SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LYLE E. FRANK** **PART** **11M**

Justice

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ROBERT BENTKOWSKI, KAREN ENGEL, MICHELLE FEINMAN, NANCY LOSINNO, JOHN MIHOVICS, KAREN MILLER, ERICA RHINE, ELLEN RIESER, BEVERLY ZIMMERMAN, THE NEW YORK CITY ORGANIZATION OF PUBLIC SERVICE RETIREES, INC.,

Petitioner,

- v -

THE CITY OF NEW YORK, ERIC ADAMS, THE CITY OF NEW YORK OFFICE OF LABOR RELATIONS, RENEE CAMPION, THE NEW YORK CITY DEPARTMENT OF EDUCATION, DAVID C. BANKS,

Respondent.

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INDEX NO. 154962/2023

MOTION DATE 06/05/2023

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents: NYSCEF document numbers 1 through 58 inclusive, 82 through 90 inclusive and 92. The Court also reviewed additional documents on sequences 3 and 4 that were relevant to the issues of this motion.

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

Preliminarily, the Decision and Order of this Court dated June 6, 2023, is vacated. The following Decision and Order is limited only to the Order to Show Cause seeking injunctive relief[1].

The petitioners bring this action pursuant to Article 78, to annul the respondents', collectively referred to as the "City", implementation of a new healthcare plan for City retirees. Petitioners allege that the City has unlawfully tried to divest Medicare-eligible retirees and their dependents of promised healthcare benefits by attempting to switch the retirees from their existing healthcare plans to an inferior plan, the Aetna Medicaid Advantage Plan.

[1] The Court would like to thank Bani Bedi for her assistance in this matter.

Petitioners now move for a preliminary injunction enjoining the City from forcing retirees to switch from their existing healthcare benefits, and from being required to either enroll in an Aetna Medicare Advantage Plan or seek their own health coverage. The City opposes the instant application. For the reasons set forth below, the petitioners' application for a preliminary injunction is granted.

Legal Standard

A party seeking a preliminary injunction must clearly demonstrate (1) the likelihood of ultimate success on the merits; (2) the prospect of irreparable injury if the injunction is not issued; and (3) a balance of the equities in the movant's favor. (*Doe v Axelrod*, 73 NY2d 748 [1988]; *Housing Works, Inc. v City of New York*, 255 AD2d 209 [1st Dept 1998]).

Discussion

First, the Court finds that the petitioners have shown by clear and convincing evidence that there is a likelihood of success on the merits. The Court agrees that it is likely that this Court will ultimately find that the respondents are estopped from switching retirees into a Medicare Advantage Plan and that New York City Administrative Code section 12-126 does not permit the action that the City plans to take. Moreover, the Court also feels that some of the petitioners are likely to succeed on the merits based on the "Moratorium Law" and that there is too much uncertainty as to what doctors and other medical providers will accept the proposed new plan, this rendering the plan arbitrary and capricious as things presently stand.

The Court finds that the petitioners have a promissory estoppel claim that is likely to succeed. Promissory estoppel requires "a clear and unambiguous promise, reasonable and foreseeable reliance by the party to whom the promise is made, and an injury sustained in reliance on that promise." *Odonata Ltd. v Baja* 137 LLC, 206 AD3d 567, 569 [1st Dept 2022]. The petitioners

have shown that numerous promises were made by the City to then New York City employees and future retirees that they would receive a Medicare supplemental plan when they retired, and that their first level of coverage once that retired would by Medicare.

Respondents have argued that the promises were not definite and were not forward looking. The Court respectfully disagrees. When words such as "will" are used, that is to this Court a promise that is future looking. Finally, this Court does not believe that any of the prior case law cited by the parties is entirely on point. This is a very unique set of facts.

In addition, the petitioners argue that retirees have suffered and will suffer injuries because of detrimental reliance on the City's promise. The Court finds that this unambiguous promise is likely sufficient to ultimately find estoppel in this action.

The Court is also convinced that the action by the City will likely be found to be in violation of New York City Administrative Code Section 12-126. This section provides that "[t]he City will pay the entire cost of health insurance coverage for city employees, city retirees, and their dependents…To this Court, this wording is unambiguous and applies to this matter. Moreover, the history of section 12-126 shows that the City intended to provide all retired employees health plans and intended to assume full payment for them. Gardener Aff., Ex. H at 27-28. This section was originally enacted through the City's expanded powers, under a 1965 amendment to General City Law § 20, passed around the same time as § 12-126, empowering the City to pay the "for premium charges for supplementary medical insurance benefits under the federal old-age, survivors and disability insurance benefit program." New York State General City Law § 20(29-b). The 1965 Resolution announcing these health benefits stated that "it is the desire and intent of the City of New York to grant to all of its retired employees … a choice of health plans … and the City shall assume full payment for such health and hospital insurance

...." Gardener Aff., Ex. H at 76. The City correctly notes that section 12-126 does not require the City to provide a choice of plans. Nonetheless, to this Court, section 12-126 does appear to be a codification that the City must pay "the entire cost of health insurance coverage." There has also been discussion that the proposed plan is premium free. The Court finds this argument unavailing, as the Court notes that section 12-126 of the Code makes no mention of the word "premium" but rather uses the word "coverage." N.Y.C. Admin. Code § 12-126.

Lastly, this Court finds that at this stage there appear to be many retirees who are unaware of whether their doctors will accept the proposed new Aetna plan and have not received sufficient information about the plan to make an informed decision. The petitioners have presented examples of potentially misleading information made available to retirees. Respondents have argued that retirees possess sufficient information about the switch already. However, as this involves people who are often elderly and/or infirm, this Court must enjoin the City from going ahead with this plan until such time as the City has shown this Court that those that will be affected are fully aware of the ramifications of this plan, so that they can make an informed choice of whether they will opt in.

As this Court finds that the petitioners have established a likelihood of success on the merits with these factors, the Court does not reach the other issues argued by petitioners.

To this Court, the issue of irreparable harm and balance of the equities both clearly favor the petitioners. The City argues in opposition, that petitioners have not been able to prove that the Aetna Medicare Advantage Plan is inferior and delaying this new policy will derail the City's plans. Petitioners in turn argue that hundreds of thousands of retirees may suffer disruptions in medical care if the City is not enjoined. As this matter deals with health decisions of an ageing and a potentially vulnerable population, mostly on fixed incomes, any lapse in care for these

people could lead to deleterious impacts. Moreover, at oral argument, the attorney for Aetna acknowledged that there would very likely be situations where medical care deemed to be needed by a doctor for a retiree could be turned down, and certain medical facilities would be unavailable to retirees. To this Court, this demonstrates that should this plan go forward, irreparable harm would result. There can be no more specific irreparable harm than this. The balance of the equities to this Court clearly weight in favor of petitioners, due to their possible loss of parts of their health care coverage.

Petitioners have by clear and convincing evidence met the requisite burden for a preliminary injunction by exhibiting the likelihood of ultimate success on the merits, the prospect of irreparable injury in absence of injunctive relief, and the balance of equities weighing in the petitioners' favor. Accordingly, it is hereby

ORDERED that the Decision and Order of this Court dated June 6, 2023, is hereby VACATED; and it is further

ORDERED that the Petitioners' application for preliminary injunction is granted and Respondents are temporarily enjoined until further order of this Court from requiring any City retirees, and their dependents from being removed from their current health insurance plan(s), and from being required to either enroll in an Aetna Medicare Advantage Plan or seek their own health coverage.

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7/6/2023
DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
	X	GRANTED		DENIED		GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE