NYSCEF DOC. NO. 217

RECEIVED NYSCEF: 03/04/2022

Supreme Court of the State of New York County of New York	
In the Matter of the Application of	
LISA FLANZRAICH, BENAY WAITZMAN, LINDA WOOLVERTON, ED FERINGTON, MERRI TURK LASKY, PHYLLIS LIPMAN, on behalf of the themselves and others similarly situated, and the NYC ORGANIZATION OF PUBLIC SERVICE RETIREES, INC., on behalf of former New York City public service employees who are now Medicare-eligible Retirees,	
Petitioners,	NOTICE OF APPEAL
For a Judgment Pursuant to CPLR Article 78	Index No. 158815/2021
- against -	
RENEE CAMPION, as Commissioner of the City of New York Office of Labor Relations, CITY OF NEW YORK OFFICE OF LABOR RELATIONS, and THE CITY OF NEW YORK,	
Respondents.	
x	
PLEASE TAKE NOTICE that respondents appeal to t	he Appellate Division, First
Department, from the decision and order of Supreme	e Court, New York County
(Frank, J.) dated and entered on March 3, 2022 (NYSCE	F Nos. 214–216).
1	
1	

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Dated: New York, New York March 4, 2022 Hon. Sylvia O. Hinds-Radix Corporation Counsel of the City of New York

By:

DEVIN SLACK

Deputy Chief, Appeals Division 100 Church Street New York, New York 10007 212-356-0817 dslack@law.nyc.gov

To: POLLOCK COHEN LLP 60 Broad St., 24th Floor New York, NY 10004 212-337-5361 scohen@pollockcohen.com

- and -

WALDEN MACHT & HARAN LLP 250 Vesey Street, 27th Floor New York, NY 10281 212-335-2965 jgardener@wmhlaw.com

Counsel for Petitioners

NYSCEF DOC. NO. 217 RECEIVED NYSCEF: 03/04/2022

Supreme Court of the State of New York Appellate Division: First Indicial Department

Informational Statement (Pursuant to 22 NYCRR 1250.3 [a]) - Civil

Case Title: Set forth the title of the show cause by which the matter w			For Court of Original Instance
In the Matter of the Application of LISA FLANZRA PHYLLIS LIPMAN, on behalf of the themselves at INC., on behalf of former New York City public set	nd others similarly situated, and the NYC ORGAN	IIZATION OF PUBLIC SERVICE RETIR	
For a Judgment Pursuant to CPLR Article 78			
			Date Notice of Appeal Filed
- against -			
RENEE CAMPION, as Commissioner of the LABOR RELATIONS, and THE CITY OF NE		CITY OF NEW YORK OFFICE OF	For Appellate Division
Case Type		Filing Type	
☐ Civil Action	■ CPLR article 78 Proceed	ling Appeal	☐ Transferred Proceeding
☐ CPLR article 75 Arbitration	☐ Special Proceeding Oth		_
CPLR article /3 Arbitration	_		Executive Law § 298
	☐ Habeas Corpus Proceed	ing CPLR Article /8	☐ CPLR 5704 Review
		☐ Eminent Domain ☐ Labor Law 220 or	
		☐ Labor Law 220 or ☐ Public Officers La	
		Real Property Tax	
		in Real Floperty Tax	Law § 1276
Nature of Suit: Check up to	three of the following estage	arias xybiah hast raflaat	the nature of the ease
Nature of Suit: Check up to	tiffee of the following categories	ones which dest tenect	the nature of the case.
■ Administrative Review	☐ Business Relationships	☐ Commercial	☐ Contracts
☐ Declaratory Judgment	☐ Domestic Relations	☐ Election Law	☐ Estate Matters
☐ Family Court	☐ Mortgage Foreclosure	☐ Miscellaneous	☐ Prisoner Discipline & Parole
☐ Real Property	☐ Statutory	☐ Taxation	□ Torts
(other than foreclosure)	•		

