

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 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,

Respondents.

Index No.:

**VERIFIED PETITION**

Petitioners Lisa Flanzraich, Benay Waitzman, Linda Woolverton, Ed Ferington, Merri Turk Lasky, Phyllis Lipman, and NYC Organization of Public Service Retirees, Inc., (“Retirees” or “Petitioners”), on behalf of themselves and other Medicare-eligible retirees of the City of New York, by their undersigned attorney, for their verified petition against Respondents Renee Campion, Commissioner of Respondent New York City Office of Labor Relations (“OLR”), OLR, and the City of New York, allege as follows:

### NATURE OF THE PROCEEDING

1. Petitioners are Medicare-eligible NYC public service retirees. They commenced this proceeding to stop Respondents' efforts to deprive the Retirees of specific vested healthcare benefits to which those Retirees are entitled by law and by contract. These healthcare benefits are guaranteed by multiple collective bargaining agreements ("CBAs"), supported by past practice and other extrinsic evidence, and constitutionally protected. Retirees have enjoyed them for years and have the sole and exclusive right to change or "opt out" of these vested rights.

2. Nonetheless, Respondents, *none of whom represent the interests of the Retirees*, have recently purported to forcibly switch Retirees' healthcare benefits from the Group Health Insurance ("GHI") Senior Care plan – a "Medigap" or Medicare Supplemental plan, chosen by the vast majority of Retirees – to a materially inferior Medicare Advantage Plan.

3. Although the City is required by law –New York Administrative Code § 12-126 – to pay for Retirees' health benefits up to a defined dollar cap, the City has decided to ignore the law. The City has told Retirees that if they wish to keep their existing health insurance, they will have to pay the premium themselves – even though the monthly premium is far below the statutory dollar cap.

4. Shockingly, all of this was done by fiat, and without even consulting the Retirees whose rights were at stake.

5. The City's decision to forcibly impose a Medicare Advantage plan on Retirees – or force Retirees to pay to keep their existing insurance – is a breach of the contracts that governed Retirees' work for the City, and a violation of City law. The Retirees have exercised every administrative option open to them, requesting a meeting

with the responsible City officials, which was refused. The Respondents' actions are thus "final" and ripe for challenge via an Article 78 proceeding.

6. The Court should enjoin Respondents' illegal plan to unilaterally deprive the Retirees of vested rights.

7. There are approximately 250,000 Retirees receiving healthcare benefits paid for by the City. That obligation costs the City in excess of \$500 million annually. Understandably, the City would like to reduce its healthcare costs. But it cannot do so by shifting those expenses onto the Retirees: people who served the City and its residents loyally for years – as fire fighters, police officers, teachers, nurses, sanitation men, and in myriad other jobs. Unsurprisingly, the City has pursued this change in policy and practice in near secrecy, spreading misinformation and asking Retirees to trust in things that just aren't true.

8. Respondents believe they can force this planned change on people whom they thought were weak: who had no organized voice; who were no longer represented by their old unions; and who were often living on fixed incomes with few resources to fight back. But the Retirees have banded together to fight, to be heard, and to stop those that would deprive senior citizens of that most critical benefit: adequate access to healthcare.

9. Retirees have a statutory right to health insurance paid for by the City – up to a dollar cap, currently \$600 per month per person, set by statute in New York Administrative Code § 12-126 – and that benefit has been incorporated into many City-wide and individual union CBAs for years. Consistent with these contractual and statutory obligations, the City has for several decades covered the entire cost of the

GHI Senior Care plan that most Retirees have chosen, as well as most other Medigap plans offered to retirees by the City. Upon information and belief, the cost to continue providing the same coverage to Retirees remains well below the § 12-126 cap: about \$200 per month per person.

10. The City's Summary Program Description ("SPD"), attached as Exhibit A, describes the benefits to which the Retirees are entitled. New York City retirees are eligible for benefits based on the "City policy in place at the time you retire" and are entitled to the "applicable" benefits in place when they retire (p. 15). And, according to virtually every City-wide and most individual union CBAs, the retiree has the exclusive right to change his or health benefits plan.

11. The health benefit plan chosen by the vast majority of Retirees – approximately 97% – is the GHI Senior Care plan. That is a Medigap plan that pays for the 20% of healthcare costs that Medicare does not cover. The GHI Senior Care plan has, for every year since it has been offered by the City, been fully paid for by the City.

12. Further, the Respondents have made this change – from the fully-paid Medigap plan to a significantly inferior Medicare Advantage Plan – not only without the consent of the Retirees, but without ever engaging them or negotiating with them. Nor did the City ever seek out any appropriate entity authorized by the Retirees to represent them. Instead, the Respondents have engaged in a charade of "negotiating" with the Municipal Labor Committee ("MLC") – a purely advisory group comprised of municipal labor union representatives – and "securing" an unrecorded voice vote of various unions to impose this material change on vested retirement benefits retroactively – *on people who are not represented by the unions.*

13. In sum, the Respondents took an unauthorized, improper action that materially affected some 250,000 New York City government retirees. Respondents announced on the OLR website on or about July 14, 2021, that the City was changing Retirees' health insurance plan. The City might as well have whispered it into the night air. They never held a public hearing about the proposed plan, which is required by law (City Charter §326). They never published the proposed plan in the City Record as required by City Procurement Board rules (PPB Rules 3-04(d)(1)(2)(F)). Instead, they announced it as a *fait accompli*, essentially *sub rosa*.

14. It is not surprising that the City hoped this announcement would escape notice, for it was telling Retirees: contrary to what you were promised, we are taking away whatever health plan you had chosen and depended on, and we're enrolling you in a newly created and materially inferior Medicare Advantage plan. Further, the City took steps to conceal the inferiority of the new plan by stating, falsely, that all doctors will accept it, and describing it as a an "Alliance" between two companies allegedly well known to Retirees: EmblemHealth and Anthem. The City did not admit that neither company had much experience actually providing Medicare Advantage plans, or that the actual provider was in Wisconsin. But soon after the announcement, City and Alliance representatives made a handful of presentations saying, in effect, "Trust us."

15. The City eventually added one last bit of critical information: if you want to stay with your existing plan, you'll have to opt-out of the plan we're putting you in, and you'll have to pay \$191.57 per person per month. In other words, the City told Retirees it would now cost them an additional \$200 a month to continue receiving the same basic healthcare benefits that had long been guaranteed to them by the City.

16. Respondents advised that the new plan starts just a few months from now on January 1, 2022. On September 13, 2021, the Retirees, having had no opportunity whatsoever to be heard, requested in writing that the Respondents defer any implementation of new Medicare Advantage Plan for already-retired retirees, (people who were retired from NYC government service prior to January 1, 2022, and who were receiving health benefits from the City). The Retirees wrote to OLR Commissioner Renee Campion asking that the Respondents maintain the healthcare plan and benefits in place as of 2021; that Respondents allow Retirees to opt-in to any new Medicare Advantage Plan available after January 1, 2022 – as opposed to requiring Retirees to opt-out of the Medicare Advantage Plan; that the City continue to pay the full premium for the GHI Senior Care plan and not charge Retirees \$191.57 to remain in the Senior Care plan; and that Respondents “meet and confer” with the Petitioners or their designated representatives.

17. Respondents, in a letter from Commission Campion dated September 17, 2021, not only failed to agree to these requests, but they also completely dismissed them, asserting there was no plan to halt the implementation of Medicare Advantage.

18. The Respondents’ actions are thus “final” and ripe for challenge via an Article 78 proceeding. The Petitioners, as retirees, are not represented by their former unions, and have no access to an established grievance or arbitration procedure.

19. Retirees have brought this action to overturn the City’s unlawful decision, and to challenge the City’s refusal to comply with contractual obligations and applicable laws. The City has the right to negotiate with the respective unions and incorporate a new Medicare Advantage Plan into new CBAs affecting future retirees. It

does not have the right to impose materially diminished benefits upon people who are long-retired and have depended upon vested benefits that were negotiated under earlier CBAs that were in place when they retired.

### **THE PARTIES**

20. Lisa Flanzraich is a resident of New York. She worked for the City University of New York from 1984 until 2017. She retired with a full pension and health benefits on or about November 2017.

21. Benay Waitzman is a resident of New York. She worked for the Human Resource Administration (HRA) from January 1974 until October 2009. She retired with a full pension and health benefits on or about October 2009.

