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BY VIORE FLORESCU—NEWSDAY

James Reilly, left, sued New York's Metropolitan Transit Authority and his union, seeking benefits for his partner, George Brennan.

In Fight for Equality, Echoes of History

Gay Subway Worker Suing for Benefits Is Fueled by Irish Roots

By CHRISTINE HAUGHNEY
Washington Post Staff Writer

NEW YORK—James Reilly may share the pale-pink complexion and Gaelic pride of his subway-conducting ancestors. But this third-generation subway worker is fighting an employment battle his father and grandfather never dreamed of.

Reilly, 57, sued the Metropolitan Transit Authority and his own union, seeking for him and his partner, George Brennan, 50, the same benefits married couples receive. Although a new contract between the MTA and the Transport Workers Union provides health benefits for domestic partners—the pair received their new insurance cards last month—Reilly says he wants the same survivor, pension and bereavement benefits as his married colleagues. “I don’t have what all the straight marrieds have,” Reilly said.

Although his fight has been a common one in the nation’s ongoing debate over gay rights, Reilly is an unlikely warrior in the cause: a blue-collar, high school dropout steeped in the lore of an ethnic, big-city union and a public transit system in which his Irish Catholic family roots go back three generations.

Reilly is openly gay but casts himself as a traditionalist. He is no longer a practicing Catholic, but he wears a traditional Irish Claddagh engagement ring to recognize his registered domestic partnership with Brennan, who is unemployed. While his siblings have moved to the Long Island suburbs, he always has lived in the same police precinct. The apartment he and Brennan have shared for 20 years is crowded with photographs of beloved Democratic politicians and a framed map of Ireland. He knows how to pour a well-steeped cup of tea and recite an altar boy’s prayers, and he retells his grandfather’s anecdotes of how Queens resi-

dents once posted signs ordering dogs and Irish off their lawns.

Most New York City agencies offer domestic partner benefits, but the MTA argues it is independent of city and state laws and does not have to offer the same benefits.

It hasn’t been easy for Reilly to take on an Irish American institution like the MTA. For decades, transit work was the

first rung for Irish immigrants up the city’s social ladder. To Reilly, Local 100 was one of the first advocates of Irish American immigrant rights. At the height of the Great Depression, seven Irish Republican Army veterans formed the union to fight layoffs and a 10 percent pay cut. The union was the underground that barked back at anti-Irish sentiment.

His family has lived in that culture for three generations—his grandfather ran a steam engine, and his father worked a token booth. It is his family’s sense of righteousness that partly fuels his crusade: Reilly said he does not want “similar benefits.” He wants “equal benefits.”

Union officials note that the last contract they negotiated with the MTA won the health benefits that Reilly had sought.

But Reilly questions why benefits for domestic partners should be negotiable when benefits for married couples are standard. “If they give it to me in this contract, they can take it away in the next contract,” he said.

Reilly started his working life at the MTA in 1969. He left to work at other city agencies, which offered domestic

partner benefits, but Brennan, his partner, didn’t need them then. Now, Brennan has circulatory problems, and he wanted the coverage. But when Reilly returned to the MTA in 2001, he found that benefits were available only for management.

Reilly turned for help to lawyer Tom Shanahan, who in turn asked the transit union for support. But Shanahan soon learned that the union wasn’t interested in helping with the case. So Reilly took on the transit authority and the union.

“I didn’t want to sue the union. I really didn’t,” Shanahan said. “I expected that their agenda would be similar to ours.”

Lawyers for the MTA and the union argued that subway workers are not city employees and thereby are exempt from the city’s human rights laws. Union officials also say that Reilly’s request would have cost \$2.5 million a year to extend domestic partnership benefits during a time of tight budgets.

“It happened to be the time when the trust was running in the red,” said Arthur Z. Schwartz, the union’s general counsel. He said negotiating the benefits during contract talks was a superior

strategy.

State Supreme Court Judge Robert D. Lippman has ruled that the MTA must comply with the city’s human rights laws and that Reilly could pursue his case; the lawsuit is pending.

Reilly now charges that the MTA is retaliating against him. He says he has been moved to train routes far from his home and pulled off his shift to give urine and blood samples. He also has been subjected to what he called “unfortunate graffiti” attacking his sexual orientation in the restrooms of train stations where conductors take breaks. His union isn’t backing his effort for more benefits but is supporting him in his allegations that he is being harassed.

MTA officials deny that Reilly has faced retribution because of his lawsuit. “We will not under any circumstances condone any discrimination or harassment,” said MTA spokesman Tom Kelly.

Reilly said he is determined to continue his fight and report to his shifts steering slyery N and W trains through Queens and Brooklyn.

“I am who I am,” Reilly said. “But that’s the Irish in me.”

On Track to

Motorman sues for health benefits for gay, lesbian domestic partners

By Joshua Robin
 STAFF WRITER

A subway operator's cab isn't any larger than an old-fashioned phone booth, but from such a claustrophobic compartment, precedent-setting changes might be coming.

