SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. VERNA L. SAUNDERS, JSC** **PART** **36**

Justice

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INDEX NO. 154985/2025

In the Matter of the Application of TRANSPORT WORKERS UNION, LOCAL 106 and PHILIP VALENTI, as President of the Transport Workers Union, Local 106; JESSIE WILLIAMS, and YANIA JUSTINIANO,

Petitioners,

MOTION SEQ. NO. 001; 002

- v -

DECISION + ORDER ON MOTION

METROPOLITAN TRANSIT AUTHORITY and NEW YORK CITY DEPARTMENT OF FINANCE,

Respondents.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 27

were read on this motion to/for **ARTICLE 78**.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32

were read on this motion to/for **DISMISSAL**.

Petitioners represent employees of the Metropolitan Transportation Authority ("MTA"). According to petitioners, the MTA has a policy that directs its employees to personally pay for moving violations issued against MTA-owned vehicles operated by its employees. In Mot. Seq. 001, petitioners contend that the MTA policy that directs MTA employees to personally pay fines issued by the New York City Department of Finance ("DoF") while operating an MTA owned vehicle to attend to other MTA owned vehicles is arbitrary and capricious. In Mot. Seq. 002,[1] the MTA argues that its policy of requiring its employees to personally pay for moving and parking violations, as challenged here, is permitted by law.

In this Article 78 proceeding, petitioners allege that the DoF's practice of issuing Notices of Liability to an authorized MTA vehicle, and the Metropolitan Transit Authority's[2] policy that compels members of TWU Local 106[3] to personally pay fines associated with the Notice of Liability is contrary to the specific provisions of the Vehicle and Traffic Law § 1111-c. Respondent MTA is comprised of several divisions including the New York City Transit Authority ("NYCTA"); the Manhattan and Bronx Surface Transit Operating Authority

[1] The MTA does not oppose Mot. Seq. 001. Therefore, the court will treat Mot. Seq. 002 as opposition to Mot. Seq. 001.

[2] Petitioners erroneously name the Metropolitan Transportation Authority as Metropolitan Transit Authority in this proceeding.

[3] TWU Local 106 is the exclusive bargaining representative of MTA supervisors and the membership consists exclusively of MTA supervisors.

("MaBSTOA"), a subsidiary of NYCTA; and MTA Regional Bus Operations (MTA-Bus). MTA employees represented by TWU Local 106 and the individual petitioners respond to emergencies and/or disabled bus calls for service when such MTA, NYCTA, MaBSTOA, or MTA-BUS owned vehicles experience operational emergencies in a restricted bus lane or bus stop. According to petitioners, they operate readily identifiable MTA marked vehicles such as patrol cars and other non-revenue vehicles when responding to emergencies in a restricted bus lane. They note that New York City operates a bus lane restriction program pursuant to Vehicle and Traffic Law § 1111-c under which a bus lane is a travel lane restricted to buses only during certain hours of the day. This law authorizes New York City to impose monetary liability on vehicle owners for parking, standing, or driving in these designated bus lanes, with fines ranging from $50.00-$250.00.

New York City enforces bus lane regulations by utilizing bus lane cameras, installing cameras on buses so that they record violators, and posting warning signage from the New York City Department of Transportation ("DoT") along routes that have bus lane cameras. Information about unauthorized vehicles recorded as violating the bus lane rules is forwarded to the DoF, who issues a Notice of Liability, petitioners assert. Petitioners also set forth that MTA's requirement that petitioners pay the fines stated in the Notices of Liability is contrary to Traffic Law § 1111-c which provides that the "owner may maintain an action for indemnification against the operator." According to petitioners, the MTA's demand that the vehicle operators pay fines issued by DoF does not constitute an action for indemnification as directed by the statute and, thus, is arbitrary and capricious. As such, petitioners urge the court to issue an order declaring that the MTA, as owner of vehicles operated by petitioners, is solely responsible for any fines imposed as a result of a purported restricted bus lane violation. They further seek an order directing the MTA to cease demanding petitioners to pay any fines assessed in the DoF Notices of Liability issued, and that the MTA reimburse petitioners and any member of the TWU Local 106 who has paid a restricted bus lane fine imposed while operating an MTA vehicle. Lastly, petitioners urge the court to grant their attorney's fees, as well as, declare that marked MTA vehicles operated by petitioners while attending to MTA vehicles experiencing operational emergencies are authorized vehicles and exempt from liability under the law and regulations concerning restricted bus lanes, bus way, and bus stop usage (NYSCEF Doc. No. 1, *petition*). Movants submit copies of the affidavits of service in support of the application (NYSCEF Doc. No. 3-4, *affidavits of service*).