22. Linda Woolverton is a resident of New York. She worked for the Department of Education from 1999 until 2017. She retired with a full pension and health benefits on or about August 1, 2017.

23. Ed Ferington is a resident of New York. He worked for the New York City Police Department from 1987 until 2011. He retired with a full pension and health benefits on or about April 30, 2011.

24. Merri Turk Lasky is a resident of New York. She worked for the Queens County District Attorney from 1984 until 2020. She retired with a full pension and health benefits, paid for by the City, in 2020.

25. Phyllis Lipman is a resident of New York. She worked for the Board of education as a teacher from 1970 until 2001 when she retired with a full pension and health benefits fully paid by the City.

26. The NYC Organization of Public Service Retirees, Inc. is a not-for-profit organization incorporated in the State of New York and registered with New York State

Secretary of State and the Office of the Attorney General. Its purpose is to advocate for the health benefits of New York City government retirees and counts more than 2,000 retirees among its ranks. Its President is Marianne Pizzitola.

27. Respondent Renee Campion is the Commissioner of the City of New York Office of Labor Relations, the agency responsible for administering healthcare benefits to City employees and Retirees.

28. Respondent Office of Labor Relations is responsible for the agency responsible for administering healthcare benefits to City employees and Retirees.

29. The City of New York is the Petitioners' former employer. It is statutorily and contractually obligated to provide Petitioners with certain benefits, as described above, and its attempt to avoid those obligation is unlawful.

#### **VENUE**

30. This Court is a proper venue for this proceeding because this is the County where the Respondents took the actions complained of, took the actions prohibited by statute and contract, and where the Respondents' Principal Offices are located.

#### **FACTUAL BACKGROUND**

31. The New York City Administrative Code § 12-126 states that the "City will pay the entire cost of health insurance coverage for city employees, city retirees, and their dependents ..." with a dollar cap pegged to the cost of the HIP-HMO. That cap is currently about \$600 per month per person. There are approximately 300,000 current city employees, some 250,000 retirees, and several hundred thousand employee and retiree dependents. Consequently, the City's cost to provide health insurance coverage for those eligible is several billion dollars annually.



32. Not surprisingly, the City has long been interested in finding ways to reduce its health insurance costs. First in 2014 and again in 2018, the City and the MLC signed a Memorandum of Agreement (MOA) wherein they agreed to find savings, reaching \$600 million annually by 2021. The MOAs agreed to “study” and “recommend for implementation as soon as practicable...modifications to the way in which health care is currently provided or funded.” The MOAs agreed to “discuss” Medicare Advantage plans – among other cost-savings options. They did not commit to any specific changes: not to a Medicare Advantage Plan, not to self-insurance, not to consolidated drug purchasing.

33. Following both the 2014 MOA and the 2018 MOA, some – but far from a majority – of the CBAs entered into by the City and various unions incorporated the MOAs into the CBA. The MOAs – and thus the CBAs – agreed to look for and discuss various ways to save on healthcare costs. But no CBA incorporated any reference to a Medicare Advantage Plan that current employees – i.e., future retirees – would get as their City-provided health plan in retirement. None.

34. On July 14, 2021, the MLC and various City union members of the MLC met via RingCentral to discuss the MLC’s recommended Medicare Advantage Plan. At that meeting, a voice vote was taken by the MLC, and it was reported that the unions represented had approved the recommended Alliance Medicare Advantage Plan, effective January 1, 2022.

35. This was the first time Retirees ever officially heard that something was afoot that might dramatically change their access to healthcare. There had been rumors and speculation in the media. But no one from the City ever told Retirees; and of

course, the unions had no obligation to discuss what was going on because they no longer represented Retirees.

36. Following the July 14 meeting, the City OLR posted information on its website concerning the new Medicare Advantage Plan. OLR stated that the new Medicare Advantage Plan would become the default plan for *all* retirees – not just those retiring after January 1, 2022, but the nearly 250,000 retirees who have enjoyed the healthcare plans they were repeatedly told vested with them when they retired years earlier.

37. Beginning in July and August 2021, representatives from the Alliance – employees of Anthem and EmblemHealth – held several information sessions with a small number of retirees. Several unions held information sessions with retirees. But those sessions were useless: In most cases, the information conveyed was rife with errors and contradictions. For example, retirees were told that all doctors had to accept the new Medicare Advantage Plan. That is simply untrue.

38. Retirees were also told that the new Medicare Advantage Plan would become the default plan given to retirees. And that if people wished to remain with their current insurance plan, they would have to affirmatively “opt-out” of the new Alliance Medicare Advantage Plan and “opt into” their current plan – and pay \$191.57 per month per person. Retirees were also told that they had to do this by the end of October 2021.

39. Yet by mid-September, many Retirees had not even received official notification or forms.

40. Respondents directed Retirees to a NYC Medicare Advantage Plus Plan dedicated phone number at 1-833-325-1190 for further information. Yet when Retirees called the number, representatives often gave incomplete, erroneous, or conflicting information. And occasionally, the number simply rang busy.

**THE PETITIONERS WERE PROMISED BENEFITS BY CONTRACT**  
**Lisa Flanzraich**

41. Lisa Flanzraich is a resident of New York. She worked for the City University of New York (“CUNY”) from 1984 until 2017. She retired with a full pension and health benefits on or about November 2017.

42. While she was an active employee, Ms. Flanzraich was a member of the Professional Staff Congress (“PSC”) union and worked under successive CBAs entered into by the City and her union.

43. The CBA in effect upon Ms. Flanzraich’s retirement is attached as Exhibit B.

44. As stated in Exhibit B, the City’s obligation to pay the cost of the health plan is detailed on page 160: the “eligible PSC-represented retirees of the EOCs shall be covered by the New York City Health Benefits Program for retiree health insurance benefits and by the PSC-CUNY Welfare Fund for supplemental health benefits.” The City has paid the basic premium for Ms. Flanzraich’s health insurance since her retirement.

45. Ms. Flanzraich became aware of her retirement benefits from both the City’s SPD and various communications with her union. The SPD provided to Ms. Flanzraich is attached as Exhibit C.

46. Upon her retirement, Ms. Flanzraich was told by her union representatives that her retirement benefits would include health insurance benefits fully paid for by the City up to the cost of the HIP-HMO which is the same dollar limit for active employees. She was told by a union representative that upon reaching the age of 65 she would be required to enroll in Medicare, parts A and B. She was told that her Medicare part B premiums would be reimbursed by the City, that her healthcare benefits would switch to a Medicare Supplemental/Medigap plan of her choosing, and that the plan she chose would be fully paid for by the City – for life. She was told that the Supplemental/Medigap plans made available by the City at the time of her retirement fully paid for the 20% of medical costs not covered by Medicare. She was also told that the cost of the Supplemental/Medigap plan was far lower than the cap set by the CBA and City law.

47. The SPD informed Ms. Flanzraich that New York City retirees are eligible for benefits based on the “City policy in place at the time you retire” and are entitled to the “applicable” benefits in place when they retire (Ex. C, p. 14).

48. The various health plan options that were available to Ms. Flanzraich are detailed in the SPD. Included in that SPD was the GHI-CPB for non-Medicare-eligible retirees; and the GHI Senior Care plan for Medicare-eligible retirees.

49. One of the communications detailing those retirement benefits – the CUNY University Benefits Office’s Spring 2020 Pre-Retirement Seminar slideshow for Instructional Staff, HEOs, ECPs, and Classified Managerial staff – is attached as Exhibit D.

50. According to the Pre-Retirement Seminar slideshow, retirees “can change [plans] in even numbered years,” during a Transfer Period (Ex. D, p. 17).

51. The Pre-Retirement Seminar slideshow states that “Retirees are eligible to be reimbursed the basic cost of Medicare Part B premium but [they] must be enrolled in a City health plan,” (Ex. D, p. 20).

52. Upon retirement, Ms. Flanzraich received a pension from the Teachers Insurance Annuity Association (“TIAA”) and health benefits from the City as detailed in the SPD.

53. The health benefit Ms. Flanzraich chose when she retired and became Medicare-eligible was the GHI Senior Care plan, a “Medigap” plan.

54. When she became eligible for that plan, the City began paying the entire premium for that plan and has done so up until the present.

