative reform and more oversight of the agency. "It's good we're still pushing them. In the end, what matters is we change the law, and this will all be part of that effort."

Staff writer Len Maniace and The Associated Press contributed to this report.

Reach Caren Halbfinger at chalbf@thejournalnews.com.

'BRIBE'

MESS IN SUIT VS. RABBIS



TOM SHANAHAN
"I did the right thing."



JUDGE FIGUEROA
Goes after lawyer.

By DAREH GREGORIAN

A respected Manhattan lawyer finds himself in a legal tangle after claiming a woman involved in a bizarre and notorious divorce case tried to bribe him. Tom Shanahan made the

sion, which called the bribe charges "unsubstantiated."

The case is still alive because Sieger is appealing and the rabbinical group is countering her. Sieger said she was put in touch with Shanahan last