Next, the Subway-Surface Supervisors Association ("SSSA"), the exclusive bargaining representative for supervisory employees at the NYCT, moves the court pursuant to CPLR 1012 and 1013, for an order permitting the SSSA, SSSA's president Michael Carrube ("Carrube"), Surface Line Dispatchers Alexander Gonzalez, Mohamed Maghrabi, and Richard Sperrazza to intervene in this petition.[4] Through Carrube's affidavit, the SSSA asserts that its members are being compelled to personally pay fines stated on the DoF's Notices of Liability for traffic violations that allegedly occur when they are operating the NYCT's official vehicles. They note that even though they are similarly situated as the TWU Local 106 members, TWU Local 106 is not the collective bargaining representative for the SSSA, and that the SSSA's interest would not be advocated for if the motion for intervention is not granted (NYSCEF Doc. No. 6, *Carrube affidavit*). The SSSA further contends that the intervention motion should be granted because, as

[4] A review of NYSCEF shows that the proposed intervenors' motion was not assigned a motion sequence number.

an employer whose interest is adversarial to that of its employees, the MTA cannot fairly represent the interest of its employees. According to the SSSA, courts routinely permit intervention where, as here, a ruling would impact the collective bargaining rights and the condition of employment between the parties. Lastly, the SSSA posits that the motion should be granted under both CPLR 1012 and 1023 because the parties are not prejudiced, and the SSSA has a substantial interest in the outcome of the proceeding (NYSCEF Doc. No. 14, *motion for intervention*). In support of the motion, the SSSA submits a copy of the proposed complaint, and the Notices of Liability issued to Surface Line dispatchers (NYSCEF Doc. Nos. 7-13).

No opposition was filed with respect to the intervention motion.

In Mot. Seq. 002, the MTA argues that while the Vehicle and Traffic Law § 1111-c imposes "monetary liability on owner of a vehicle for failure of an operator thereof to comply with bus lane restriction," it permits, rather than demands, that a plenary action be instituted by the MTA agencies/division, as owners of the vehicles, to seek indemnification against the operators of the offending vehicles. According to the MTA, its agencies can seek indemnification from operators by promulgating a policy ("ACE Program") to that effect. It asserts that by holding operators personally responsible for bus lane violations, the ACE Program incentivizes public employees to obey the rules of the road when driving agency vehicles. The MTA posits that its "permanent bulletin" which has been in place since August 2024 for the ACE Program provides that to avoid potential violations, personnel "responding to emergencies and/or disabled buses should park directly in front of or behind the bus (in need of servicing)" and follow other guidelines." It notes that petitioners have failed to allege a single instance where they followed all protocols while attending to a legitimate emergency operation involving a bus and for which they were held personally liable for fines assessed via Notices of Liability.

Next, the MTA argues that the operational vehicles at issue are not authorized emergency vehicles within the meaning of the Vehicle and Traffic Law and, that since 2013, all operators of MTA agencies' vehicles are required to comply with the applicable regulations and are responsible for traffic and parking infractions. As relevant here, the MTA issued a Bulletin emphasizing that "[e]mployees operating MTA vehicles are required to obey traffic regulations, including those governing the use of bus lanes, bus stops and double-parking," and that operators of MTA non-revenue vehicles (e.g., patrol cars, road trucks, and other official non-revenue vehicles) shall be responsible for fines issued in the Notices of Liability for violations.

According to the MTA, the Bulletin provides an exception under which the operators of vehicles attending to emergencies and/or disabled buses will not be liable for fines provided that they:

> "a. Park directly in front of or behind the bus;
> b. The bus and all responding vehicles activate their hazards, and a traffic cone placed behind or in front of the vehicle (if available) to alert others of the emergency; and
> c. The vehicle must not remain at the location once the bus has been released."

As such, the MTA maintains that the allegations that it coerces employees legitimately attending to operational emergencies involving buses to follow the protocols set forth in the Bulletin and pay for bus lane violations are misleading and inaccurate. The MTA further notes

that Mot. Seq. 001 is improper insofar as the collective bargaining agreement ("CBA") between itself and the TWU Local 106 provides an appropriate complaint and grievance mechanism for members to raise concerns and challenge MTA Agencies' policies or procedures, but petitioners did not file any grievance before instituting the current proceeding.

