Index No. 158815/2021

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 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,

Petitioner

For a Judgment Pursuant to CPLR Article 78

- against -

RENEE CAMPION, as Commissioner of the City of New York Office of Labor Relations, CITY OF NEW YORK OFFICE OF LABOR RELATIONS, the CITY OF NEW YORK

Respondent

MEMORANDUM OF LAW IN OPPOSITION TO PETITIONERS' ORDER TO SHOW CAUSE FOR A TEMPORARY RESTRAINING ORDER AND A PRELIMINARY INJUNCTION

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PRELIMINARY STATEMENT

Respondents, Renee Campion, the City of New York Office Labor Relations, and the City of New York, by their attorney Georgia M. Pestana, Corporation Counsel of the City of New York, respectfully submit their opposition to Petitioners' Article 78 Petition and request for a preliminary injunction seeking to restrain Respondents from: (1) requiring Retirees to select a health plan for 2022 by October 31, 2021; (2) establishing a Medicare Advantage plan as the Medicare-eligible Retirees default plan and requiring Petitioners to opt out of a City offered Medicare Advantage plan; (3) requiring petitioners to pay to continue their existing health insurance plan; (4) directing Respondents to maintain status quo enrollment beginning January 1, 2022; and (5) maintaining full premium coverage for GHI Senior Care plan or any other plan to Medicare-eligible retirees in accordance with the City Administrative Code § 12-126. *See* Order to Show Cause, NYSCEF Dkt. No. 24, at pp. 2-3.

The preliminary injunction should be denied because Petitioners lack a likelihood of success on the merits, they have not established imminent irreparable harm, and the balance of equities favor Respondents. Indeed, as a matter of law the Amended Petition is deficient and should be dismissed.

STATEMENT OF FACTS

The City has proposed and begun implementing a new healthcare plan for New York City retirees, Medicare Advantage. Medicare Advantage will provide current and future retirees with comparable coverage to the existing majority held plan known as Senior Care. Medicare Advantage, compared to the Senior Care plan, will, overall, improve benefits. Not only will those retirees in Medicare Advantage have access to the same physicians they previously had under Senior Care, but Medical Advantage will include other benefits. For example, Medical Advantage will include $0 copays for primary care visits, coverage for twenty four non-emergency transportation to doctors and pharmacies within a thirty

mile range, coverage for Silver Sneakers fitness memberships, and coverage for meal deliveries following hospitalization visits. *See* Levitt Aff. annexed to DiBenedetto Affirmation, hereto as Exhibit A, at ¶ 6; Plan Design Comparison, annexed to DiBenedetto Affirmation, hereto as Exhibit B, at p. 1

The Medicare Advantage plan is a customized, cost-effective, plan designed for New York City retirees. It allows for out of network benefits and does not require members to incur more costs to use non-network providers. For those physicians who elect not to accept direct payment from Alliance, the retirees will not bear any additional costs. Should a physician not accept payment from Alliance, Alliance will pay retiree the difference in costs, which the retiree may use to pay their physician.

Respondents have submitted affidavits from knowledge from individuals who have served in several health-care related roles. These affidavits attest to the Medicare Advantage plan's advantages. In contrast, Petitioners' submissions are based on hearsay and speculation. They incorrectly claim that their current providers will not accept Medicare Advantage and that Medicare Advantage will bear additional costs. These statements are simply untrue. A significant number of physicians have agreed to accept Medicare Advantage and those who have not, likely will accept the new plan. The City's Medicare Advantage plan pays the same rates as directly paid by Medicare to both in network and out of network doctors. As such, once the out of network physicians learn more about the new program, they will likely accept direct payment and join the network.

Petitioners misunderstand the details of Medicare Advantage. First, with respect to prior authorizations, Medical Advantage implements prior authorization requirements in an effort to provide the most effective, appropriate care. *See* Parker Aff. annexed to DiBenedetto Affirmation, hereto as Exhibit C, at ¶ 12. Under this plan, providers must request prior authorization for certain types of care such as inpatient hospital admissions, skilled nursing facilities, complex radiology, prosthetics, and transplants from medical professionals. *See id.* ¶ 11. Nurses make some pre-authorization decisions, whereas, licensed doctors must approve other requests. *See id.* ¶ 15. Should, however, a provider fail to seek prior authorization, the provider may not bill the member for the cost of treatment. *See id.* ¶ 11; Pre Authorization FAQs, annexed

to DiBenedetto Affirmation, hereto as Exhibit D, at pp. 1-2. Additionally, should a physician feel that a treatment must be conducted on short notice, there are processes for emergency prior authorizations. *See* Parker Aff. ¶ 13. The only difference from the current Senior Care plan is that under Senior Care, Medicare submits requests for reimbursements after the fact. *See id*. ¶ 14.

