

Authority of New York's Railroad Police Needs to Be Expanded

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Recent news reports showed a hammer-wielding individual swinging at the heads of pedestrians and park-goers in Midtown Manhattan but stopped by two members of the NYPD.¹ Now imagine if the two uniformed police officers were on their way to their assignment – not as members of the NYPD, but rather as highly trained railroad police officers, who are former NYPD officers, now appointed to the railroad police by the Superintendent of the New York State Police under the New York Railroad Law. Would you want those officers to attempt a lawful arrest of the attacker to prevent deadly harm to themselves and innocent citizens? Or would you rather the railroad police officers call the NYPD and hope that a unit can arrive before people get hurt?

Surprisingly, under the law as it exists today, a police officer appointed under Section 88 of the New York Railroad Law does not have the authority to make that arrest, because the crime did not take place "upon the property or in connection with the property" owned by the railroad company for which the officer works. See N.Y. R.R. LAW §88(14).

This is so despite the fact that a police officer who works on the LIRR or on Metro North could lawfully use his or her police powers to arrest the perpetrator on the streets of New York City. To add to the perplexity, LIRR and Metro North police officers were initially appointed as railroad police officers under Section 88 of the Railroad Law before they were merged into the MTA police force in 1997. See N.Y. Pub. Auth. Law §1266-h (enacted in 1997) (consolidating the Long Island Rail Road Company and Metro-North Commuter Rail Road Company police forces into a Metropolitan Commuter Transportation Authority police department).

The limited jurisdiction of railroad police officers under the Railroad Law is rooted in historical tradition and neglect, while the utility of the rule that adheres to that tradition does not appear to have been considered of late. Societal and technological changes over the last century have

¹ J. David Goodman, Al Baker, "Police Shoot Hammer-Wielding Man Sought in 4 Manhattan Attacks," *The New York Times* (May 13, 2015), http://www.nytimes.com/2015/05/14/nyregion/officer-shoots-man-in-midtown-manhattan.html?_r=0; Chelsia Rose Marcus, Rocco Parascandola, Caitlin Nolan, Tina Moore, "NYPD cops shoot hammer-wielding suspect near Penn Station they say was wanted in Union Square, other attacks," *Daily News* (May 14, 2015) <http://www.nydailynews.com/news/crime/nypd-shoots-hammer-attack-suspect-article-1.2220522>.

spurred enormous changes in civil and criminal laws, as well as in law enforcement procedures, from advanced surveillance techniques to inter-agency, inter-authority, and inter-state investigative and prosecutorial coordination. Indeed, while the New York Legislature has adapted the New York Criminal Procedure Law (CPL) to new challenges that face the public in the 21st century, the obscure and antiquated New York Railroad Law has remained largely unchanged over its more than 100-year history.

The railroad police, who are highly qualified and subject to strict appointment criteria, still play a vital role in the law enforcement community and could provide a boon to local and state law enforcement officers in the discharge of their duties, if they are not restrained from exercising their police duties except on or near railroad property.

Railroad police are required to patrol large areas of land and are often required to traverse great distances in a single day from one railroad yard in one state to another railroad yard in another state. It would only benefit local law enforcement if railroad police were to remain vigilant and were authorized to exercise their police powers without hesitation while traveling across territory and property that, while not owned or controlled by a railroad company, is within the counties and State of New York. Indeed, it not only would make good policy sense to authorize railroad police officers to exercise general police powers in the jurisdictions in which their respective employer railroad companies operate, but it also would modernize the Railroad Law and make it consistent with the CPL and the Public Authority Law.

Geography and Severity

The CPL has a sophisticated array of statutory provisions that govern the geographical jurisdiction of virtually all police officers and define the geographical scope of the officers' powers based on the severity of the offenses with which they are confronted. Under the CPL, the "geographical area of employment" of certain police officers (as relevant for our purposes) is as follows:

(a) Except as provided in paragraph (d) of this subdivision [regarding police officers appointed by the state universities], New York state constitutes the "geographical area of employment" of any police officer *employed as such by an agency of the state or by an authority which functions throughout the state;*

(c) Where an authority functions in more than one county, the "geographical area of employment" of a police officer employed thereby extends through all of such counties. CPL §1.20.34-a (emphasis added). The scope of a police officer's powers is defined and regulated, in part, based on his or her geographical area of employment. For instance, "[a] police officer may arrest a person [without a warrant] for a petty offense...only when...[s]uch offense was committed or believed by him or her to have been committed within the geographical area of such police officer's employment or within one hundred yards of such geographical area...." CPL §140.10(2)(a).

But the analysis does not simply end there when a crime, as opposed to a petty offense, is at hand. Indeed, "[a] police officer may arrest a person for a crime [without a warrant]..., whether or not such crime was committed within the geographical area of such police officer's employment, and he or she may make such arrest within the state, regardless of the situs of the commission of the crime...." CPL §140.10(3). Thus, the officer's authority to arrest without a warrant depends on a calculus between the severity of the offense and the geographical area of employment of the police officer. The rationale is obvious: Police officers in New York should protect citizens from crime, first and foremost.