55. Under the GHI Senior Care plan, Ms. Flanzraich had access to all doctors who treated Medicare-eligible patients; paid no co-pays; and her doctors rarely had to get prior authorization for procedures; and when they did, had no problem getting them in a timely, patient-centered manner.

56. On or about August 20, 2021, Ms. Flanzraich received a letter from New York City Office of Labor Relations stating that effective January 1, 2022, she would no longer be enrolled in the GHI Senior Care Plan, and that she would be switched into a Medicare Advantage Plan provided by an alliance of Emblem Health and Empire Blue Cross Blue Shield.

57. Ms. Flanzraich contacted several of her current doctors, who informed her that they would not be accepting the new Medicare Advantage plan. Without Medicare-

paid-for access to her current doctors, the Medicare Advantage Plan is a material diminution of the benefits Ms. Flanzraich receives under the GHI Senior Care Plan.

58. Under her current GHI Senior Care plan, Ms. Flanzraich does not pay any co-pays. The City has informed Ms. Flanzraich that the new Medicare Advantage Plan will require her to pay some co-pay fees. That imposition of co-pays is a significant diminution of the health benefits Ms. Flanzraich has received since her retirement.

59. Ms. Flanzraich does not want to change from the GHI Senior Care plan to the Medicare Advantage Plan and has not authorized the City to make that switch from the GHI Senior Care plan.

60. Ms. Flanzraich's CBA said that "*CUNY public retirement system retirees* shall have the option of changing their previous choice of Health Plans," (Ex. B, p. 83) (emphasis added). Nothing in Ms. Flanzraich's CBA gave the City the right to change Ms. Flanzraich's health insurance plan without her consent.

61. On or about August 20, 2021, Ms. Flanzraich contacted the Medicare Advantage hotline set up by New York City to express her dissatisfaction with the Medicare Advantage plan, and her desire to keep the GHI Senior Care plan. She was told that to keep the GHI Senior Care plan, she would have to affirmatively opt into that plan and pay a premium of \$191.57 per month.

62. A monthly payment of \$191.57 would be a material hardship to Ms. Flanzraich who lives on a fixed income and faces significant health challenges as she ages.

63. Ms. Flanzraich's vested benefits include a Medicare Supplemental plan/Medigap plan that is fully paid for by the City and covers the portion of the cost of

her medical care not covered by Medicare Parts A and B. Any diminution of those benefits that result from the imposition of a Medicare Advantage Plan by the City is an abrogation of the benefits Ms. Flanzraich is entitled to under the CBA in place when she retired.

**Benay Waitzman**

64. Benay Waitzman is a resident of New York. She worked for the New York City Human Resource Administration (“HRA”) from January 1974 until October 2009. She retired with a full pension and health benefits on or about October 2009.

65. While she was an active employee, Mrs. Waitzman was a member of the Communication Workers of America CWA Local 1180 union and worked under successive CBAs entered into by the City and her union.

66. The CBA in effect upon Mrs. Waitzman’s retirement is attached as Exhibit E.

67. As stated in Exhibit E, the City’s obligation to pay the cost of the health plan is detailed on page 13: the “Employer’s cost for each contract for each Employee and for each retiree (under age 65) shall be equalized at the community rated basic HIP/HMO plan payment rate.” The City has paid the basic premium for Mrs. Waitzman’s health insurance since her retirement.

68. Mrs. Waitzman became aware of her retirement benefits from both the City’s SPD and various communications with her union.

69. She was told by a union representative that upon reaching the age of 65 she would be required to enroll in Medicare, parts A and B. She was told that her Medicare part B premiums would be reimbursed by the City, that her healthcare benefits would switch to a Medicare Supplemental/Medigap plan of her choosing, and

that the plan she chose would be fully paid for by the City – for life. She was told that the Supplemental/Medigap plans made available by the City at the time of her retirement fully paid for the 20% of medical costs not covered by Medicare. She was also told that the cost of the Supplemental/Medigap plan was far lower than the cap set by the CBA and City law.

70. Mrs. Waitzman believes that the SPD in place at the time of her retirement was similar to the SPD provided by the City currently and said that retirees are eligible for benefits based on the “City policy in place at the time you retire” and are entitled to the “applicable” benefits in place when they retire (Ex. A, p. 14).

71. The various health plan options that were available to Mrs. Waitzman are detailed in the SPD. Included in that SPD was the GHI-CPB for non-Medicare-eligible retirees; and the GHI Senior Care plan for Medicare-eligible retirees.

72. Prior to her retirement, Mrs. Waitzman was repeatedly informed by union and city officials that her retirement benefits would be those offered by the City at the time of her retirement.

73. Upon retirement, Mrs. Waitzman received a pension and health benefits from the City as detailed in the SPD.

74. The health benefit Mrs. Waitzman chose when she retired and became Medicare-eligible was the GHI Senior Care plan, a “Medigap” plan.

75. When she became eligible for that plan, the City began paying the entire premium for that plan and has done so up until the present.

76. Under the GHI Senior Care plan, Mrs. Waitzman had access to all doctors who treated Medicare-eligible patients; paid no co-pays; and her doctors rarely had to



get prior authorization for procedures; and when they did, had no problem getting them in a timely, patient-centered manner.

77. From the time she informed the City that the GHI Senior Care plan was her choice of health insurance until the present day, the City paid the entire premium for that plan.

78. On or about August 20, 2021, Mrs. Waitzman received a letter from New York City Office of Labor Relations stating that effective January 1, 2022, she would no longer be enrolled in the GHI Senior Care Plan, and that she would be switched into a Medicare Advantage Plan provided by an alliance of Emblem Health and Empire Blue Cross Blue Shield.

79. Mrs. Waitzman contacted her current doctor, whose office informed her that they would not be accepting the new Medicare Advantage plan. Without Medicare-paid-for access to her current doctors, the Medicare Advantage Plan is a material diminution of the benefits Mrs. Waitzman receives under the GHI Senior Care Plan.

80. Under her current GHI Senior Care plan, Mrs. Waitzman does not pay any co-pays. The City has informed Mrs. Waitzman that the new Medicare Advantage Plan will require her to pay some co-pay fees. That imposition of co-pays is a significant diminution of the health benefits Mrs. Waitzman has received since her retirement.

81. Mrs. Waitzman does not want to change from the GHI Senior Care plan to the Medicare Advantage Plan and has not authorized the City to make that switch from the GHI Senior Care plan.

82. Nothing in Mrs. Waitzman's CBA gave the City the right to change Mrs. Waitzman's health insurance plan without her consent.

83. On or about August 20, 2021, Mrs. Waitzman contacted the CWA Retiree Division to express her dissatisfaction with the Medicare Advantage plan, and her desire to keep the GHI Senior Care plan. She watched several video town halls and was told that to keep the GHI Senior Care plan, she would have to affirmatively opt into that plan and pay a premium of \$191.57 per month.

84. A monthly payment of \$191.57 would be a material hardship to Mrs. Waitzman who lives on a fixed income and faces significant health challenges as she ages.

85. Mrs. Waitzman's vested benefits include a Medicare Supplemental plan/Medigap plan that is fully paid for by the City and covers the portion of the cost of her medical care not covered by Medicare Parts A and B. Any diminution of those benefits that result from the imposition of a Medicare Advantage Plan by the City is an abrogation of the benefits Mrs. Waitzman is entitled to under the CBA in place when she retired.

#### **Linda Woolverton**

86. Linda Woolverton is a resident of New York. She worked for the City Department of Education from 1999 until 2017. She retired with a full pension and health benefits on or about August 1, 2017.

87. While she was an active employee, Ms. Woolverton was a member of the Council of School Supervisors and Administrators ("CSA") union and worked under successive CBAs entered into by the City and her union.

88. The CBA in effect upon Ms. Woolverton's retirement is attached as Exhibit F.

89. As stated in Exhibit F, the City's obligation to pay the cost of the health plan is detailed on page 23: the "DOE agrees to arrange for, and make available to each supervisor, a choice of health and hospital insurance coverage from among designated plans and the DOE agrees to pay the full cost of such coverage." The City has paid the basic premium for Ms. Woolverton's health insurance since her retirement.

90. Ms. Woolverton became aware of her retirement benefits from both the City's SPD and various communications with her union. The SPD provided to Ms. Woolverton is attached as Exhibit C.