According to MTA, petitioners have not asserted any cognizable claim under Vehicle and Traffic Law or MTA agencies' policies, including the Bulletin and as such, the MTA agencies are not acting arbitrarily and capriciously in holding operators personally responsible for moving and parking violations under the ACE Program. To the extent the petition concerns the MTA's agencies/divisions' statutory authority to enforce operational policies and determinations, the MTA argues that petitioners' claims are not subject to judicial review and should be denied. Lastly, the MTA maintains that, based on the arguments advanced in opposition, petitioners cannot meet their burden to establish entitlement to a preliminary injunction (NYSCEF Doc. No. 24, *MTA motion to dismiss*).

In opposition to Mot. Seq. 002, petitioners argue that, contrary to the MTA's contentions, the MTA internal policy on payment of fines runs afoul of the specific requirements of the Vehicle and Traffic Law Section 1111-c which directs that vehicle owners are responsible for paying the fines. As relevant here, petitioners posit that the only avenue for an owner of a vehicle to seek redress is through an indemnification action or small claims action in the New York City Civil Court. According to petitioners, the word "may" as used in Vehicle and Traffic Law Section 1111-c, only applies as to whether the vehicle owner wishes to bring an action, but not that the MTA can use an internal policy to direct vehicle operators to pay the fines and circumvent the dictate of the statute in the process. They also assert that the MTA vehicles operated when attending to other MTA buses experiencing some form of emergency are authorized vehicles under the statute and are therefore exempt from liability as it applies to a restricted bus lane, busway, or bus stop usage. As such, petitioners assert that any attempt by the MTA to transfer liability to the driver of an authorized MTA vehicle is unenforceable as a matter of law. They also insist that any threat to take disciplinary action against a Local 106 member also runs afoul of the express language in Section 1111(c)(2).

Next, petitioners maintain that the parties' grievance mechanism in the collective bargaining agreement addresses only issues of contract interpretation. Thus, the MTA's invocation of the grievance mechanism in the collective bargaining agreement as a viable means to resolve the issues raised in this application is unconvincing, and meritless, claim petitioners. In support of this contention, petitioners rely on the affidavit of Philip Valenti, a named petitioner and the president of the TWU Local 106, to assert that the MTA confirmed at a meeting that the MTA's internal policy, the ACE Program, was not grievable under the law (NYSCEF Doc. No. 30, *Valenti affidavit in opposition*). As such, the MTA's use of any image or images captured by bus lane photo devices in any disciplinary proceeding is likewise excluded by the parties' collective bargaining agreement and subject to statutory interpretation. Furthermore, they argue that the petition is timely and within the four (4) month statutory period because they allege ongoing violations by the MTA. Petitioners also assert that if the petition is brought in an improper form, the court has the authority and jurisdiction to convert the petition to a plenary action under CPLR 103(3) which would make the action timely. Lastly, they insist that they are entitled to injunctive relief (NYSCEF Doc. No. 29, *opposition*).

In reply, the MTA asserts that any argument signaling that operators of MTA agency vehicles that obstruct bus lanes should escape liability is contrary to the purpose of the ACE Program, which aims to increase the speed and flow of bus operation. It maintains that Vehicle and Traffic Law Section 1111-c does not exempt MTA agency vehicles obstructing bus lanes from liability, and that such vehicles are not authorized emergency vehicles specifically defined under the Vehicle and Traffic Law Section 101. It also argues that contrary to petitioners' position, the statute contemplates that while vehicle owners are ultimately liable for the DoF fines issued for bus lane violations, those owners are permitted but are not required to institute a legal action for indemnification against the vehicle operator. According to the MTA, while its Bulletin[5] does not supersede the statutory language, it advances New York State and MTA policies for holding vehicle operators responsible for the ACE program violations. Lastly, the MTA argues that petitioners' claim that the MTA has continuously misapplied Vehicle and Traffic Law Section 1111-c does not render the belated petition timely and further, that petitioners have not established entitlement to injunctive relief (NYSCEF Doc. No. 32, *reply*).

The standard of review in this Article 78 proceeding is whether the respondents' determination "was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion" (CPLR 7803[3]). Whether an administrative decision is arbitrary or capricious depends on whether the determination "is without sound basis in reason and is generally taken without regard to the facts" (*Matter of Galaxy Bar & Grill Corp. v New York State Liq. Auth.*, 154 AD3d 476, 482 [1st 2017], citing *Pell v Board of Education*, 34 NY2d 222, 231 [1974]). A rational or reasonable basis for an administrative agency determination exists if there is evidence in the record to support its conclusion (see *Sewell v New York*, 182 AD2d 469, 473 [1st Dept. 1992]). As such, "[i]f the determination is rational, it must be upheld, even though the court, if viewing the case in the first instance, might have reached a different conclusion" (*Sullivan County Harness Racing Ass'n v Glasser*, 30 NY2d 269, 278 [1972]).

