

**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,	<b>MOTION DATE</b>	<u>10/21/2021, N/A, 02/22/2022</u>
Plaintiff,	<b>MOTION SEQ. NO.</b>	<u>001 002 004</u>

- v -

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

**DECISION + ORDER ON  
MOTION**

Defendant.

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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.<sup>1</sup> 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

<sup>1</sup> 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 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