91. Upon her retirement, Ms. Woolverton was told by her union representatives that her retirement benefits would include health insurance benefits fully paid for by the City up to the cost of the HIP-HMO which is the same dollar limit for active employees. She was told by a union representative that upon reaching the age of 65 she would be required to enroll in Medicare, parts A and B. She was told that her Medicare part B premiums would be reimbursed by the City, that her healthcare benefits would switch to a Medicare Supplemental/Medigap plan of her choosing, and that the plan she chose would be fully paid for by the City – for life. She was told that the Supplemental/Medigap plans made available by the City at the time of her retirement fully paid for the 20% of medical costs not covered by Medicare. She was also told that the cost of the Supplemental/Medigap plan was far lower than the cap set by the CBA and City law.

92. The SPD informed Ms. Woolverton that New York City retirees are eligible for benefits based on the "City policy in place at the time you retire" and are entitled to the "applicable" benefits in place when they retire (Ex. C, p. 14).

93. The various health plan options that were available to Ms. Woolverton are detailed in the SPD. Included in that SPD was the GHI-CPB for non-Medicare-eligible retirees; and the GHI Senior Care plan for Medicare-eligible retirees.

94. Upon retirement, Ms. Woolverton received a pension and health benefits from New York City as detailed in the SPD.

95. The health benefit Ms. Woolverton chose when she retired and became Medicare-eligible was the GHI Senior Care plan, a “Medigap” plan.

96. When she became eligible for that plan, the City began paying the entire premium for that plan and has done so up until the present.

97. Under the GHI Senior Care plan, Ms. Woolverton had access to all doctors who treated Medicare-eligible patients; paid no co-pays; and her doctors rarely had to get prior authorization for procedures; and when they did, had no problem getting them in a timely, patient-centered manner.

98. On or about August 19, 2021, Ms. Woolverton received a letter from New York City Office of Labor Relations stating that effective January 1, 2022, she would no longer be enrolled in the GHI Senior Care Plan, and that she would be switched into a Medicare Advantage Plan provided by an alliance of Emblem Health and Empire Blue Cross Blue Shield.

99. Ms. Woolverton contacted several of her current doctors, who informed her that they would not be accepting the new Medicare Advantage plan. Without Medicare-paid-for access to her current doctors, the Medicare Advantage Plan is a material diminution of the benefits Ms. Woolverton receives under the GHI Senior Care Plan.

100. Under her current GHI Senior Care plan, Ms. Woolverton does not pay any co-pays. The City has informed Ms. Woolverton that the new Medicare Advantage Plan will require her to pay some co-pay fees. That imposition of co-pays is a significant diminution of the health benefits Ms. Woolverton has received since her retirement.

101. Some of Ms. Woolverton's doctors have informed her that, though they will accept the new Medicare Advantage Plan, the new plan's prior authorization procedures may result in a serious delay of medical tests or procedures, which could endanger her health.

102. Ms. Woolverton does not want to change from the GHI Senior Care plan to the Medicare Advantage Plan and has not authorized the City to make that switch from the GHI Senior Care plan.

103. Nothing in Ms. Woolverton's CBA gave the City the right to change Ms. Woolverton's health insurance plan without her consent.

104. On or about August 19, 2021, Ms. Woolverton contacted the Medicare Advantage hotline set up by New York City to express her dissatisfaction with the Medicare Advantage plan, and her desire to keep the GHI Senior Care plan. She was told that to keep the GHI Senior Care plan, she would have to affirmatively opt into that plan and pay a premium of \$191.57 per month.

105. A monthly payment of \$191.57 would be a material hardship to Ms. Woolverton who lives on a fixed income and faces significant health challenges as she ages.

106. Ms. Woolverton's vested benefits include a Medicare Supplemental plan/Medigap plan that is fully paid for by the City and covers the portion of the cost of

her medical care not covered by Medicare Parts A and B. Any diminution of those benefits that result from the imposition of a Medicare Advantage Plan by the City is an abrogation of the benefits Ms. Woolverton is entitled to under the CBA in place when she retired.

### **Ed Ferington**

107. Ed Ferington is a resident of New York. He worked for the New York City Police Department from 1987 until 2011. He retired with a full pension and health benefits on or about April 30, 2011.

108. While he was an active employee, Mr. Ferington was a member of the Detectives Endowment Association (“DEA”) and worked under successive CBAs entered into by the City and his union.

109. The CBA in effect upon Mr. Ferington’s retirement is attached as Exhibit G.

110. The City has paid the basic premium for Mr. Ferington’s health insurance since his retirement.

111. Mr. Ferington became aware of his retirement benefits from both the City’s SPD and various communications with his union.

112. He was told by a union representative that upon reaching the age of 65 he would be required to enroll in Medicare, parts A and B. He was told that his Medicare part B premiums would be reimbursed by the City, that his healthcare benefits would switch to a Medicare Supplemental/Medigap plan of his choosing, and that the plan he chose would be fully paid for by the City – for life. He was told that the Supplemental/Medigap plans made available by the City at the time of his retirement fully paid for the 20% of medical costs not covered by Medicare. He was also told that

the cost of the Supplemental/Medigap plan was far lower than the cap set by the CBA and City law.

113. The Mr. Ferington believes that the SPD in place at the time of his retirement was similar to the SPD provided by the City currently and said that retirees are eligible for benefits based on the “City policy in place at the time you retire” and are entitled to the “applicable” benefits in place when they retire (Ex. A, p. 14).

114. The various health plan options that were available to Mr. Ferington are detailed in the SPD. Included in that SPD was the GHI-CPB for non-Medicare-eligible retirees; and the GHI Senior Care plan for Medicare-eligible retirees.

115. Prior to his retirement, Mr. Ferington was repeatedly informed by union and city officials that his retirement benefits would be those offered by the City at the time of his retirement.

116. Upon retirement, Mr. Ferington received a pension and health benefits from the City as detailed in the SPD.

117. The health benefit Mr. Ferington chose when he retired and became Medicare-eligible was the GHI Senior Care plan, a “Medigap” plan.

118. When he became eligible for that plan, the City began paying the entire premium for that plan and has done so up until the present.

119. Under the GHI Senior Care plan, Mr. Ferington had access to all doctors who treated Medicare-eligible patients; paid no co-pays; and his doctors rarely had to get prior authorization for procedures; and when they did, had no problem getting them in a timely, patient-centered manner.

120. On or about August 19, 2021, Mr. Ferington received a letter from New York City Office of Labor Relations stating that effective January 1, 2022, he would no longer be enrolled in the GHI Senior Care Plan, and that he would be switched into a Medicare Advantage Plan provided by an alliance of Emblem Health and Empire Blue Cross Blue Shield.

121. Mr. Ferington contacted several of his current doctors, who informed him that they would not be accepting the new Medicare Advantage plan. Without Medicare-paid-for access to his current doctors, the Medicare Advantage Plan is a material diminution of the benefits Mr. Ferington receives under the GHI Senior Care Plan.

122. Under his current GHI Senior Care plan, Mr. Ferington does not pay any co-pays. The City has informed Mr. Ferington that the new Medicare Advantage Plan will require him to pay some co-pay fees. That imposition of co-pays is a diminution of the health benefits Mr. Ferington has received since his retirement.

123. Mr. Ferington does not want to change from the GHI Senior Care plan to the Medicare Advantage Plan and has not authorized the City to make that switch from the GHI Senior Care plan.

124. Mr. Ferington's CBA said that "Effective with the reopener period for Health Insurance subsequent to January 1, 1980 and every two years thereafter, *retirees shall have the option* of changing their previous choice of health plans," (Ex. G, p. 12) (emphasis added). Nothing in Mr. Ferington's CBA gave the City the right to change Mr. Ferington's health insurance plan without his consent.

125. On or about August 25, 2021, Mr. Ferington learned from social media that in order to keep the GHI Senior Care plan, he would have to affirmatively opt into



that plan and pay a premium of \$191.57 per month. He never received any communication from the City concerning this imposition of a charge to keep his current plan, but later confirmed it with the OLR.

126. A monthly payment of \$191.57 would be a material hardship to Mr. Ferington who lives on a fixed income and faces significant health challenges as he ages.

127. Mr. Ferington's vested benefits include a Medicare Supplemental plan/Medigap plan that is fully paid for by the City and covers the portion of the cost of his medical care not covered by Medicare Parts A and B. Any diminution of those benefits that result from the imposition of a Medicare Advantage Plan by the City is an abrogation of the benefits Mr. Ferington is entitled to under the CBA in place when he retired.