CPLR 7802(d) provides that the court "may allow other interested persons to intervene." CPLR 1013 provides, in pertinent part, "any person may be permitted to intervene in any action when a statute of the state confers a right to intervene in the discretion of the court, or when the person's claim or defense and the main action have a common question of law or fact." Intervention in an Article 78 proceeding pursuant to 7802(d) is therefore broader than that provided by CPLR 1013 (see *Greater NY Health Care Facilities Ass'n v DeBuono*, 91 NY2d 716, 720 [1998]). "Distinctions between intervention as of right and discretionary intervention are no longer sharply applied" as "[i]ntervention is liberally allowed by courts, permitting persons to intervene in actions where they have a bona fide interest in an issue involved in that action" (*Yuppie Puppy Pet Prods., Inc. v Street Smart Realty, LLC*, 77 AD3d 197, 201 [1st Dept 2010]).

CPLR 1012(a)(2) and (3) allow a party to intervene in an action "[u]pon timely motion" when "the representation of the person's interest by the parties is or may be inadequate and the

[5] The Bulletin's exception allows personnel responding to emergencies and disabled buses not to be held personally liable for moving violations complained of here, provided they follow certain instructions such activating hazard lights.

person is or may be bound by the judgment" or when the action involves title to property and the "property and the person may be affected adversely by the judgment." When a court considers any motion to intervene, the first consideration is "whether the motion is timely" (see *Matter of HSBC Bank v U.S.A.*, 135 AD3d 534, 534 [1st Dept 2016]). The timeliness of a motion to intervene is determined by factors such as the length of time the intervenor knew or should have known of their interest in the case, the stage of the proceeding and the prejudice caused to the original parties by the delay (see *U.S. Bank N.A. v Barra*, 2018 NY Slip Op 33450[U], *4 [Sup Ct, Suffolk County 2018]). "A motion seeking leave to intervene, whether made pursuant to CPLR 1012 or 1013, must include the proposed intervenor's proposed pleading" (*U.S. Bank Trust N.A. v 21647 LLC*, 217 AD3d 429, 429 [1st Dept 2023]).

Here, the motion to intervene is denied as it is not properly before the court. Even though the proposed intervenors argue that they would undoubtedly be bound by this court's decision and order in this action, the motion is improperly submitted as part of the Petition (Mot. Seq. 001). The motion to intervene should have its own distinct motion sequence number and therefore, it will not be considered in the disposition of these applications.

As a preliminary issue, the MTA fails to convince the court that the application by petitioners is untimely. MTA fails to demonstrate that its ACE Program is subject to the parties' collective bargaining agreement or that there is a mechanism to appeal the ACE Program. As such, the court shall consider the application.

Addressing now the petition, same is granted, in part. While Vehicle and Traffic Law § 1104 exempts the driver of an authorized emergency vehicle engaged in emergency operation from certain rules of the road (see *Riley v County of Broome*, 95 NY2d 455, 462 [2000]; *Rodriguez v City of New York*, 105 AD3d 623, 624 [1st Dept 2013]), petitioners fail to convince the court that MTA vehicles at issue qualify to be designated as authorized emergency vehicles. Vehicle and Traffic Law § 101, which sets forth the categories of vehicles designated as an authorized emergency vehicle states that "[e]very ambulance, police vehicle or bicycle, correction vehicle, fire vehicle, civil defense emergency vehicle, emergency ambulance service vehicle, blood delivery vehicle, human organ delivery vehicle, county emergency medical services vehicle, environmental emergency response vehicle, sanitation patrol vehicle, hazardous materials emergency vehicle and ordinance disposal vehicle of the armed forces of the United States." Relying on and giving effect to the plain meaning of the statute (see *Rosner v Metro. Prop. & Liab. Ins. Co.*, 96 NY2d 475, 479 [2001]), petitioners' contention that the readily identifiable marked MTA vehicles at issue here, such as a patrol car, road truck or other non-revenue vehicles that they operate, are authorized emergency vehicles is unavailing.