NYSCEF DOC. NO. 217 RECEIVED NYSCEF: 03/04/2022

	Appea			
Paper Appealed From (Check one only	·):		en from more than one order or	
		judgment by the filing of this notice of appeal, please		
			ation for each such order or	
		judgment appealed from	on a separate sheet of paper.	
☐ Amended Decree	☐ Determination	Order	☐ Resettled Order	
☐ Amended Judgement	☐ Finding	☐ Order & Judgment	☐ Ruling	
☐ Amended Order	☐ Interlocutory Decree	☐ Partial Decree	\square Other (specify):	
☐ Decision	☐ Interlocutory Judgment	☐ Resettled Decree		
☐ Decree	☐ Judgment	☐ Resettled Judgment		
Court: Supreme Cour	<u>t</u>	County: New Y	´ork	
Dated: 03/03/2022		Entered: 03/03/2022		
Judge (name in full): Hon. Lyle E. Frank		Index No.: 158815/2021		
Stage: ☐ Interlocutory ■ Final ☐		Trial: ☐ Yes ■ No	If Yes: ☐ Jury ☐ Non-Jury	
	Prior Unperfected Appeal a	nd Related Case Information	n	
Are any appeals arising in the same ac			🗆 Yes 🔳 No	
If Yes, please set forth the Appellate D	ivision Case Number assign	ed to each such appeal.		
Where appropriate, indicate whether		or proceeding now in any co	ourt of this or any other	
jurisdiction, and if so, the status of the	: case:			
	Original Proc	ooding		
	Original Proc	eedilig		
Commenced by: Order to Show C	ause Notice of Petition	☐ Writ of Habeas Corpus	Date Filed:	
Statute authorizing commencement of	f proceeding in the Appellat	te Division:		
F	Proceeding Transferred Purs	suant to CPLR 7804(g)		
Court: Choose Court	Со	unty: Choos	e Countv	
Judge (name in full):		der of Transfer Date:	o oddiitt	
,	CPLR 5704 Review of			
Court: Choose Court			e Countv	
Judge (name in full):		ted:		
Description of	of Appeal, Proceeding or Ap	plication and Statement of	Issues	
Description: If an appeal, briefly descr	ibe the paper appealed from	m. If the appeal is from an	order, specify the relief	
requested and whether the motion wa	as granted or denied. If an o	original proceeding comme	nced in this court or transferred	
pursuant to CPLR 7804(g), briefly desc	ribe the object of proceedir	ng. If an application under (CPLR 5704, briefly describe the	
nature of the ex parte order to be revi	ewed.			
By decision and order dated and entered March				
enrollment in the Medicare Advantage Plan can effective date; (2) enjoined respondents from pa				
where such plan rises above the H.I.PH.M.O.				
only one plan for the calendar year 2022.				

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Issues: Specify the issues proposed to be raised on the appeal, proceeding, or application for CPLR 5704 review, the grounds for reversal, or modification to be advanced and the specific relief sought on appeal.

Did Supreme Court err in:

- (1) ordering that enrollment in the Medicare Advantage Plan cannot occur until April 1, 2022, and that retirees must be able to opt-out for at least three months from the effective date;
- (2) enjoining respondents from passing along any costs of the New York City retirees' current plan to the retiree or their dependents, except where such plan rises above the H.I.P.-H.M.O. threshold; and
- (3) directing respondents to ensure that all retirees and dependents pay the deductible for only one plan for the calendar year 2022?

Party Information

Instructions: Fill in the name of each party to the action or proceeding, one name per line. If this form is to be filed for an appeal, indicate the status of the party in the court of original instance and his, her, or its status in this court, if any. If this form is to be filed for a proceeding commenced in this court, fill in only the party's name and his, her, or its status in this court.