A motorman from Astoria has sued the Metropolitan Transportation Authority to extend health benefits to his gay partner of 20 years, an effort he hopes will bring greater acceptance of homosexuals in blue-collar jobs.

"I'm a high school dropout," said James Reilly, 57, who most days can be found steering the N and W trains, "but I do know the difference between right and wrong . . . I'm not going to stop 'til he's covered, and if I have to go to the United States Supreme Court, I will."

Last month, State Supreme Court Justice Robert Lippmann declined the MTA's request to throw out the suit, which sought to add benefits to Reilly's partner, George Brennan, who is unemployed.

The decision paved the way for future legal action. Several city council members have also pledged support to the case and are expected to hold a news conference this week to call attention to it.

Brennan, 50, is not seriously ill, but he does suffer from circulatory prob-

lems. After years using his own private insurance, he now relies on federal assistance.

If all Reilly wants was health insurance for Brennan, their story could be soon ending. Under a new contract currently before the 34,000 members of Local 100 of the Transport Workers Union, domestic partners of union workers would receive the same health coverage as spouses.

It is unclear how many MTA employees have domestic partners, MTA officials and employees said. However, they noted not all are same-sex partnerships.

"If they ratify that contract, and the board approves it . . . that benefit would be provided to them," said Paul Fleuranges, a spokesman for New York City Transit, a subsidiary of the MTA. The vote will be tallied Jan. 21.

Reilly's lawyer, Tom Shanahan, said internal MTA policy, not a finite contract, should give domestic partners the benefits rights as spouses, including bereavement leave and other entitlements.

"Gays and lesbians should not have to collectively bargain for their civil rights," said Shanahan, who is working pro bono. "You didn't collectively bargain to integrate schools."

Reilly, 57, who first took the helm of an IRT car in 1970, traces his lineage in the subways back more than a century. His grandfather powered a steam engine shortly after the

'I'm a high school dropout, but I do know the difference between right and wrong . . . I'm not going to stop 'til he's covered, and if I have to go to the United States Supreme Court, I will.'

— James Reilly, right, on his fight for benefits for his partner, George Brennan, far right

Change the MTA

Spanish-American War, when the city's transit system was still private, and his father worked in a token booth.

Politics also bubbled in the self-described "motor-mouth" motorman, an unabashed Democrat who keeps a holiday card from Andrew Cuomo and his wife, Kerry Kennedy Cuomo, beneath American, Irish and rainbow-colored flags.

For 18 years, he fought the Navy to reverse a dishonorable discharge and was successful. After five years working on the subways in the 70's, Reilly later worked in the offices of the City Council and public advocate, where Brennan was eligible for benefits because the city recognizes same-sex unions.

Reilly returned to NYC Transit in 2001 and soon applied to bring Brennan into the plan. "I thought it would go *automaticamente*," Reilly said. It didn't.

Although domestic partners of city employees are entitled health benefits, the MTA argued it wasn't required to provide such benefits because it was an independent agency, separate from the city and the state. In short order, Reilly sued the agency, his union and the union's trustees.

Reilly said bosses have since retaliated against him: they shifted his normal tour on the N and W, which runs by his house, to the L, C and D, which have railyards as far away as the Rockaways.

Tom Kelly, an MTA spokesman, declined to comment on that charge, except to say the MTA does not condone harassment or retaliation.

Reilly said there have been instances of homophobia over the years from fellow employees — name calling, graffiti — but he said the overwhelming majority don't bother him.

Still, other homosexuals in NYC Transit, he said, fear coming out to colleagues and their bosses. Reilly said that while they might remain secret about their identity, he is convinced a change in MTA policy would likely make them feel more sure of themselves around their heterosexual co-workers.

"If I know what's right, I don't stop 'til I've won," he said.



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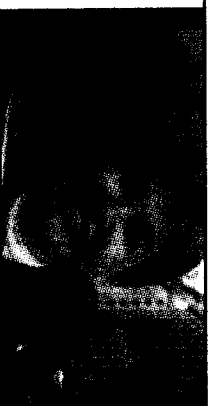
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Motorman Wins Round One

Transit Authority worker's benefits suit survives preliminary hurdles

BY ARTHUR S. LEONARD

A lawsuit seeking health benefits for lesbian and gay domestic partners of New York City Transit Authority employees survived a crucial hurdle when New York Supreme Court Justice Robert Lippmann ruled that the Transit Authority is subject to compliance with the New York City Human Rights Law, which forbids discrimination on the basis of sexual orientation.

Lippmann's decision was published in the New York Law Journal on January 2.

James P. Reilly, a TA employee, and his domestic partner, George A. Brennan, registered as domestic partners with New York City in 1999. In June 2001, Reilly applied to the Health Benefit Trust jointly operated by the union and the TA for domestic partner benefits coverage for Brennan, and was turned down.

