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## MTA Bridge, Tunnel Workers Get Class Cert. In OT Pay Suit

By **Max Kutner**

Law360 (June 25, 2021, 2:04 PM EDT) -- Bridge and tunnel officers can move forward with claims that the New York City area's Metropolitan Transportation Authority shorted them on overtime by making them work unpaid off the clock, as a federal judge said there was sufficient evidence of an overarching policy depriving them of pay.

In an order Thursday, U.S. District Judge Analisa Torres conditionally approved the collective action against the MTA and the affiliated Triborough Bridge and Tunnel Authority, saying the workers made a "requisite factual showing" that they were similarly situated in their Fair Labor Standards Act claims.

The workers had put forward nine declarations containing similar claims that the MTA did not pay them for pre- and post-shift work, shaved hours by rounding time, failed to pay promptly for overtime and miscalculated the overtime rate, according to the order.

The conditional collective consists of all current and former bridge and tunnel officers who worked for the MTA since August 2017, except those who served as union executive board members.

Judge Torres also denied the MTA's bid to consolidate the case with another it faces by workers alleging FLSA violations, *Joseph et al. v. Metropolitan Transportation Authority et al.*

The judge said consolidation wasn't appropriate because of a question about whether the Joseph workers were exempt from overtime requirements because they are salaried.

Jeffrey Mercado, Tyrone Pringle, Adam Roman, Kevin Knois and Edward Kalanz filed the present suit on behalf of themselves and other bridge and tunnel officers. As of August, when they filed the complaint, they were all current MTA officers, and each had worked there since the early 2000s.

The workers claimed unpaid overtime stemming from their having to do unpaid work before and after shifts.

Before work, they would have to review and discuss assignments, put together forms, obtain summonses, review alerts and postings, retrieve firearms, get and test equipment and check out keys and vehicles, according to the complaint. Those tasks take 20 to 40 minutes, the complaint said.

After work, they would have to wait for other officers to relieve them, return to the administration building or other locations, submit reports and documents, complete paperwork for their vehicles and return equipment, which would take 25 to 30 minutes, according to the complaint.

The MTA did not let the officers clock in or out more than 29 minutes before or after their scheduled shifts so those pre- and post-shift tasks could be unpaid, according to the complaint. The agency later changed this to 22 minutes before or 16 minutes after the scheduled shifts, the complaint said.

The agency's timekeeping system also rounded clock-in times up to their scheduled start time and clock-out times down to their scheduled end time, resulting in unpaid overtime, the workers said.

They also accused the agency of not promptly paying overtime compensation, sometimes making them wait up to six weeks, and of deliberately miscalculating overtime rates by not including certain compensation, differentials and bonuses.

"Defendants' organizationwide policies and practices affect all officers and the resulting violations of the FLSA are continuous and ongoing," the complaint said.

The MTA has not filed an answer to the complaint.

The workers filed for conditional certification in September.

Innessa M. Huot, who represents the workers, said 445 officers have already joined the suit, an amount she called "staggering."

"We are happy that the remaining handful of officers, many of whom have already retired, will now be given notice of the lawsuit and their right to participate in it," Huot said in a statement to Law360 on Friday. "We are eager to get formal discovery started and proceed with the litigation of the case."

Counsel for the MTA did not immediately respond to a request for comment.

An MTA spokesperson declined to comment.

The officers are represented by Alex Jeffrey Hartzband, Camilo Burr, Patrick Joseph Collopy and Innessa Melamed Huot of Faruqi & Faruqi LLP and by Eric Scott Tilton and Joshua Sam Beldner of Tilton Beldner LLP.

The MTA is represented by Joshua Samson Fox and Steven D. Hurd of Proskauer Rose LLP.

The case is Jeffrey Mercado et al. v. Metropolitan Transportation Authority et al., case number 1:20-cv-06533, in U.S. District Court for the Southern District of New York.

--Editing by Neil Cohen.