No.	Party Name	Original Status	Appellate Division Status
1	LISA FLANZRAICH	Petitioner	Respondent
2	BENAY WAITZMAN	Petitioner	Respondent
3	LINDA WOOLVERTON	Petitioner	Respondent
4	ED FERINGTON	Petitioner	Respondent
5	MERRI TURK LASKY	Petitioner	Respondent
6	PHYLLIS LIPMAN	Petitioner	Respondent
7	NYC ORGANIZATION OF PUBLIC SERVICE RETIREES, INC.,	Petitioner	Respondent
8	RENEE CAMPION, as Commissioner of the City of New York Office of Labor Relations	Respondent	Appellant
9	CITY OF NEW YORK OFFICE OF LABOR RELATIONS	Respondent	Appellant
10	THE CITY OF NEW YORK	Respondent	Appellant
11			
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NYSCEF DOC. NO. 217 RECEIVED NYSCEF: 03/04/2022

	Attorney In	formation	
Instructions: Fill in the names	s of the attorneys or firms for	the respective part	ies. If this form is to be filed with the
	•		commenced in the Appellate Division,
-			nt that a litigant represents herself or
himself, the box marked "Pro	Se" must be checked and the	appropriate informa	ation for that litigant must be supplied
in the spaces provided.			
Attorney/Firm Name: Pollock Co	ohen LLP		
Address: 60 Broad St., 24th Floor	Challa NV	7'	T. L. J N 040 007 5004
City: New York	State: NY	Zip: 10004	Telephone No: 212-337-5361
E-mail Address: scohen@pollocko			D C
, ,,	Retained Assigned Retained Assigned Assigned Retained Assigned		Pro Se
Party or Parties Represented (m table above): 1-	 1875 1875 1875 1875 1875 1875 1875 1875 1875 1875 1875 1875 1875 1875 1875 1875
Attorney/Firm Name: Walden M			
Address: 250 Vesey Street, 27th Flo			
City: New York, New York	State: NY	Zip: 10281	Telephone No: 212-335-2965
E-mail Address:jgardener@wmhl			
	Retained \square Assigned \square		Pro Se
Party or Parties Represented (set forth party number(s) fro	m table above): 1-3	
Attorney/Firm Name: New York	City Law Department		
Address: 100 Church Street			
City: New York	State: NY	Zip: 10007	Telephone No: 212-356-2500
E-mail Address: nycappeals@law	.nyc.gov (for urgent matters, cc: dsla	ck@law.nyc.gov and cpla	atton@law.nyc.gov)
Attorney Type:	Retained \square Assigned \blacksquare	Government \square	Pro Se 🔲 Pro Hac Vice
Party or Parties Represented (set forth party number(s) fro	m table above): 8-1	10
Attorney/Firm Name:	00 - 00 - 00 - 00 - 00 - 00 - 00 - 00	(1,001,001,001,001,001,001,001,001,001,0	00-00-00-00-00-00-00-00-00-00-00-00-00-
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Address:			
City:	State:	Zip:	Telephone No:
E-mail Address:		·	
Attorney Type:	Retained \square Assigned \square	Government	Pro Se
Party or Parties Represented (
Attorney/Firm Name:			1907 - 1917 - 19
Address:			
City:	State:	Zip:	Telephone No:
E-mail Address:	ı	•	•
	Retained	Government	Pro Se Pro Hac Vice
Party or Parties Represented (