### **Merri Turk Lasky**

128. Merri Turk Lasky is a resident of New York. She worked for the Queens County District Attorney as a prosecutor from 1982 until 2018. She retired with a full pension and health benefits on or about March 15, 2018. She was not a member of any union.

129. As an employee, Ms. Lasky received health insurance benefits from the City of New York as detailed in the City's SPD attached as Exhibit A. The City has paid the basic premium for Ms. Lasky's health insurance since her retirement.

130. Upon her retirement, Ms. Lasky was told that her retirement benefits would include health insurance benefits fully paid for by the City up to the cost of the HIP-HMO which is the same dollar limit for active employees. She was told that upon reaching the age of 65 she would be required to enroll in Medicare, parts A and B. She

was told that her Medicare part B premiums would be reimbursed by the City, that her healthcare benefits would switch to a Medicare Supplemental/Medigap plan of her choosing, and that the plan she chose would be fully paid for by the City – for life. According to the SPD provided to her, the GHI Senior Care plan would pay the 20% of healthcare costs that Medicare did not cover (Ex. A, p. 68). She was also told that the cost of the Supplemental/Medigap plan was far lower than the cap set by the CBA and City law.

131. The SPD informed Ms. Lasky that New York City retirees are eligible for benefits based on the “City policy in place at the time you retire” and are entitled to the “applicable” benefits in place when they retire (Ex. A, p. 15).

132. The various health plan options that were available to Ms. Lasky are detailed in the SPD. Included in that SPD was the GHI-CPB for non-Medicare-eligible retirees; and the GHI Senior Care plan for Medicare-eligible retirees.

133. The health benefit Ms. Lasky chose as an employee was the GHI-CBP plan. The premiums for the basic plan were fully paid by the City.

134. Ms. Lasky’s spouse’s health insurance was also paid for by the City.

135. Because Ms. Lasky’s spouse is younger than she is, Ms. Lasky wanted to clarify the coverage that both she and her spouse would receive when she turned 65, but he had not yet reached the eligible age for Medicare.

136. On October 14, 2020, she emailed the OLR. On October 16, 2020, Ms. Lasky received a response from Carmen Carroll at OLR. That email stated: “Your souse (sic) will to be covered for life, you both need to apply for parts A and B, part D is

covered with GHI as always, you don't need to apply for D. at that point you'll both be in GHI SENIOR CARE," (Exhibit H).

137. Upon retirement, Ms. Lasky received a pension and health benefits from the City as detailed in the SPD.

138. The health benefit Ms. Lasky chose when she retired and became Medicare-eligible was the GHI Senior Care plan, a "Medigap" plan.

139. When she became eligible for that plan, the City began paying the entire premium for that plan and has done so up until the present.

140. Under the GHI Senior Care plan, Ms. Lasky had access to all doctors who treated Medicare-eligible patients; paid no co-pays; and her doctors rarely had to get prior authorization for procedures; and when they did, had no problem getting them in a timely, patient-centered manner.

141. On or about August 19, 2021, Ms. Lasky received a letter from New York City Office of Labor Relations stating that effective January 1, 2022, she would no longer be enrolled in the GHI Senior Care Plan, and that she would be switched into a Medicare Advantage Plan provided by an alliance of Emblem Health and Empire Blue Cross Blue Shield.

142. Ms. Lasky went on the EmpireBlue website, where some of her doctors were listed as accepting the plan and others were not. Without Medicare-paid-for access to her current doctors, the Medicare Advantage Plan is a material diminution of the benefits Ms. Lasky receives under the GHI Senior Care Plan, and continuity of care is important to her.

143. Under her current GHI Senior Care plan, Ms. Lasky does not pay any co-pays. The City has informed Ms. Lasky that the new Medicare Advantage Plan will require her to pay some co-pay fees. That imposition of co-pays is a significant diminution of the health benefits Ms. Lasky has received since her retirement.

144. Ms. Lasky does not want to change from the GHI Senior Care plan to the Medicare Advantage Plan and has not authorized the City to make that switch from the GHI Senior Care plan.

145. The SPD provided to Ms. Lasky said that she had the option to transfer to a different health plan in even-numbered years or once at any time during her retirement (Ex. A, p 18). Nothing in Ms. Lasky's SPD gave the City the right to change Ms. Lasky's health insurance plan without her consent.

146. Ms. Lasky called the special number set up by the City/Alliance to answer questions about the new plan. Each time she hit "O" to talk to a person, the phone rang a few times and then went to a busy signal. She never reached a live representative.

147. Ms. Lasky understands that to keep the GHI Senior Care plan, she would have to affirmatively opt into that plan and pay a premium of \$191.57 per month. As a retiree, does not want to pay such a premium.

148. Ms. Lasky's vested benefits include a Medicare Supplemental plan/Medigap plan that is fully paid for by the City and covers the portion of the cost of her medical care not covered by Medicare Parts A and B. Any diminution of those benefits that result from the imposition of a Medicare Advantage Plan by the City is an abrogation of the benefits Ms. Lasky is entitled to under the CBA in place when she retired.

### Phyllis Lipman

149. Phyllis Lipman is a resident of New York. She worked for the Board of Education, as a teacher from 1970 until 2001. She retired with a full pension and health benefits on or about June 2001.

150. While she was an active employee, Ms. Lipman was a member of the United Federation of Teachers (“UFT”) union and worked under successive CBAs entered into by the City and her union.

151. The CBA in effect upon Ms. Lipman’s retirement is attached as Exhibit I.

152. As stated in Exhibit I, the City’s obligation to pay the cost of the health plan is detailed on page 7: the “Board agrees to arrange for, and make available to each day school teacher, a choice of health and hospital insurance coverage from among designated plans and the Board agrees to pay the full cost of such coverage.” The City has paid the basic premium for Ms. Lipman’s health insurance since her retirement.

153. Ms. Lipman became aware of her retirement benefits from both the City’s SPD and various communications with her union.

154. Upon her retirement, Ms. Lipman was told by her union representatives that her retirement benefits would include health insurance benefits fully paid for by the City up to the cost of the HIP-HMO which is the same dollar limit for active employees. She was told by a union representative that upon reaching the age of 65 she would be required to enroll in Medicare, parts A and B. She was told that her Medicare part B premiums would be reimbursed by the City, that her healthcare benefits would switch to a Medicare Supplemental/Medigap plan of her choosing, and that the plan she chose would be fully paid for by the City – for life. She was told that the Supplemental/Medigap plans made available by the City at the time of her retirement

fully paid for the 20% of medical costs not covered by Medicare. She was also told that the cost of the Supplemental/Medigap plan was far lower than the cap set by the CBA and City law.

155. Ms. Lipman believes that the SPD in place at the time of her retirement was similar to the SPD provided by the City currently and said that retirees are eligible for benefits based on the "City policy in place at the time you retire" and are entitled to the "applicable" benefits in place when they retire (Ex. A, p. 14).

156. The various health plan options that were available to Ms. Lipman are detailed in the SPD. Included in that SPD was the GHI-CPB for non-Medicare-eligible retirees; and the GHI Senior Care plan for Medicare-eligible retirees.

157. Prior to her retirement, Ms. Lipman was repeatedly informed by union and city officials that her retirement benefits would be those offered by the City at the time of her retirement.

158. Upon retirement, Ms. Lipman received a pension and health benefits from the City as detailed in the SPD.

159. The health benefit Ms. Lipman chose when she retired and became Medicare-eligible was the GHI Senior Care plan, a "Medigap" plan.

160. When she became eligible for that plan, the City began paying the entire premium for that plan and has done so up until the present.

161. Under the GHI Senior Care plan, Ms. Lipman had access to all doctors who treated Medicare-eligible patients; paid no co-pays; and her doctors rarely had to get prior authorization for procedures; and when they did, had no problem getting them in a timely, patient-centered manner.

162. On or about August 19, 2021, Ms. Lipman received a letter from New York City Office of Labor Relations stating that effective January 1, 2022, she would no longer be enrolled in the GHI Senior Care Plan, and that she would be switched into a Medicare Advantage Plan provided by an alliance of Emblem Health and Empire Blue Cross Blue Shield.

163. Ms. Lipman contacted several of her current doctors in New York, who could not confirm whether or not they would accept the new Medicare Advantage plan. One of her doctors instructed her not to accept the plan, as she often spends time in California. Some of her New York doctors, as well as her California doctors and hospitals, could not confirm whether or not they would accept this plan. Without Medicare-paid-for access to her current doctors, the Medicare Advantage Plan is a material diminution of the benefits Ms. Lipman receives under the GHI Senior Care Plan.

164. Under her current GHI Senior Care plan, Ms. Lipman does not pay any co-pays. The City has informed Ms. Lipman that the new Medicare Advantage Plan will require her to pay some co-pay fees. That imposition of co-pays is a significant diminution of the health benefits Ms. Lipman has received since her retirement.

165. Ms. Lipman does not want to change from the GHI Senior Care plan to the Medicare Advantage Plan and has not authorized the City to make that switch from the GHI Senior Care plan.

166. Nothing in Ms. Lipman's CBA gave the City the right to change Ms. Lipman's health insurance plan without her consent.

167. On or about August 20, 2021, Ms. Lipman contacted the UFT to express her dissatisfaction with the Medicare Advantage plan, and her desire to keep the GHI Senior Care plan. She cancelled her voluntary COPE payments to the Union. She was told that to keep the GHI Senior Care plan, she would have to affirmatively opt into that plan and pay a premium of \$191.57 per month.

168. A monthly payment of \$191.57 would be a material hardship to Ms. Lipman who lives on a fixed income and faces significant health challenges as she ages.

169. Ms. Lipman's vested benefits include a Medicare Supplemental plan/Medigap plan that is fully paid for by the City and covers the portion of the cost of her medical care not covered by Medicare Parts A and B. Any diminution of those benefits that result from the imposition of a Medicare Advantage Plan by the City is an abrogation of the benefits Ms. Lipman is entitled to under the CBA in place when she retired.

**The NYC Organization of Public Service Retirees, Inc.**

170. The NYC Organization of Public Service Retirees, Inc. (the "Organization") is a not-for-profit corporation established for the purpose of advocating for healthcare benefits for New York City public service retirees ("Retirees"). It was formed on August 31, 2021, and currently has more than 3,732 members.

171. The Organization is governed by a set of bylaws, a Board of Directors, and Advisors. It was formed after hundreds of retirees responded to a survey, which was posted on numerous Facebook and other social media sites where NYC retirees congregate. The survey found that an overwhelming majority of retirees do not want the planned Alliance Medicare Advantage plan; have been actively misled by various City and Alliance communications about the proposed plan; never authorized the City



to change their plan; believe they are entitled to the healthcare benefits that were in place when they retired; authorized the Organization to challenge the legality of planned change in plans; and to negotiate with the City to ensure a fully-paid-for-by-the-City continuation of their existing healthcare benefits and other suitable alternatives. Several thousand retirees have made voluntary donations to fund the legal challenge.

172. The Organization is comprised of Board members and donors representing dozens of former City agencies and unions.

173. Dozens of retirees – in addition to those named above – have stepped forward and identified themselves to the Organization’s leadership as potential petitioners in this action.

174. The Organization’s President is Marianne Pizzitola. Ms. Pizzitola has submitted an affidavit with this Petition. It details many of the misrepresentations put forth by the City and the Alliance in their effort to force this new plan on Retirees.

**FULLY PAID HEALTHCARE FOR RETIREES IS  
GUARANTEED BY STATUTE AND CONTRACT**

175. New York City law specifies that “The 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.”<sup>1</sup> The statute further provides that the cost of premiums for Medicare Part B will also be paid for by the City.

176. These exact (or very similar) words have been incorporated into many (but not all) of the CBAs between the City and the numerous unions representing City

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<sup>1</sup> City Administrative Code §12-126

employees over the last twenty years. See, for example, the Detectives' Endowment Association 2008-2012 Agreement dated from 2009: "The City shall continue to provide a fully paid choice of health and hospitalization insurance plans for each employee, not to exceed 100% of the full cost of HIP-HMO on a category basis," (Ex. G, p. 12). See, also, the Citywide Health Benefits Program Summary Program Description ("SPD") dated October 2020: "The City will reimburse retirees and their Medicare-eligible dependents for Medicare Part B premiums," (Ex. A, p. 20).

177. Every year, all City employees receive – from the City – a booklet entitled the Summary Program Description ("SPD") that describes the health benefits available to them that year. Every past SPD available on the internet includes the same statement: "There is no cost for basic coverage under some of the health plans offered through the City Health Benefits Program, but others require a payroll or pension deduction."

178. Many of the SPDs include another statement about benefits:

"The following summarizes eligibility policy as of the date of this publication. Your actual eligibility for benefits will be determined by the City policy *in place at the time you retire, and the benefits applicable to you should be ascertained at that time.*" (2020 SPD, p. 15) (emphasis added).

179. Many of the CBAs include another important benefit for employees when they retire: the right to change their choice of health plan. For example, the CBA in effect between 2008 and 2012 for the Detectives' Endowment Association used commonly found (in CBAs) language: "Effective with the reopener period for Health

Insurance subsequent to January 1, 1980 and every two years thereafter, retirees shall have the option of changing their previous choice of health plans,” (Ex. G, p. 12).<sup>2</sup>

180. Very simply, Retirees’ understanding of their health benefits were spelled out in the CBAs and pertinent extrinsic materials provided to them: their healthcare plans and options would be detailed in the SPD effective the year they retired; the plans would be paid for up to the price of the HIP-HMO; and retirees could change their plans in even-numbered years, or at any time once in their retirement. The right to change health plans was given exclusively to the retiree, not to the City.

**DIMINUTION OF RETIREES’ CONTRACTUALLY-GUARANTEED HEALTH BENEFITS IS PROHIBITED BY THE NEW YORK STATE CONSTITUTION**

181. The New York State Constitution states: “After July [1, 1940], membership in any pension or retirement system of the state or of a civil division thereof shall be a contractual relationship, the benefits of which shall not be diminished or impaired.” N.Y. Const. art. V, § 7. In 1985, the New York Court of Appeals considered this provision and ruled that “Public retirees’ health insurance benefits do not enjoy the same protection as is afforded pension benefits and retirees’ health insurance benefits are therefore subject to reductions in the contribution to health insurance premiums.”<sup>3</sup>

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<sup>2</sup> Almost identical language is found (on the OLR website) in other CBAs including: Sanitation Chiefs, CBU 100, Executed Contract Reopener 10-10-2007 to 10-09-2011; Captains, CBU 17, Captains’ Endowment Association, MOU Reopener, 11-01-03 to 03-31-2012; Sanitation Officers, CBU 99, Executed Contract Reopener, 11-13-07 to 07-01-12; Asst. Deputy Wardens, Dep Wardens, CBU 11, Executed Contract REVISED, 03-01-08 to 06-30-12; Pilots (Uniformed) et al, CBU 068, Executed Contract, 07-28-07 to 07-27-11; Correction Captains, CBU 25, Executed Contract, 12-16-07 to 06-30-12; Sanitation Workers, CBU 49, Executed Contract, 03-02-07 to 09-20-11.

<sup>3</sup> *Matter of Lippman v. Board of Educ. of Sewanhaka Cent. High School Dist.* 66 N.Y.2d 313, 315 (1985).

182. However, *Lippman* made clear that this holding applied only in circumstances where retirees had no other statutory or contractual right to continued State contributions to their health care at the same levels: “*As 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.*” *Id.* (emphasis added). There was no underlying CBA in *Lippman*. The Retirees here, however, did work and enjoy retiree benefits that were the result of CBA contracts and the statutory protection of New York city Administrative code §12-126. Consequently, their health benefits are protected under the New York State Constitution.

**RETIREEES ARE ENTITLED TO THE HEALTHCARE BENEFITS  
THAT WERE IN PLACE WHEN THEY RETIRED**

183. To the extent there is any ambiguity in the contractual language concerning the Retirees' health benefits, the Court should look to extrinsic evidence, including past practice, to determine its meaning: “It is well established that substantive rights may arise not only through collective negotiations, but also through consistently followed past practices.” *Aeneas McDonald Police Benev. Ass'n, Inc. v. City of Geneva*, 245 A.D.2d 1042, 1043, (4th Dep't 1997), *aff'd*, 92 N.Y.2d 326, (1998). A binding past practice is established where “the practice was unequivocal and was continued uninterrupted for a period of time sufficient under the circumstances to create a reasonable expectation among the affected bargaining unit employees that the practice would continue.” *Matter of Chenango Forks Cent. Sch. Dist. v New York State Pub. Empl. Relations Bd.*, 21 N.Y.3d 255, 263 (3d Dep't 2012).

184. Every Petitioner and current Retiree had, when they retired, a Medigap plan fully paid for by the City; and that Medigap plan covered the 20% of healthcare costs that Medicare did not cover. Retirees were, and still are, entitled to this. As the SPD currently in use by the City makes clear, “Your actual eligibility for benefits will be determined by the City policy in place at the time you retire, and the benefits applicable to you should be ascertained at that time.”

185. Future retirees may only have a Medicare Advantage option – if their unions include that in future CBAs. But for past retirees, their benefits were defined by what was in place when they retired. And that was a fully-paid-for medigap plan.

**RETIREES HAVE THE EXCLUSIVE RIGHT TO CHANGE THEIR HEALTHCARE PLANS. THE CITY CANNOT FORCE THEM TO “OPT-INTO” THE PLAN THEY ALREADY HAVE**

186. Retirees – and retirees alone – have the exclusive right to change their health insurance plan. That exclusive right is spelled out in every SPD published by the City in recent memory and incorporated into many CBAs. Not in any contract, in any statute, in any SPD does it say that the City has the right to change a retiree’s health plan.

**THE CITY’S AGREEMENT WITH THE MLC CAN ONLY AFFECT FUTURE RETIREES**

187. The MLC’s role – by statute and tradition – is advisory. And for many years it has recommended which specific health plans (from which insurance companies) should be offered to City employees – and those employees about to retire during that fiscal year. Petitioners recognize that the MLC can recommend, and unions can choose to adopt or reject, those recommendations.

188. But the recommendations of the MLC – adopted by unions long after people have ceased to be members of those unions – cannot retroactively change benefits that vested upon retirement. The plans that the MLC recommended for implementation in January 2022 were voted upon by the unions in July 2021 and will take effect in January 2022. But those plans cannot be forced on Petitioners – and indeed all people who retired from City service prior to January 1, 2022 – none of whom are members of any municipal union or employees of the City.

189. The Retirees’ benefits were established by contract and went into effect when they retired. People who retire after January 1, 2022, will be affected by new (or modified existing) CBAs which reflect an agreement to implement a new Alliance Medicare Advantage plan. Current employees – i.e., future retirees – are affected by current CBAs. People who are not currently employed by the City and are not represented by their respected union – i.e., people who are already retired – are not affected by a new collective bargaining agreement.

**VARIOUS UNIONS’ INCORPORATION OF THE 2014 AND 2018 MOAS  
REFLECTED INTENT TO CONSIDER ALTERNATIVES,  
NOT CHANGE BENEFITS**

190. There has been speculation that because some unions – fewer than half – incorporated the 2014 and 2018 Memoranda of Agreement (“MOA”) between the MLC and the City into subsequent CBAs, that incorporation somehow allows the City to retroactively apply the terms of the July 2021 plan into past CBAs. Petitioners do not question whether the 2014 and 2018 MOAs were incorporated into some CBAs that were in place when they retired. The problem – for the City – is that those MOAs committed the unions to nothing more than to “study” and “recommend for

implementation as soon as practicable...modifications to the way in which health care is currently provided or funded.”

191. The MOAs agreed to “discuss” Medicare Advantage plans. They did not commit to any specific changes: not to a Medicare Advantage Plan, not to self-insurance, not to consolidated drug purchasing. They agreed to find savings – but that is an amorphous, non-specific promise. No union included in its negotiation or in a CBA a commitment to implement a Medicare Advantage Plan for people retiring after a specific date covered by that CBA.

192. The City’s overreach is underscored by the very assertion that the incorporation of the MOAs somehow gives the City the right to retroactively change CBAs: fewer than half the CBAs incorporated both the 2014 and 2018 MOAs. Does that mean that Retirees who then members of those unions that did incorporate the MOA are subject to the new Medicare Advantage plan, while those who were members of unions which did not incorporate the MOAs are not? And what about those people who retired before either MOA was even drafted? Logic must prevail: the MOAs have no bearing on this issue.

**THE CITY CANNOT FORCE RETIREES  
TO PAY FOR THE GHI SENIOR PLAN**

193. One of the most offensive aspects of the City’s handling of this situation has been the confusing, often contradictory, threatening ways the City has tried to get retirees to sign up for the new Alliance Medicare Advantage plan. The city has told Retirees that if they want to keep their GHI Senior Care plan, they could. But the retiree would have to opt into the new plan and then pay \$191.57 per person per month. By City law (§ 12-126) the City must pay for retiree health benefits “not to exceed 100%

of the full cost of HIP-HMO”. That dollar cap is currently about \$600 per person per month. The City may want to encourage Retirees to choose the new Alliance Medicare Advantage plan. But the City has an obligation – by statute and contract – to pay up to the HIP-HMO amount.

194. Petitioners are not saying the City must provide them with a Medigap plan (or other benefits) that cost the full price of HIP-HMO plan. But inasmuch as Retirees are entitled to what was in place when they retired – and the GHI Senior Plan costs far less than the statutory cap – the City cannot shirk its obligation.

**RETIREEES WERE NOT REPRESENTED BY THE MLC OR THEIR  
FORMER UNIONS IN THE PROCESS TO CHANGE  
TO A MEDICARE ADVANTAGE PLAN**

195. One of the saddest and most mind-spinning aspects of this sordid affair has been the City’s suggestion that Petitioners and Retirees have been represented in this decision by the MLC; or by the unions that used to represent Petitioners when they were active employees. It is black letter law that unions do not represent retirees. Stemming from the U.S. Supreme Court’s decision in *Allied Chemical* 404 US 157, through § 201.7. (a) of Article 14 the Civil Service Law, through *Burnham and UFT*, 28 PERB 4590, *McDonald PBA v City of Geneva*, 92 N.Y.2d 326, and *Kolbe v Tibbetts*, 22 NY3d 344, retirees are not employees for the purposes of collective bargaining.

196. The City’s actions – and suggestions that retirees were somehow represented, consulted, listened to – is simple arrogance. The City knew retirees were not represented by their former unions or anyone else. Yet the City acted like a schoolyard bully, knowing that people who had served the City honorably, often at the expense of their own health – for many retirees are on service-related disability benefits – had limited resources to fight City Hall.



**THE CITY AND THE ALLIANCE HAVE MATERIALLY  
MISLED RETIREES ABOUT THE NEW PLAN**

197. Beginning in the summer of 2021, amidst rumors and fears, the City and representatives from the Alliance held several Zoom meetings with small groups of retirees. In those presentations, the Alliance representatives often misled retirees. The supposed benefits of the Alliance Medicare Advantage plan were often misrepresented, exaggerated, and changed from presentation to presentation. When Petitioners and retirees called the hotline set up by the City and the Alliance, representatives gave misleading and often contradictory information.

198. For example, NYC Medicare Advantage Plus Plan dedicated phone number representatives told Retiree Ava Newman Sterling on two separate occasions that her doctors would accept the plan. When Ms. Sterling saw one of her doctors on September 20th, 2021, his billing department representatives told her that they had not heard of the plan and did not know whether or not they would accept it.

199. In another instance, dedicated telephone representatives told Ms. Sterling that the doctors who would be involved in telehealth visits through the plan would not be her own doctors and that her own doctors will likely stop receiving payments for telehealth visits through the plan because they are pandemic-specific visits. In contrast, Ms. Sterling recently received a NYC Medicare Advantage Plus Plan booklet which states that telehealth visits are covered.

200. On one occasion, representatives told Ms. Sterling that, under the plan, complicated tests would require precertification if they were “medically necessary.” On a separate occasion, representatives told Ms. Sterling that, without extensive documentation, her precertification for such tests would likely be denied.

201. Representatives told another Retiree, Mark L. Pohl, that Memorial Sloan Kettering Cancer Center (“MSK”) would accept the plan but when Mr. Pohl spoke with MSK representatives, they told him that MSK has not accepted the plan and that there is no agreement to cover patients who have the plan.