Petitioners incorrectly state that they will incur additional costs should they select Medicare Advantage. However, both the Mayor's Office of Labor Relations ("OLR") and the Municipal Labor Committee (MLC) state, unequivocally, that effective January 2022, Senior Care will require the same $15 copay costs. *See* Ex. A, at ¶ 12.

ARGUMENT

The City's decision to select Medicare Advantage is rational and lawful and thus the Amended Petition should be denied. Petitioners fail to demonstrate that the City's decision to select the Medicare Advantage healthcare plan was irrational or contrary to the law. The arguments to the contrary in the Amended Petition and supporting Memorandum of law are largely based on hearsay and misinformation about the plan. As explained below, Petitioners are not entitled to a temporary restraining order or preliminary injunction as they have not shown a likelihood of success on the merits, irreparable harm, nor the equites tilting in their favors.

STANDARD OF REVIEW

An application for preliminary injunction relief is addressed to the sound discretion of the court. *See* CPLR § 6301. Such relief is a drastic remedy which should not be granted unless a clear legal right to it is established under law. *See De Lury v. New York*, 378 N.Y.S.2d 49, 50-51 (1st Dep't 1975). To establish entitlement to the extraordinary relief of a Temporary Restraining Order or a Preliminary Injunction, the movant must show: (1) a likelihood of success on the merits; (2) immediate and irreparable harm absent injunctive relief; and that, (3) a balancing

of the equities favors the movants' position. *Nobu Next Door, LLC v. Fine Arts Hous., Inc.*, 4 N.Y.3d 839, 840 (2005). Here, Petitioner's request for a preliminary injunction should be denied.

POINT I

PETITIONERS' LACK OF A LIKELIHOOD OF SUCCESS OF THE MERITS

A. Petitioners Fail to State a Breach of Contract Claim

Petitioners assert that the City has breached the respective collective bargaining agreements ("CBA") providing for retiree healthcare. Not only are Petitioners factually incorrect, but they lack standing to assert such a claim. Only a party to the contract, either the City or the Collective Bargaining representative, may initiate a breach of contract claim. *See Berlyn v Bd. of Educ. of E. Meadow Union Free Sch. Dist.*, 435 N.Y.S.2d 793, 794 (2d Dep't 1981), *aff'd* 55 N.Y.2d 912 (1982). Only the union, not either current employees or retirees, may bring such a claim. Consequently, Petitioners lack standing to bring a breach of contract claim, and that claim therefore must be dismissed.

B. Petitioners Misconstrue the Law and the Facts

Administrative Code § 12-126(b), reads in pertinent part 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." Contrary to Petitioners' claims, Administrative Code § 12-126 does not permanently fix the terms of any plan for active employees or retirees. Rather, the Code merely guarantees a premium-free option for retiree health insurance and provides a statutory cap for how much the City should pay, absent an existing CBA. The Code highlights the payment of health insurance costs for city employees, city retirees, and their dependents. *See* N.Y.C. Admin. Code §12-126(b). There is no language in

the Code that that a retiree's existing plan cannot change, or that changes are solely in the retiree's discretion. Nor do the CBAs fix in stone forever medical plans.

Neither the respective CBAs, the Summary Plan Descriptions ("SPD"), or Memorandum of Agreements between the City and the unions prohibit the City and the unions from adjusting their existing plan. Indeed, Petitioners concede that the SPD is revised yearly to reflect changes to healthcare benefits. *See* Am. Pet. ¶ 178. One of Petitioners' exhibits is a New York City SPD dated December 22, 2016. It explicitly describes health benefit changes to retirees for which they are eligible. *See* Summary Plan Description, NYSCEF Dkt No. 33, at p. 17. .