NYSCEF DOC. NO. 214

INDEX NO. 158815/2021

RECEIVED NYSCEF: 03/04/2022

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. LYLE E. FRANK	PARI	11 IVI
Ju	stice	
	····X INDEX NO.	158815/2021
NYC ORGANIZATION OF PUBLIC SERVICE RETIREES INC, LISA FLANZRAICH, BENAY WAITZMAN, LINDA WOOLVERTON, ED FERINGTON, MERRI TURK LASKY PHYLLIS LIPMAN,		10/21/2021, N/A, 02/22/2022
Plaintiff,	MOTION SEQ. NO.	001 002 004
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- V -		
RENEE CAMPION, CITY OF NY OFFICE OF LABOR RELATIONS, CITY OF NEW YORK,	DECISION + C MOTIC	
Defendant.		
	X	
The following e-filed documents, listed by NYSCEF docur 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 97, 98, 99, 100, 110, 111, 112, 212	, 45, 46, 47, 48, 49, 50, 51, 5 101, 102, 103, 104, 105, 106	2, 53, 55, 56, 58, 5, 107, 108, 109,
were read on this motion to/for IN	IJUNCTION/RESTRAINING	ORDER
The following e-filed documents, listed by NYSCEF docum 80, 81, 82, 96, 113, 166, 205, 206	ent number (Motion 002) 2, 5	7, 63, 64, 65, 79,
were read on this motion to/forIN	JUNCTION/RESTRAINING	ORDER
The following e-filed documents, listed by NYSCEF documents, 190, 191, 192, 193, 194, 195, 196, 197, 201, 208, 209		5, 186, 187, 188,
were read on this motion to/for The underlying petition arises out of allegation	MMARY JUDGMENT(AFTER s that respondents have un	
amended the Medicare plan of current retirees. 1 The C	Court previously held on O	ctober 21, 2021,
that the selection of the Alliance to administer the proj	posed 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. Bas	ed on that determination, to	he Court granted

158815/2021 NYC ORGANIZATION OF PUBLIC SERVICE RETIREES, INC ET AL vs. CAMPION, RENEE ET AL

Page 1 of 4

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.

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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 thus 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

158815/2021 NYC ORGANIZATION OF PUBLIC SERVICE RETIREES, INC ET AL vs. CAMPION,

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the only reasonable way of interpreting this section.

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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

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:

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

158815/2021 NYC ORGANIZATION OF PUBLIC SERVICE RETIREES, INC ET AL vs. CAMPION, RENEE ET AL

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² The Court refers to this below as the "threshold".

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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.

3/3/2022					20220303105510LFR.NKB4A82/J5C50D1	941B88150FAC1F30767E3
DATE	•				LYLE E. FRANK	, J.S.C.
CHECK ONE:	Х	CASE DISPOSED			NON-FINAL DISPOSITION	
		GRANTED	DENIED	Х	GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER	<u>—</u>
CHECK IF APPROPRIATE:		INCLUDES TRANSFE	ER/REASSIGN		FIDUCIARY APPOINTMENT	REFERENCE

NYSCEF DOC. NO. 215

INDEX NO. 158815/2021

RECEIVED NYSCEF: 03/03/2022

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HO	ON. LYLE E. FRANK		PARI	11101
		Justice		
		X	INDEX NO.	158815/2021
INC, LISA FLANZ	TION OF PUBLIC SERVICI RAICH, BENAY WAITZMA ED FERINGTON, MERRI T J	N, LINDA	MOTION DATE	10/21/2021, N/A, 02/22/2022
TTT LEIG EIT WITH	Plaintiff,		MOTION SEQ. NO.	001 002 004
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	- V -			
	N, CITY OF NY OFFICE OF Y OF NEW YORK,	FLABOR	DECISION + O MOTIO	
	Defendant.			
		X		
29, 30, 31, 32, 33,	ed documents, listed by NY 34, 35, 36, 37, 38, 39, 40, 471, 72, 73, 74, 75, 76, 97,	1, 42, 43, 44, 45, 46	, 47, 48, 49, 50, 51, 52	2, 53, 55, 56, 58,
were read on this r	notion to/for	INJUNCT	ION/RESTRAINING	ORDER .
The following e-file 80, 81, 82, 96, 113	d documents, listed by NYS , 166, 205, 206	SCEF document num	nber (Motion 002) 2, 5	7, 63, 64, 65, 79,
were read on this r	notion to/for	INJUNCT	ION/RESTRAINING	ORDER
	d documents, listed by NY5, 193, 194, 195, 196, 197, 2			5, 186, 187, 188,
were read on this r The under	notion to/for lying petition arises out o		JUDGMENT(AFTER espondents have un	
amended the Med	icare plan of current retin	rees. ¹ The Court pr	reviously held on O	ctober 21, 2021,
that the selection	of the Alliance to admini	ster the proposed N	Medicare Advantage	Plus Plan (the
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158815/2021 $\,$ NYC ORGANIZATION OF PUBLIC SERVICE RETIREES, INC ET AL vs. CAMPION, RENEE ET AL