The TA has consistently taken the position that as an "independent" state authority it is not subject to the jurisdiction of New York City laws and its employees are not city employees. A city ordinance passed during the Giuliani administration makes city employees eligible for domestic partnership benefits for their registered same-sex partners.

Reilly and Brennan brought their claim against the TA and the union on three grounds.

They argue first that Reilly should be considered a city employee for purposes of benefits eligibility. Their second argument is that failing to extend benefits to same-sex registered partners of TA employees is a violation of the city's ban on sexual orientation discrimination in employment. Finally, they argue that the Transit Authority's own internal policy banning sexual orientation discrimination requires extension of benefits.

Justice Lippmann's opinion was mainly directed at the question whether any of these legal theories are strong enough to allow the lawsuit to proceed. Regarding the first theory, Lippmann concluded that although the TA is largely funded by the city and performs its functions within the city, and although its employees are certainly "public employees," they cannot be considered city employees. The most authoritative decisions seem to hold that the TA, as a public benefit corporation created by state statute, is neither a state nor city government agency.

The "TA is not a division of the State or the City," wrote Lippmann, although legal precedent certainly exists for compelling the TA to comply with state laws.

"At the present time, however, State law does not require public authorities, such as the TA, to provide health benefits to the domestic partners of their

employees," he wrote. "While the court is sympathetic to the challenges faced by nontraditional families, it cannot, by judicial fiat, create a class of quasi-city employees in order to extend health benefits to the domestic partners of TA employees."

But Lippmann found merit to the argument that the TA is subject to the city's Human Rights Law, citing relatively recent cases finding that the TA is subject to discrimination claims brought under the city law. Lippmann mentioned a recent federal trial court decision suggesting that the Public Authorities Law exempts public authorities such as the TA from complying with only those local laws that interfere with carrying out their function. Lippmann asserted that "compliance with the local human rights laws will not interfere with the TA's purpose."

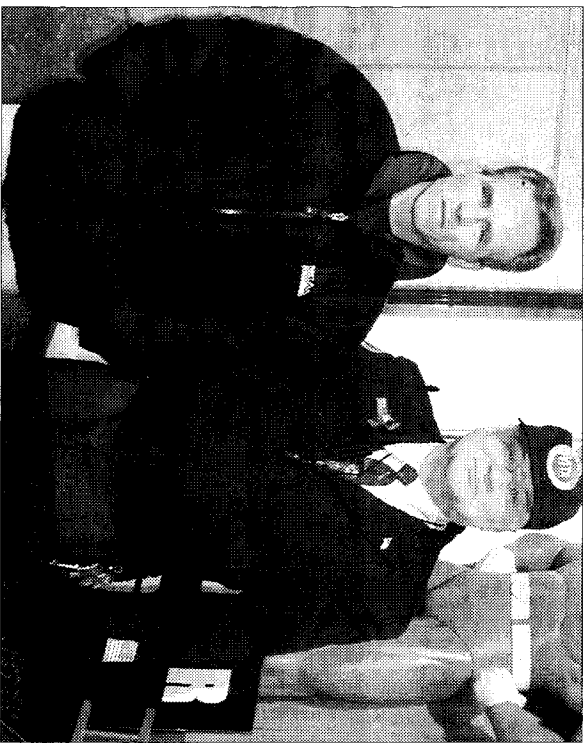
As to the merits of the city nondiscrimination claim, Lippmann invoked the recent Court of Appeals decision against Yeshiva University, holding that a policy, neutral on its face, which results in sexual orientation discrimination, violates the city law. Two lesbian medical students challenged Yeshiva's refusal to allow them to live with their domestic partners in University student housing, which was restricted to students and their legal spouses. The Court of Appeals found that this policy could be challenged under the city law, because it had a "dis-

parate impact" on lesbian and gay students.

Similarly, Lippmann found that it is possible that the plaintiffs can prove that the TA's refusal to extend domestic partnership benefits has a disparate impact on lesbian and gay employees. Since the plaintiffs did not provide any specific proof on this point, however, Lippmann said that the issue cannot be resolved based on pretrial motions. But his ruling upholds the right of the plaintiffs to bring this lawsuit and gives them a chance at eventual victory.

Lippmann inconclusively dismissed the plaintiffs' claim under the TA's own nondiscrimination policy. It is unclear whether he decided to allow that claim to continue, as he merely stated that the relief plaintiffs were seeking was identical under this theory to the relief sought under the city human rights law. This issue, however, may eventually have to be decided independently of the city law issue, since it is possible that at a later stage in the case the TA will be demonstrate that it is not required to comply with the city human rights law. In that case, the plaintiffs' only remaining legal argument would be based on the TA's own internal nondiscrimination policy.

Lippmann rejected an argument by the union and its officials that they should be dismissed from the case at this stage.



RAMIT JOSE

■ BACK TO COURT George A. Brennan and James P. Reilly.