

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LYLE E. FRANK PART 11M

Justice

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NYC ORGANIZATION OF PUBLIC SERVICE RETIREES,
INC, LISA FLANZRAICH, BENAY WAITZMAN, LINDA
WOOLVERTON, ED FERINGTON, MERRI TURK LASKY,
PHYLLIS LIPMAN,

Plaintiff,

INDEX NO. 158815/2021

MOTION DATE 10/21/2021,
N/A,
02/22/2022

MOTION SEQ. NO. 001 002 004

- v -

RENEE CAMPION, CITY OF NY OFFICE OF LABOR
RELATIONS, CITY OF NEW YORK,

Defendant.

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 55, 56, 58, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 212

were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 2, 57, 63, 64, 65, 79, 80, 81, 82, 96, 113, 166, 205, 206

were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 201, 208, 209, 210, 213

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER).

The underlying petition arises out of allegations that respondents have unlawfully amended the Medicare plan of current retirees.¹ The Court previously held on October 21, 2021, that the selection of the Alliance to administer the proposed Medicare Advantage Plus Plan (the “Plan”) was not arbitrary and capricious, however the implementation of the plan was irrational and many details of the plan required refinement. Based on that determination, the Court granted

¹ It appears undisputed that the summary judgment motion by petitioners (seq. 4) was not legally permissible in this proceeding. However, due to the complexity of this case, the Court reviewed the papers submitted for seq. 4 as being incorporated to the 2 motion sequences that were proper: seq. 1, the order to show cause of which the preliminary injunction was derived, and seq. 2, the original petition, and the cross-motion to dismiss by respondents.

a preliminary injunction to allow respondents to clarify and make adjustments consistent with the Court's order.

The parties have since made multiple submissions and appearances before the Court; as a result, the preliminary injunction is now vacated, and the underlying petition is ripe for resolution. For the reasons set forth below, the petition is granted to the extent indicated below and respondents' motion to dismiss the petition is denied.

First, the respondent and nominal respondent have taken many strides to improve the information available regarding the Plan, and thus, while the steps they have taken may not make things perfect, the Court finds that at this point the implementation of the Medicare Advantage Plan is no longer what this Court would consider irrational.

Second, much of the legal arguments made by the petitioners are unavailing. The respondent was well within its right to work with the Municipal Labor Council to change how retirees get their health insurance. As the municipal labor unions are the entities that enter into collective bargaining agreements, those unions, through the umbrella Municipal Labor Council may amend those agreements. Moreover, even if the Court were to find the labor unions may not bind retirees, this would only mean that the respondents could act alone without the Municipal Labor Council, which nevertheless would still not invalidate the agreement that was reached here.

Third, as the petitioners freely acknowledge, the New York State Constitution does not guarantee specific health insurance for retirees.

However, based on this Court's reading of New York City Administrative Code Section 12-126, so long as the respondent is giving retirees the option of staying in their current program, they may not do so by charging them the \$191 the respondent intends to charge. This section

states unequivocally that “[t]he City will pay the entire cost of health insurance coverage for city employees, city retirees and their dependents, not to exceed one hundred percent of the full cost of H.I.P.-H.M.O. on a category basis.²” Respondent and nominal respondent aver that the definition of “health insurance coverage”, as defined in Admin. Code § 12-126 (a), stating “a program” as opposed to “any program” means that the City of New York need only pay for the entire cost of one program. This Court respectfully disagrees. NYC Admin. Code § 12-126 (b)(1) is simply unequivocal and does not use terms like “provide” or “offer”; rather it uses the term will pay and it provides parameters of such payment. The definition in NYC Admin. Code § 12-126 (a)(iv) simply provides what constitutes a program or plan that the City of New York is required by law to pay for, by defining the contents of such a plan. This Court holds that this is the only reasonable way of interpreting this section.

Of course, none of this is to say that the respondent must give retirees an option of plans, nor that if the plan goes above the threshold discussed in NYC Admin. Code § 12-126 (b)(1) that the respondent could not pass along the cost above the threshold to the retiree; only that if there is to be an option of more than one plan, that the respondent may not pass any cost of the prior plan to the retirees, as it is the Court’s understanding that the threshold is not crossed by the cost of the retirees’ current health insurance plan. This is buoyed by the fact that the current plan has been paid for by the respondent in full to this point. Based on the foregoing, it is therefore

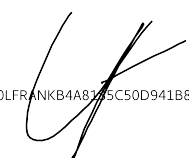
ORDERED that the preliminary injunction previously put into place by this Court is lifted, except that:

1. Enrollment in the Medicare Advantage Plan may not occur until at least April 1, 2022, and that retirees shall have the option of opting out of the Medicare

² The Court refers to this below as the “threshold”.

Advantage Plan for not less than three months following the effective date of the Medicare Advantage Plan;

- 2. The respondent is permanently enjoined from passing along any costs of the New York City retirees' current plan to the retiree or to any of their dependents, except where such plan rises above the H.I.P.-H.M.O. threshold, as provided by New York City Administrative Code Section 12-126; and
- 3. The respondent shall ensure that all retirees and dependents of such retirees pay the deductible for only one plan for the calendar year 2022.


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LYLE E. FRANK, J.S.C.

3/3/2022

DATE

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