202. One representative told Retiree Marina Sgroi on September 7, 2021, that the plan would not pay “excess charges” (e.g., an additional 5-15%). Another representative told Ms. Sgroi on September 16, 2021, that the plan would cover excess charges if the provider accepted the plan.

203. One representative told Retiree Dana Sutton via email on September 12, 2021, that the cost of an optional 365-day hospital rider would be covered for those Retirees who have the “full-option” plan, while another representative told her that the rider is only available as part of a prescription plan. Dr. Sutton’s monthly hospital rider fee is currently charged separately from her pension, while her union – the Professional Staff Congress of the City University of New York – manages her Medicare Part D prescription plan. This indicates that hospital rider coverage depends on each Retiree’s former employer and union, contradicting the advice that dedicated NYC Medicare Advantage Plus Plan phone representatives gave Dr. Sutton.

204. The City’s misrepresentations about the plan and the rushed schedule have prohibited Retirees from making an informed decision about what is available to them or which plan is best for them. Those arbitrary and capricious actions by the City were an abuse of its discretion and cause significant harm and risk to Retirees.

### **THE PETITIONERS’ PROTESTS**

205. On September 14, 2021, a letter was sent from Petitioners to Renee Campion, Commissioner of the NYC Office of Labor Relations. In that letter,

Petitioners asked OLR to halt the implementation of the new Alliance Medicare Advantage plan, reconsider it, and meet and confer with members of the Petitioner's organization (Exhibit J).

### **THE CITY'S DENIAL OF PETITIONERS' PROTESTS**

206. On September 17, 2021, Commissioner Campion wrote to Petitioners denying their request that implementation be halted. Commissioner Campion did not even deign to respond to Petitioners' request for a meet-and-confer (Exhibit K). This amounted to a final administrative determination.

207. The City's refusal to consider Retirees' request to delay implementation of the plan in light of the many misrepresentations about the plan by the city and Alliance representatives; and its refusal to meet with Retirees to discuss the plan, Retirees' rights, options, or alternatives is arbitrary, capricious, and an abuse of its discretion.

### **THE CITY'S DEPRIVATION OF PETITIONERS' RIGHTS AND BENEFITS IS CONTRARY TO BOTH STATUTE AND CONTRACT**

208. The City's decision to forcibly change Retirees' healthcare plan from their exiting plan to the new Alliance Medicare Advantage plan, force retirees to opt out of the new plan, and force them to pay a \$191.57 per month per person premium to keep their existing GHI Senior Care plan is contrary to both the contracts in place when Petitioners retired, and what they are entitled to under law. Under both the New York City Administrative Code § 12-126 and the individual contracts petitioners had in place when they retired, the City would pay for health care plans up to the price of the HIP-HMO. The cost of petitioners' existing GHI Senior Care plan is far below the statutory cap established by § 12-126, and Petitioners and retirees are entitled to that benefit.

209. By contract, Petitioners and retirees were entitled to change their choice of health plan in even-numbered years, and once at any time during their retirement. This power of choice was exclusively the retirees'; nothing in any contract gives that power to the City.

210. The City's failure to abide by the statutory provision of city administrative Code §12-126, or the benefits provisions of myriad CBAs is arbitrary, capricious, and abuse of discretion.

**THE CITY'S PLAN TO IMPOSE THE ALLIANCE MEDICARE ADVANTAGE PLAN ON RETIREES IS ARBITRARY AND CAPRICIOUS, AND AN ABUSE OF ITS DISCRETION**

211. The City's decision to forcibly change Retirees' healthcare plan from their exiting plan to the new Alliance Medicare Advantage plan, force retirees to opt out of the new plan, and force them to pay a \$191.57 per month per person premium if they wish to keep their existing GHI Senior Care plan is arbitrary, capricious, and an abuse of the City's discretion.

212. The City has an obligation to enforce the laws and abide by its contracts. By failing to pay for a retirement plan that it continues to offer – the GHI Senior Plan – whose cost is beneath the statutory cap set by City Administrative Code §12-126 is arbitrary, capricious, and an abuse of Discretion

213. The City's own SPD details retirees' options and benefits. Nowhere in any SPD did the City ever tell employees or retirees that the City had the right to change retirees' health plans. Nor did any SPD tell employees or retirees that the City could choose not to pay for retirees' healthcare plan up to the statutory limit. No SPD made such claims because it could not: no law, no contract, no past practice gave the City that

power. The City's decision to ignore the guidance it puts forth in its SPD is arbitrary, capricious, and abuse of its discretion.

214. The City is required by law – specifically the Taylor Law – to negotiate benefits such as health care with properly authorized unions. There is no question that health benefits for employees and future retirees are subjects that come under the ambit of the Taylor Law. Consequently, the City has negotiated with the municipal unions about those benefits for years. Yet no CBA entered into by the City and its many unions ever included a retirement benefit that specified a Medicare Advantage plan. Yet by its actions in trying to impose the Alliance Medicare Advantage plan on Retirees effective January 1, 2022, the City is imposing a material change on a benefit that was not a subject of collective bargaining when the now-retiree was still an active employee and subject to the collective bargaining process. The City's attempt to impose a new benefit of employment on people no longer employed is arbitrary, capricious, and an abuse of discretion.

215. The City's SPD does, however, specify that retirees are entitled to the benefits that were in place when they retired. And because no CBA ever specified a Medicare Advantage plan would affect retirees, it is arbitrary, capricious, and an abuse of discretion for the City to now claim that such a plan should be imposed on retirees retrospectively.

216. The City's intent to force retirees to affirmatively opt-out of a new Medicare advantage plan that they never chose is an abuse of the discretion the City enjoys in administering benefits for retirees. Similarly, the City's decision to impose a

monthly fee on retirees who wish to keep the Medigap policy they have enjoyed at no cost is an abuse of discretion.

217. The City's failure to hold a public hearing about the proposed Medicare Advantage plan, as required by the City Charter, is arbitrary, capricious, and an abuse of discretion.

218. The City's failure failed to publish the plan in in the City Record as required by the City's Procurement Policy, is arbitrary, capricious, and an abuse of discretion.

219. The City's refusal to meet and confer with the Retirees is arbitrary, capricious, and an abuse of discretion.

220. The City's misrepresentation of the benefits and costs of the new plan to retirees is arbitrary, capricious, and an abuse of discretion.

221. The City rejected an alternative design and provider for a Medicare Advantage plan that actually scored higher on the criteria established by the City to assess alternative bids.

222. The City's behavior in designing a health plan in secret, refusing to meet with retirees, failing to seek input from the people whose lives will be affected, misrepresenting the limitations of the plan, abrogating the rights of Retirees to exclusively choose and change their own health plan, rushing Retirees to act on incomplete and often contradictory information, refusing to pay for a plan that is with the statutory dollar cap, and forcing Retirees to pay to keep their existing plan is the very definition of arbitrary and capricious.

### **CLAIM FOR RELIEF UNDER ARTICLE 78**

223. Petitioners reallege and repeat the allegations of all paragraphs above.

224. The decisions of the City Respondents in connection with the imposition of the Alliance Medicare Advantage plan should be reversed, vacated, set aside, and enjoined under Article 78 of the CPLR.

225. The decisions of the City Respondents to require retirees who wish not to accept the Medicare Advantage plan to have to affirmatively opt-out of their existing health plan should be reversed, vacated, set aside, and enjoined under Article 78 of the CPLR.

226. The decisions of the City Respondents to impose a monthly fee on retirees who wish to retain their existing GHI Senior Care Medigap plan should be reversed, vacated, set aside, and enjoined under Article 78 of the CPLR.

227. Those decisions by Respondents were made in violation of valid contracts and statute; were an abuse of discretion; and were arbitrary and capricious,

228. The Respondents failed to abide by lawful, in-force contracts, by past practice, and by statute.

229. Petitioners have no adequate remedy at law.

WHEREFORE, Petitioners respectfully request that the Court enter judgment as follows:

230. Reversing, vacating, setting aside, and enjoining its plan to impose a Medicare Advantage plan on retirees.

231. Reversing, vacating, setting aside, and enjoining its plan to force to opt-out of their current health plan.

232. Reversing, vacating, setting aside, and enjoining its plan to force retirees to pay a premium for their existing health plan.

233. Awarding Petitioners their attorney's fees and costs.

234. Awarding Petitioners any further and other relief as the Court may deem just and appropriate.

Dated: September 26, 2021  
New York, NY

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