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FILED. NEW TORK COUNTY CHERK

INDEX NO. 158815/2021

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However, based on this Court's reading of New York City Administrative Code Section

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they may not do so by charging them the \$191 the respondent intends to charge. This section

158815/2021 NYC ORGANIZATION OF PUBLIC SERVICE RETIREES, INC ET AL vs. CAMPION,

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the only reasonable way of interpreting this section.

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Enrollment in the Medicare Advantage Plan may not occur until at least April 1,
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158815/2021 NYC ORGANIZATION OF PUBLIC SERVICE RETIREES, INC ET AL vs. CAMPION, RENEE ET AL

Motion No. 001 002 004

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² The Court refers to this below as the "threshold".

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INDEX NO. 158815/2021

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.

3/3/2022					20220303105510LFR.NKB4A83/5C50D9	941B88150FAC1F30767E3
DATE	•			•	LYLE E. FRANK	, J.S.C.
CHECK ONE:	Х	CASE DISPOSED			NON-FINAL DISPOSITION	
		GRANTED	DENIED	Х	GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER	<u> </u>		SUBMIT ORDER	<u> </u>
CHECK IF APPROPRIATE:		INCLUDES TRANSFE	ER/REASSIGN		FIDUCIARY APPOINTMENT	REFERENCE

NYSCEF DOC. NO. 218

INDEX NO. 158815/2021

RECEIVED NYSCEF: 03/04/2022

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT:	HON. LYLE E. FRANK	PART	11M
		Justice	
		INDEX NO.	158815/2021
INC, LISA F	NIZATION OF PUBLIC SERVICE RETIRE LANZRAICH, BENAY WAITZMAN, LINDA TON, ED FERINGTON, MERRI TURK LAS PMAN		10/21/2021, N/A, 02/22/2022
	Plaintiff,	MOTION SEQ. NO.	001 002 004
	- V -		
	MPION, CITY OF NY OFFICE OF LABOR S, CITY OF NEW YORK,	DECISION + MOTI	
	Defendant.		
		X	
66, 67, 68, 69 110, 111, 112	2, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 9, 70, 71, 72, 73, 74, 75, 76, 97, 98, 99, 102, 212 this motion to/for		06, 107, 108, 109,
	e-filed documents, listed by NYSCEF doc 5, 113, 166, 205, 206	ument number (Motion 002) 2,	57, 63, 64, 65, 79,
were read on	this motion to/for	INJUNCTION/RESTRAINING	ORDER .
	e-filed documents, listed by NYSCEF doc 1, 192, 193, 194, 195, 196, 197, 201, 208,		85, 186, 187, 188,
	this motion to/for Sunderlying petition arises out of allegat	UMMARY JUDGMENT(AFTER ions that respondents have u	
amended the	Medicare plan of current retirees. 1 Th	e Court previously held on (October 21, 2021,
that the selec	ction of the Alliance to administer the p	roposed Medicare Advantag	ge Plus Plan (the
"Plan") was	not arbitrary and capricious, however t	he implementation of the pla	nn was irrational
and many de	tails of the plan required refinement. I	Based on that determination,	the Court granted

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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.

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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 thus 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

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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:

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

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² The Court refers to this below as the "threshold".

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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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DATE			•	LYLE E. FRANK	, J.S.C.
CHECK ONE:	Х	CASE DISPOSED		NON-FINAL DISPOSITION	
		GRANTED DENIED	Х	GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER		SUBMIT ORDER	<u> </u>
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	REFERENCE