Further, the MTA vehicles at issue here do not meet the particular circumstances specified in Vehicle and Traffic Law § 114(b) that qualify vehicles to be engaging in "emergency operation." Vehicle and Traffic Law § 114(b) provides that "[t]he operation, or parking, of an authorized emergency vehicle, when such vehicle is engaged in transporting a sick or injured person, transporting prisoners, delivering blood or blood products in a situation involving an imminent health risk, transporting human organs and/or medical personnel for the purpose of organ recovery or transplantation in a situation involving an imminent health risk where undue delay would jeopardize such recovery or transplantation, pursuing an actual or

suspected violator of the law, or responding to, or working or assisting at the scene of an accident, disaster, police call, alarm of fire, actual or potential release of hazardous materials or other emergency. Emergency operation shall not include returning from such service." As relevant here, petitioners' operation of said vehicles to respond to other MTA vehicles experiencing operational emergencies does not meet the statutory definition of a "emergency operation" and thus, said argument is unpersuasive.

Turning now to the issue of whether the MTA is permitted to direct its employees to pay fines for alleged traffic violations while operating MTA owned vehicles to attend to other MTA owned vehicles experiencing operational difficulties, the MTA has failed to convince the court that such a practice is permitted by VTL § 1111- c(j)(1) which provides that "[i]f the owner liable for a violation of a bus lane restriction was not the operator of the vehicle at the time of the violation, the owner may maintain an action for indemnification against the operator." In the first instance, a Notice of Liability is issued to the MTA, not the operators of the MTA vehicles. Therefore, the MTA has not demonstrated that the operators of the offending vehicles, effectively third-parties, are entitled to any administrative process at all (see *Matter of Josey v New York City Dept. of Fin.*, ___ AD3d ___, ___, 2026 NY Slip Op 01404[U], *4 [1st Dept 2026]). Should the operators of the offending vehicles appeal a Notice of Liability, it is not clear on this record that they have the requisite standing to initiate the process. There is no demonstration or argument advanced indicating that the body handling the appeal process would even receive notice that though the Notice of Liability was issued to the MTA, the operator of the offending vehicle is required, and should be permitted, to initiate the appeal process. As such, the ACE Program, as effectuated by the MTA to purportedly advance the government's interest in providing a cost-efficient means of addressing traffic infractions, does not provide due process for the MTA employees who operate offending MTA vehicles. Further, the due process concerns are all the more pronounced because the MTA fails to demonstrate that its ACE Program is subject to the parties' collective bargaining agreement. Thus, this court is persuaded that based on its reading of VTL § 1111- c(j)(1), the MTA, as owners of the offending vehicles, must first pay the fines associated with a Notice of Liability and then may choose to seek redress through an indemnification action.

The court, however, declines to direct the MTA to reimburse petitioners, and those similarly situated, for all monies paid as a result of fines associated with the Notices of Liability issued. Petitioners have not provided grounds entitling them to this remedy. With respect to request for the grant of attorney's fees, same is denied. The Court of Appeals has long held that "New York follows the general rule that attorney's fees are incidents of litigation and a prevailing party may not collect them from the loser unless an award is authorized by agreement between the parties, statute or court rule" (*Matter of Part 60 Put-Back Litig.*, 36 NY3d 342, 361, [2020]). While petitioners seek attorney's fees presumably pursuant to CPLR 8101, there is no showing that the provision requires the grant of attorney's fees. All other arguments have been considered and are either without merit or need not be addressed. Accordingly, it is hereby

ORDERED, AJUDGED and DECLARED that the petition is granted only to the extent that the MTA shall not direct operators of offending MTA vehicles responding to emergencies and/or disabled buses in restricted bus lanes to pay fines associated with Notices of Liability issued to the MTA, but it is otherwise denied; and is hereby dismissed; and it is further

ORDERED that, within twenty (20) days after this decision and order is uploaded to NYSCEF, counsel for petitioners shall serve a copy of this decision and order, with notice of entry, upon all parties, as well as the Clerk of the Court, who shall enter judgment accordingly; and it is further

ORDERED that service upon the Clerk of Court shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases.

This constitutes the decision and order of this court.

April 10, 2026

HON. VERNA L. SAUNDERS, JSC

CHECK ONE:	[X]	**CASE DISPOSED**		[ ]	**NON-FINAL DISPOSITION**		
	[ ]	**GRANTED**	[ ] **DENIED**	[X]	**GRANTED IN PART**	[ ]	**OTHER**
APPLICATION:	[ ]	**SETTLE ORDER**		[ ]	**SUBMIT ORDER**		
CHECK IF APPROPRIATE:	[ ]	**INCLUDES TRANSFER/REASSIGN**		[ ]	**FIDUCIARY APPOINTMENT**	[ ]	**REFERENCE**