Railroad police officers appointed under Section 88 of the Railroad Law are "police officers" under the CPL and would be governed by the CPL's geographical area of employment provision but for the antiquated limits on jurisdiction imposed by the Railroad Law. See CPL §1.20.34(p). Notwithstanding the fact that the railroad police are not appointed by a state agency or authority, it is sound policy and consistent with the CPL and other laws to define a railroad police officer's authority the same way that the Legislature defines virtually any other police officer's authority—in accordance with the geographical area of employment provisions of CPL §1.20.34-a and the statutory provisions that incorporate the geographical area of employment provisions by reference.

Thus, if the railroad company operates throughout the whole state of New York, then, under CPL §1.20.34-a, the geographic area of employment of the railroad police officer who is employed by that company should be the whole state, and his police powers should be governed by the other provisions of the CPL that incorporate by reference the police officer's geographical area of employment. Similarly, if the railroad company functions only in certain counties, then the railroad police officer's geographical area of employment should be those

counties. Such is the present state for the Metropolitan Transportation Authority (MTA) police officers.

Originally Railroad Police

The evolution of the MTA police laws, which were enacted in 1997, clearly demonstrates why present railroad police officers should be treated the same way present MTA police officers are treated. Prior to 1997, the Long Island Rail Road Company and the Metro-North Commuter Railroad Company operated their own railroad police forces pursuant to the New York Railroad Law, with their respective authority limited to railroad property. In 1997, a law was passed that authorized and empowered the MTA (then referred to as the Metropolitan Commuter Transportation Authority) to provide and maintain an authority police department, which is the police agency of New York's Metropolitan Transportation Authority, and which includes a uniformed authority police force to patrol the MTA's trains and facilities. See N.Y. Pub. Auth. Law §1266-h. Each member of the authority's uniformed police force is deemed to be a "police officer" for the purposes of the CPL (as are present railroad policemen pursuant to CPL §1.20.34(p), as noted above).

But as part of the MTA law, the Long Island Rail Road Company police force and the Metro-North Commuter Railroad Company police force were reorganized and consolidated under the MTA police force, and the "traditional police functions previously performed by the Long Island Rail Road Company and/or the Metro-North Commuter Railroad Company police force [] continue[d] to be performed by the authority police forces." N.Y. Pub. Auth. Law §1266-h(1). Furthermore, under the MTA law, initial appointments to the MTA police force were to consist of "all incumbent police officers" from the LIRR company and Metro-North company.

In other words, the very same LIRR and Metro-North railroad police, who had been railroad police officers pursuant to the New York Railroad Law, suddenly became authority police officers governed by the "geographical area of employment" rule under the CPL Law.

Because these MTA police officers were once railroad police officers under Section 88 of the Railroad Law, and still would be but for the reorganization into the police forces under the MTA, it stands to reason and good policy that the geographical bounds of a railroad police officer's authority should be the same as those of virtually any other police officer under the CPL today.

Exploring Historical Roots

Railroad police officers are appointed by the Superintendent of the New York State Police and are highly qualified officers required to satisfy rigorous criteria in order to receive appointment. Indeed, many of these officers are former police officers from the NYPD, MTA, or some other police force. Yet the antiquated Railroad Law, dating back to the late 1800s, prevents these qualified officers from exercising their police authority except when they are acting on or in connection with property that is connected with or under the control of the railroad company for which they work. This rigid territorial limitation on their police power, which is rooted in historical and outdated legislation, is highly unsuitable for law enforcement in the modern world.

There is no surviving legislative history concerning the reasons behind the requirement that a railroad policeman "shall not be permitted to exercise the duties and functions of a policeman *except upon the property or in connection with the property connected with or under the control of the company for which he has been appointed.*" N.Y. R.R. LAW §88(14) (emphasis added).

Indeed, the current language of N.Y. R.R. Law §88(14) existed in its present form as of 1968, but the vast majority of the language existed as far back as 1924, and the original geographic limitations on railroad policemen's powers most likely date all the way back to 1890. Although there very well could have been a rational purpose behind the Legislature's decision to treat railroad police officers differently from other police officers back in 1890, 1910, and perhaps even 1924, it is evident that this historical anachronism simply remained in place over the following decades while the Legislature turned its focus to new areas of concern.

Conclusion

The statutory history of Section 88 of the Railroad Law reveals that the law has, since at least 1924 if not from its inception, limited, without explanation, railroad police officers' authority to perform their police duties to the land or property of or under the custody or control of the railroad company. There is no legislative history that discusses the rationale as to why the powers of railroad police officers have been so limited. Nevertheless, there are strong policy grounds for finding that this limitation on authority, grounded as it is in history and tradition rather than safety and pragmatism, should be repealed and that railroad police officers should be able to exercise their duties and functions to the full extent permitted for a police officer under the CPL.