

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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**JOHN SAMUELSEN, Individually, and as President of
TRANSPORT WORKERS UNION OF GREATER
NEW YORK, LOCAL 100,**

Case No. 16-cv-9336

Plaintiffs,

VERIFIED COMPLAINT

–vs.–

METROPOLITAN TRANSPORTATION AUTHORITY,

Defendant.

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Plaintiffs, by their undersigned attorneys, as and for their Verified Complaint, allege as follows:

INTRODUCTION

1. This action is brought to address the refusal of the Metropolitan Transportation Authority (“MTA”) to accept a paid advertisement from Transport Workers Union of Greater New York, Local 100 (“Local 100”) which emphasizes assaults on Transit workers, and emphasizes the text “We Deserve A Wage Increase for Our Sacrifices.” Without any specification other than to say that the ad addressed “issues,” the MTA rejected the ad, referred Local 100 to a page and a half of a five-page Advertising Policy, and stated that the Local 100 ad was “prohibited advertising.” The Policy in question prohibits ads that “express a political message, including ... an opinion, position or view point regarding disputed economic, political, ... or social issues ...” At the same time, since the announcement of Donald Trump’s win in the US Presidential election, the MTA has allowed citizens to post thousands of “Post-It” size and larger size political messages in the subway passageways, mostly critical of the President-elect.

As of the date of this filing, those notes, which are posted and reposted daily, have, for three weeks, undercut any contention that the subway system is not a public forum. In the face of these postings, there is no question that the rejection of Local 100's advertisement violated its First Amendment rights.

JURISDICTION

2. This Court's jurisdiction is invoked under 28 U.S.C. Sec. 1331, and 42 U.S.C. Sec. 1983. The action seeks relief for violation of the First Amendment to the United States Constitution.

PARTIES

3. Plaintiff John Samuelson, a citizen of the United States, is an employee on leave from the NYC Transit Authority ("NYCTA"), and is President of Local 100. Local 100 is the collective bargaining agent for approximately 38,000 operations, maintenance, and technical employees of subsidiaries of the MTA.

4. The MTA is a public authority, created pursuant to the New York State Public Authorities Law, which oversees various other transportation-related agencies and authorities in the New York City metropolitan area, including NYCTA, the Manhattan and Bronx Surface Transit Operating Authority ("MABSTOA"), the Long Island Railroad ("LIRR"), the Metro North Railroad ("MNRR"), the MTA Bus Authority ("MBA"), the Staten Island Rapid Transit Operating Authority ("SIRTOA"), and the Triboro Bridge and Tunnel Authority ("TBTA"). The MTA is headquartered at 2 Broadway, New York, New York. It is responsible for the operation of all publicly run subways, railroads, and buses in the New York City metropolitan area.

FACTS RELEVANT TO ALL CLAIMS

5. Local 100's collective bargaining agreements with NYCTA, MABSTOA, and MBA are set to expire on January 15, 2017. Contract negotiations have commenced, and the parties are already at loggerheads over the amount of a wage increase that Local 100-represented employees will receive.

6. Local 100 historically engages in a very public campaign when it bargains with the MTA, since its members interact every day with millions of New Yorkers. Its labor disputes often have an impact on the public; in 2005 the union engaged in a three-day strike, and had similar strikes in 1980 and 1965.

7. As a kick-off to its campaign, upon the decision of Plaintiff Samuelson, Local 100 made a request, on or about November 14, 2016, to the MTA to buy \$190,000 in advertising space in the NYCTA subway system and on NYCTA buses. The ad emphasized how frequently Transit Workers are assaulted, and asserted that "We Deserve A Wage Increase for Our Sacrifices." The ad which Local 100 proposed to post is annexed as Exhibit A.

8. On or about November 21, 2016, Local 100 was told by email that the ad buy was rejected. The advertising representative for the MTA stated that:

"The copy here does not meet MTA guidelines. The copy was issue oriented and falls under the prohibited advertising as listed in the MTA Advertising [sic] which is attached. Please refer to Page 3, Item B that lays out all prohibited advertising."

The email is annexed as Exhibit B.

9. Under the title "Prohibited Advertising," the MTA Advertising Policy includes a list of prohibited speech, including ads "political in nature ... which prominently advocate a political message ... for or [in] opposition to disputed issues or causes." The Advertising Policy is not content neutral, but prohibits only ads addressing "disputed" issues, causes, or related

matters without any guidance other than the MTA's own determination of which issues and causes those are. The MTA Advertising Policy, which was adopted in around April 2015, is annexed as Exhibit C. It was adopted in response to an effort to post ads by a group seeking to attack the Palestinian group Hamas. It has never been directly challenged in a court.

10. The rejection Local 100's ad did not explain how the Local 100 ad fit into this category, since it did not involve politics or any political issue.

11. More importantly, the rejection came in the context of the MTA opening up the walls of its facilities to free political expression following the election of Donald Trump as President of the United States, making it possible for riders to express their feelings on the walls of MTA subway stations, most prominently the Union Square subway station. Annexed as Exhibit D are articles appearing all over the world about this exercise in political expression, and annexed as Exhibit E are photographs of some of the subway postings.

12. The postings not only oppose President-elect Trump, they call for an abolition of the Electoral College and an end to "free prison labor," and they seek to have riders make calls to their Senators and representatives, and on and on. There is no dispute that whatever the purpose of the 2015 Advertising Policy was, the MTA has opened the subway system as a public forum.

**AS AND FOR A FIRST
CAUSE OF ACTION**

13. By rejecting the advertisement proposed by Samuelsen, on behalf of Local 100, the MTA has violated Samuelsen's and Local 100's rights under the First Amendment of the United States Constitution.

**AS AND FOR A SECOND
CAUSE OF ACTION**

14. By maintaining an advertising policy that generally prohibits expression “in support or opposition to *disputed* issues and causes,” (emphasis added) the MTA has enacted a policy that is vague and overbroad, and gives itself unconstitutionally unlimited authority to restrict First Amendment expression.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that the Court:

1. Enter an a preliminary and permanent injunction barring the MTA, its officers, agents and assigns, from refusing to either (a) sell advertising space to Local 100 to post its “We Deserve A Wage Increase” ad, or (b) allow Local 100 to post its ads for free on the walls of subway stations
2. Enter a Declaratory Judgment declaring the MTA Advertising Policy violative of the First Amendment.
3. Award plaintiffs attorneys’ fees and costs.

Dated: New York, New York
December 4, 2016

ADVOCATES FOR JUSTICE,
CHARTERED ATTORNEYS
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By: _____ /s/
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VERIFICATION

John Samuelsen, based on his own knowledge, verifies that he has read the foregoing Complaint and that it is true to his knowledge and information.

Dated: December 4, 2016

_____/s/
JOHN SAMUELSEN