Petitioners claim having vested rights to the healthcare benefits that were in place when they retired. They assert that the CBAs conveyed upon them the exclusive right to change their healthcare plan, and ensured that the City cannot unilaterally shift retirees' healthcare plan. Petitioners are incorrect. Although Petitioners have the right to pick any healthcare plan of their choosing, they may only choose from available plans. The unions and the City have the ability to negotiate modifications to the CBA. *See Kolbe v. Tibbetts*, 22 N.Y.3d 344, 356, n.3 (2013) ("[I]n those cases that the parties contemplated future modifications to health-coverage—due either to the inclusion of language suggesting that the employers retained the right to make alternations . . . understanding that reasonable modifications to benefits were permissible." (internal citations omitted)) Indeed, the Petitioners concede in their attached CBA agreements that the City and unions may alter their healthcare plan. *See, e.g.*, Pets.' Ex C, at 160; Pets. Ex F, at 13; Pets. Ex G, at 23; Pets. Ex H, at 12; Pets. Ex M, at 7. A review of the CBAs negates the assertion that retirees hold a unilateral right to change their plan. All of the respective submitted CBAs suggest in some form that the parties may negotiate and then changes aspects of the health plans incorporated into the existing CBA. *See* Affirmation of Alan M. Klinger, NYSCEF Dkt. No. 60, at p. 21 (citing

Petitioners' attached exhibits).[1] Here, Petitioners claim that because the 2014 and 2018 Memorandum Agreements did not implement substantive changes to the CBAs, the City may not alter retirees healthcare, fails. As Petitioners admit, the parties contemplated future modifications through the agreements. *See* Pets.' ¶ 193. They concede that the memoranda reflect an intent to consider alternatives to incorporate changes into existing CBAs. *See* Pets.' ¶¶ 193-95. The failure to make changes at one point in the past does not preclude the City from making changes in the future.

Also, contrary to Petitioners' position, see Pets.' ¶ 195, at no point had the City argued that they intended to retroactively change existing CBAs nor have they done so. Instead, the Memoranda of Agreements simply supports the fact that the City and the Unions intended to implement changes and intended to modify existing CBAs. *See* Pets.' ¶ 194. Thus, Petitioners lack grounds to assert that the City and the unions cannot implement a new healthcare plan for retirees. The case of *Evans v. Deposit Cent. Sch. Dist.*, 123 N.Y.S.3d 285, 289 (3rd Dep't 2020), to which Petitioners cite, does not support their position. In *Evans*, the Appellative Division examined the unremarkable issue of whether plaintiffs' rights vested under the prior CBA survive

[1] "*See, e.g.*, The City University of New York Agreement between The City University of New York and the Professional Staff Congress/CUNY, Verified First Amended Petition Ex. C at 160 (NYSCEF Doc. 32) (noting that the agreement can be modified by the parties in writing); 1995 Municipal Coalition Memorandum of Economic Agreement, Verified First Amended Petition Ex. F at 13 (NYSCEF Doc. 35) (". . . the parties may negotiate a reconfiguration of this package . . ."); Agreement between the Board of Education of the City School District of the City of New York and Council of Supervisors and Administrators, Verified First Amended Petition Ex. G at 23 (NYSCEF Doc. 36) ("Any program-wide changes to the existing basic health coverage made either by the DOE and CSA or city-wide, by the Municipal Labor Committee and the City, will be expressly incorporated into and made a part of this Agreement"); Agreement between the Board of Education of the City School District of the City of New York and United Federation of Teachers, Verified First Amended Petition Ex. M. at 7 (NYSCEF Doc. 42) ("The Board, the Union and the City of New York ("City") continue to discuss, on an ongoing basis the citywide health benefits program covering employees represented by the Union and employees separated from service. Any program-wide changes to the existing basic health coverage will be expressly incorporated into and made a part of this Agreement."); Detectives' Endowment Association 2008-2012 Agreement, Verified First Amended Petition Ex. H at 12 (NYSCEF Doc. 37) (". . . retirees shall have the option of changing their previous choice of health plans. This option shall be exercised in accordance with procedures established by the Employer")." *See* Affirmation of Alan M. Klinger, NYSCEF Dkt. No. 60, at p. 21 (citing Petitioners' attached exhibits).

beyond the CBA's' termination. *Id.* The *Evans* case does not address whether the union and employer can negotiate modification to health plans previously created by a CBA. It simply states that such earlier negotiated plans continue at the CBA's termination until an agreement upon a new CBA.

Petitioners' reliance on the Moratorium Statute[2] also fails. The purpose of this Moratorium Statute was to ""protect[ ] retirees by in effect making them part of the collective bargaining process. [It] does not, however, prevent school districts from taking cost-cutting measures, so long as these apply equally to active employees and retirees." Senate Mem. in Support, 2003 McKinney's Session Laws of N.Y., at 1624. Thus, the statute is not violated if both active and retirees are reduced.

Those courts which have found Moratorium Statue violated, did so where there were efforts to reduce health benefits for school district retirees and their dependents without comparable cuts to active employees, *See*, *e.g.*, *Bryant v. Bd. of Educ.*, *Chenango Forks Central Sch. Dist.*, 29 Misc. 3d 706 (Sup. Ct. Broome Co. 2010), *app. den.*, 968 N.Y.S.2d 806 (2013); *Jones v. Bd. of Educ. of Watertown City Sch. Dist.*, 816 N.Y.S.2d 796 (2006); *Baker v. Bd. of Educ., Wappingers Central Sch. Dist.*, 815 N.Y.S.2d 112 (2d Dep't), *app. den.*, 7N.Y.3d 708 (2006); *May v. Bd. of Educ., Newark Central School Dist.*, 2008 N.Y. Misc. LEXIS 10256 (Sup.

[2] When the law was renewed in 2008, the State Assembly commented as follows about the intent of the legislation:

> In recent years, many public employers have abandoned their long-standing policy of providing health insurance coverage for retirees in an attempt to contain or reduce health insurance costs. There is no statutory requirement that local public employers provide health care coverage to retirees. This allows public employers to unilaterally diminish or even eliminate health insurance benefits to retirees. The Committee strongly believes that protecting retirees from the loss or diminution of health care benefits is essential, even in this time of fiscal constraints....

2008 Annual Report of the N.Y.S. Assembly Standing Committee on Government Employees, Dec. 15, 2008

Ct. Wayne Co. 2008); *see also Jackson v. Roslyn Bd. of Educ.,* 652 F. Supp. 332, 343 (E.D.N.Y. 2009). These cases are inapposite to the instant matter, as changes are being made to active and retired employees.

The creation of the Medicare Advantage does not violate the Moratorium Statute because the plan does not diminish retiree benefits without impact to active employees' benefits.

Also, any argument that the requirement for prior authorization for certain procedures qualifies as a diminution of benefits also fails. *See* Pet. ¶ 225. The fact that Medicare Advantage will consider certain procedures prospectively instead of retroactively as compared to Senior Care, does not in itself suggest any reduction or removal of retiree benefits. As reflected in the affidavit from Alliance, the position is that they are still able to prescribe a procedure. Although, the methodology of compensation is therefore modified. This will neither cause delay nor endanger any employees—actives and retirees. *See* Ex. A, ¶ 14.

Even assuming this qualifies as a diminution of benefits, comparable adjustments have been made to retirees and activities. Changes are being imposed on retirees and active employees and there is no evidence that the retiree benefit changes are disproportionate compared to any corresponding changes to current active employees' benefits.

Moreover, Senior Care and Medicare Advantage are substantially similar plans. Petitioners claim that their perceived lack of clarity concerning the specifics of the new plan render the City's decision arbitrary and capricious. In support of their claim, Petitioners reference several unidentified representatives from Alliance Insurance. *See* Pet. ¶ 201. However, even so, Petitioners reliance on these alleged statements from representatives are nothing more than erroneous, speculative, and unreliable hearsay. These are simply inaccurate and untrue statements.

C. The New York State Constitution does not prohibit a change in retiree healthcare benefits

Petitioners imply a constitutional issue, but in the body of their argument they are forced to admit that such a limitation does not exist. The Court of Appeals in the *Matter of Lippman v. Board of Educ. of Sewanhaka Cent. High School Dist.*, 66 N.Y.2d 313, 315 (1985), explicitly stated that "[h]ealth insurance benefits are not within the protection of article V, Section 7, of the State constitution." The New York Court of Appeals went on stating that, "[p]ublic retirees' health insurance benefits and retirees' health insurance benefits are therefore subject to reductions to the contribution to health insurance premiums." *Matter of Lippman v. Bd of Educ. of Sewanhaka Cent. High School Dist.*, 66 N.Y.2d. 313, 315 (1985)). Indeed, Petitioners themselves quote *Matter of Retired Pub. Empl. Assn, Inc.*, which explains that "petitioners have no statutory, contractual, or other protected right to continued State contributions to their health care at the same levels as they were receiving, Civil Service Law § 167(8) and respondents' implementation of that amendment are clearly not unconstitutional violations of the Contract Clause." *Matter of Retired Pub. Empl. Assn.*, *Inc. v. Cuomo*, 2012 N.Y. Slip Op 32979(U), at *14 (Sup. Ct, Albany County 2012). Consequently, Petitioners' claim fails.

D. The City's Decision is Not Arbitrary and Capricious

The City's decision to implement the Medicare Advantage healthcare plan is not irrational, arbitrary or capricious. It is essential to keep in mind the basic role of the courts in reviewing the acts of government agencies. As stated in *Matter of Sullivan Cnty. Harness Racing Assn. v. Glassner*, 332 N.Y.S.2d 622 (1972):

> Cases are legion which illustrate the principle that our review ends when a rational basis is found for the agency determination ... The judicial function is exhausted when there is to be found a rational basis for the conclusions approved by the administrative body.

See also Greenwald v. Schechter, 188 N.Y.S.2d 751 (Sup. Ct. N.Y. Co. 1959). This limited review recognizes the maxim that the perfect should not be the enemy of the good. *See Central Sch. Dist. No. 2 of Coeymans v. New York State Teachers Retirement Sys.*, 46 Misc. 2d 225, 233 (Sup. Ct., Albany Co. 1965), *aff'd* 27 A.D.2d 265 (3rd Dept., 1967), *aff'd* 23 N.Y.2d 213 (1968) ("Disagreement among experts as to which avenue of operation may be the best should not form the predicate to upset a determination made by a Board vested with discretion and exercising it in an area controlled by a 'rational basis.").

Respondents' actions to pass muster under the Article 78 standard need only be rational - not optimal. *See Matter of Lopez v. New York City Hous. Auth.*, 2011 N.Y. Misc. LEXIS 213, at *10-11 (Sup. Ct., N.Y. Co. Feb. 4, 2011). The fact that the retirees, or even the courts, may disagree with what the City considers the best course of action is insufficient grounds to invalidate the action. Indeed, were the Court to examine government action not on the basis of "is it rational" but "is it the best," the judicial branch would constantly intrude on the obligations and responsibilities of the executive and legislative branches. The Court of Appeals holds, however, that such contentions concerning the allocation of resources of also not in the purview of the Courts but are to be left to the City. *See New York State Law Enf. Employees v. Cuomo*, 485 N.Y.S.2d 719, 722 (1984) ("questions of judgment, allocation of resources and ordering of priorities . . . are generally not subject to judicial review.").

Similarly, any argument that Medicare Advantage violates New York Law similarly rests on solely on unsupported, unreliable hearsay statements. Purely because Petitioners are unclear about certain aspects of the healthcare plan, see Pets.' Mem. at pp. 12-13, does not in itself support their position. For instance, Petitioners claim that an unknown representative conveyed to Mr. Gitter that a clerk, instead of a healthcare professional makes preauthorization

decisions. *See* Pet. ¶¶ 228-29. This is simply inaccurate and untrue. *See* Ex. A, ¶14; Ex. D, at pp. 1-2.

The City elected to implement a healthcare plan consistent with existing plans, with comparable coverage, and additional benefits. As such, the City's actions are rational and thus the inquiry ends, and the Amended Petition must dismissed.

POINT II

PETITIONERS HAVE NOT ESTABLISHED IMMINENT IRREPARABLE HARM

Petitioners make essentially two arguments concerning the harm they claim they may suffer. One argument is cost. They claim that they will need to pay more for benefits. Leaving aside the fact that his is factually incorrect, see Ex. A, at ¶ 7, an injury that can be repaired by the payment, or repayment, of money is not irreparable harm.

For the purposes of a preliminary injunction, "irreparable" harm is "a continuing harm resulting in substantial prejudice by the acts sought to be restrained if per permitted to continue *pendente lite.*" *Chrysler Corp. v. Fedders Corp.*, 404 N.Y.S.2d 844, 845 (1st Dep't 1978). There is no irreparable harm if monetary damages may compensate petitioners. *See Harris v. Patients Med., P.C.,* 93 N.Y.3d 299, 301 (1st Dep't 2019).

The second argument concerning purported harm is an alleged limitations on access to medical care. As demonstrated by the affidavits of Levitt, Municipal Labor Committee, and Alliance, Petitioners will still have access to their physicians and existing care. Under Medicare Advantage, Petitioners will have comparable, if not, improved healthcare. Most providers will likely accept Medicare Advantage. Under Medicare Advantage, there is $0 copay primary care visits, 24 non-emergency transportation to doctors office and pharmacies within 30 miles, coverage for Silver Sneakers fitness memberships, and coverage for meal delivers following a

hospitalization. *See* Ex. A, ¶ 6; Sorkin Aff., annexed to DiBenedetto Affirmation, hereto as Exhibit E, ¶ 11.

Petitioners citation to *Int'l Union of Operating Eng'rs, Local No. 463*, 191 Misc. 2d 375, 379 (Sup Ct., Niagara Cty 2002), is inapposite. In that case one hundred people risked losing their coverage. Here, no one will lose healthcare coverage. As stated, the retirees will receive comparable care as provided by a substantially similar plan to the existing GHI/EBCBS Senior Care. Similarly inapposite are the several cases to which Petitioner cite the proposition that monetary damages may not substitute the loss of coverage or disruption. *See* Pets.' Mem. at p. 28. Yet, in the instant matter there is no evidence of a potential disruption in medical care, let alone a loss in coverage.

As such, Petitioners will not face an irreparable harm should the implementation process proceed as planned. In fact, should the process be interrupted, the retirees and the City will face irreparable harm. Should this process be postponed, the current complex, tight deadline would delay well into 2022, but also would confuse retirees with respect to process details and submitted paperwork.

POINT III

THE BALANCE OF THE EQUITIES FAVORS RESPONDENTS

The balance of equities does not favor Petitioners. Indeed, the balance of equities favors Respondents. The courts must weigh the interests of the general public as well as the interests of the parties to the litigation. *See Amboy Bus Co. Inc. v. Klein*, No. 117760/09, 2010 N.Y. Misc. LEXIS 2445, at *38 (Sup. Ct. N.Y. Cty. Apr. 28, 2010) (citations omitted).

Petitioners' claims, again, rest on misinformation, particularly that the retirees cannot afford to incur the additional cost of maintaining their current plan and will face severe

harm should they have to switch doctors to comply with Medicare Advantage. *See* Pets.' Mem. at p. 29. Petitioners claim that because they must make an informed decision by October 31 and allegedly, they have received misleading and conflicting information about the nuanced details of the plan, they cannot make an informed decision. *See* Pet.'s Mem. at pp. 7, 11-12. Relying on a federal case from outside this circuit, in balancing the equities tips in their favor, Petitioners argue that they cannot make a decision based on "incomplete and potentially misleading information." *See* Pets.' Mem. at p. 28 (citing *Woodward & Lothrop, Inc. v. Schnabel*, 593 F. Supp. 1385, 1394 (D.D.C. 1984)).

Petitioners' argument concerning the balance of the equities in their favor is somewhat obscure. Essentially, they assert the equities tip in their favor because they lack sufficient clarity to make a decision. The assertion of a lack of clarity is incorrect. All retirees have been provided with compressive, information concerning the new plan which is available on websites. It is beyond peradventure that health insurance plans are complex and confusing. A lack of comprehensive understanding on the part of a select number of potential enrollees does not tip the equities in their favor for suspension of an entire program intended to provide enhance benefits and costs savings.

As detailed above, the proposed plan will provide additional benefits to City retirees, save the municipalities millions of dollars in expenses, which will be used for further stabilization of the health benefits plan. The overall benefits to the retirees and to the city outweighs any inconvenience to the Petitioners and thus, the equities tip in favor of the public interest of enhancing benefits while saving costs.

Moreover, some of the pre-set scheduled dates are governed by regulatory requirements. If the transition cannot be completed by January 1, 2022, it would generate even

more confusion to retirees. Specifically, retirees will likely experience confusion with respect to changed dates, and potentially, multiple mailings with, now conflicting information. Additionally, should the transition not be completed by January 1, retirees may experience financial consequences. For example, when an insurance plan is switched mid-year, the retiree is required to satisfy another deductible. In fact, Petitioners acknowledge that the City conveyed the deductible issue, but refer to the possible additional payment as a scare tactic. *See* Pets.' Mem. at p. 25. Consequently, the balance of equities favors Respondents.

CONCLUSION

WHEREFORE, Petitioners' application for a temporary restraining order and a preliminary injunction should be denied.

Dated: New York, New York
October 15, 2021

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CERTIFICATION

I hereby certify pursuant to Rule 202.8-b of the Uniform Civil Rules for the Supreme Court and County Court of the State of New York that the enclosed brief is produced using 12-point Times New Roman type and the total number of words in the foregoing document including footnotes and exclusive of the caption, table of contents, table of authorities, and signature block, is 4,435 according to the "Word Count" function of Microsoft Word, the word-processing system used to prepare the document, and thus that the document complies the word count limit set forth in Rule 202.8-b and file memoranda of law not to exceed 7,000 words, exclusive of the caption, table of contents, table of authorities, and signature block.