

AFFIDAVIT OF  
JOSEPH D' AURIA

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

<p>X</p> <p>JOHN SAMUELSEN, AS PRESIDENT OF THE TRANSPORT WORKERS UNION OF GREATER NEW YORK, LOCAL 100,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">- against -</p> <p>RAY KELLY, AS COMMISSIONER OF THE NEW YORK CITY POLICE DEPARTMENT; and THOMAS F. PENDERGAST, AS PRESIDENT OF THE NEW YORK CITY TRANSIT AUTHORITY,</p> <p style="text-align: center;">Defendants.</p> <p style="text-align: right;">-----X</p>		<p style="text-align: center;"><b><u>DECLARATION OF JOSEPH D'AURIA</u></b></p>
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**JOSEPH D'AURIA**, pursuant to 28 U.S.C. § 1746. declares:

1. I am the Chief Transportation Officer ("CTO") of the Department of Buses ("DOB") for the New York City Transit Authority ("Transit Authority" or "TA"). I have been employed by the Transit Authority for 37 years in total and in my current position since April 18, 2011. Prior to my current position, I have also held the following managerial positions in DOB: Deputy General Manager (for a year), Assistant General Manager (from March 1998 to July 2008), Assistant Chief Officer (from July 1995 to March 1998), General Superintendent of Transportation (from April 1992 to July 1995), and Superintendent. I began my career as a bus operator for the Transit Authority and served in that capacity for eight years. In my capacity as CTO, I am responsible for, among many other things, implementation of policies in DOB, as well as the management of the various Transit Authority bus depots, including the employees who,

in various capacities, manage, supervise, operate, repair, and maintain Transit Authority buses, as well as maintain the general cleanliness of those depots.

2. This declaration is based on my personal knowledge as well as internal business records kept by the Transit Authority in the ordinary course of business.

3. The Transit Authority's DOB maintains bus depots in all five boroughs of New York City – Manhattan, Brooklyn, Bronx, Queens, and Staten Island.

***The Rule Book Governing the Conduct of Transit Authority Employees***

4. The terms and conditions of employment for Transit Authority employees are governed by, among other things, the written Rules and Regulations in what is known as “the Rule Book”. (Relevant pages of the Rule Book are annexed hereto as Exhibit A.)

5. Rule 2 of the Rule Book requires, in relevant part, that Transit Authority employees familiarize themselves with the Rules and that: “[e]mployees who violate any of these rules may be disciplined in accordance with the Civil Service Law or their collective bargaining agreement or Authority policy, as applicable....Employees must be conversant with and obey the rules that govern their particular duties and all special instructions issued by their superiors.” (Exhibit A at page numbered “2”.)

6. Rule 36 requires Transit Authority bus operators to examine bulletin boards at their work locations “[b]efore going on duty, and as frequently thereafter as possible. . .” (Exhibit A at page numbered “27.”)

***Distribution of Bulletins***

7. The Transit Authority routinely issues bulletins that spell out its employees' job responsibilities, among on other things, in the day-to-day performance of their job duties.

8. The Transit Authority distributes such bulletins, upon being issued, by attaching them to an employee's paycheck. Also, as each new bulletin is issued, it is prominently posted on bulletin boards at Transit Authority work locations, replacing a previously issued copy. In the case of Permanent Bulletins, they remain permanently posted on bulletin boards at work locations.

*The Permanent Bulletin on Emergency Personnel Commandeering TA Buses*

9. Even though I am not certain whether a permanent bulletin on the ability of the New York City Police Department ("NYPD") to commandeer a Transit Authority buses existed when I was a bus operator, I was aware that they had the authority to do so. For example, a bus I was operating was once commandeered by the NYPD to transport injured individuals to St. Claire's hospital. In accordance with training that I received as a bus operator for the Transit Authority, I notified the DOB's Bus Command Center (the nerve center of bus operation for the Transit Authority) and followed the orders of the police.

10. Indeed, the policy of emergency personnel commandeering Transit Authority buses and ordering Transit Authority bus operators to operate such buses in emergency situations has been in existence for a very long time.

11. In 1997, the Transit Authority issued a Permanent Bulletin, titled "Commandeered Buses" (Permanent Bulletin Order No. 03.09.01) which gives bus operators certain guidelines to follow when their buses are commandeered by the NYPD. (Ex. A, annexed hereto.) The bulletin directs a bus operator to, in addition to notifying the Bus Command Center, "contact the console dispatcher for periodic updates every hour and each time they are instructed to change locations." (Id.)

*Sample Times When Transit Authority Buses have Been Commandeered by the NYPD*

12. Consistent with the aforementioned 1997 Permanent Bulletin, Transit Authority buses, to my knowledge, have been commandeered by the NYPD on numerous occasions. Most notably, on September 11, 2001, Transit Authority buses were commandeered by the NYPD for several days, wherein they were driven by Transit Authority bus operators, to various locations in New York City.

13. Another occasion where Transit Authority buses have been commandeered by the NYPD was when a building collapsed in midtown Manhattan. There, again, Transit Authority buses were driven by Transit Authority bus operators transporting injured individuals to hospitals.

14. Most recently, 200 buses were commandeered by the New York City Office of Emergency Management during Hurricane Irene to transport individuals in nursing homes to various locations across the city.

15. At no time during those occasions did any of the Transit Authority bus operators whose buses had been commandeered complain that they did not know that the NYPD had such authority, nor fail to follow, consistent with the aforementioned Permanent Bulletin, their responsibility to notify the Bus Command Center of the NYPD's directives or give periodic updates of the situations.


16. Recently, on October 1, 2011, Transit Authority buses were commandeered by the NYPD to transport protesters who had been arrested on the Brooklyn Bridge.

17. So far as I know, none of the bus operators whose buses had been commandeered claimed that they were not aware of their responsibilities during such a

situation; indeed, so far as I know, none of them also complained that they did not want to follow the orders of the police officers or that they wanted to leave because they had matters to tend to.

18. While I have not reviewed the records of the bus operators whose buses were commandeered on that day, I am not aware that anyone one of them complained that he or she did not want to work. Had any of those bus operators called and claimed that their shift is over and had to go home to take care of a matter (such as to pick up a child from school or day care, for example), we would have made every arrangement to make sure that that operator was relieved by another operator. To my knowledge that was never the case on that day.

Executed at Brooklyn, New York this 3<sup>rd</sup> day of October, 2011, subject to penalties of perjury.

  
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JOSEPH D'AURIA  
Chief Transportation Officer  
New York City Transit Authority  
Department of Buses