

Court of Appeals
STATE OF NEW YORK

In the Matter of the Application of

NYC ORGANIZATION OF PUBLIC SERVICE RETIREES, INC.,
LISA FLANZRAICH, BENAY WAITZMAN, LINDA WOOLVERTON,
ED FERINGTON, MERRI TURK LASKY, and PHYLLIS LIPMAN,

Plaintiffs-Respondents,

—against—

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

Defendants-Appellants.

**BRIEF IN SUPPORT OF MOTION FOR LEAVE TO FILE
AMICI CURIAE BRIEF ON BEHALF OF THE NEW YORK CITY
CORRECTION CAPTAINS ASSOCIATION; UNIFORMED EMTS,
PARAMEDICS & FIRE INSPECTORS FDNY, LOCAL 2507, DISTRICT
COUNCIL 37, AFSCME, AFL-CIO; THE INTERNATIONAL
ORGANIZATION OF MASTERS, MATES & PILOTS, AFL-CIO;
UNITED ASSOCIATION PLUMBERS LOCAL 1; AND LOCAL
UNION 924, DISTRICT COUNCIL 37, AFSCME, AFL-CIO,
IN SUPPORT OF PLAINTIFFS-RESPONDENTS**

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January 23, 2024

STATEMENT OF RELATED LITIGATION

Pursuant to Rule 500.13(a) of the Rules of Practice of the Court of Appeals of the State of New York, the Unions state that, as of the date of the filing of this amicus brief, there is related litigation, *Bentkowski v. City of New York*, New York County Clerk's Index No. 154962/2023, pending before the Appellate Division, First Department.

DISCLOSURE UNDER COURT OF APPEALS RULE 500.1(f)

Pursuant to Rule 500.1(f) of the Rules of Practice of the Court of Appeals of the State of New York, the New York City Correction Captains Association is an independent union and has no parents, subsidiaries or affiliates; the parent of the Uniformed EMTs, Paramedics & Fire Inspectors FDNY, Local 2507, District Council 37, AFSCME, AFL-CIO is District Council 37; the parent of the International Organization of Masters, Mates & Pilots, AFL-CIO is the AFL-CIO; the parent of United Association Plumbers Local 1 is the United Association; and the parent of Local Union 924, District Council 37, AFSCME, AFL-CIO, is District Council 37.

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PRELIMINARY STATEMENT

New York City Correction Captains Association; Uniformed EMTs, Paramedics & Fire Inspectors FDNY, Local 2507, District Council 37, AFSCME, AFL-CIO; International Organization of Masters, Mates & Pilots, AFL-CIO; United Association Plumbers Local 1; and Local Union 924, District Council 37, AFSCME, AFL-CIO (“Unions”) submit this *amicus curiae* brief in support of Petitioners-Respondents, to protect the healthcare rights of Medicare-eligible (*i.e.*, older and/or disabled) retired New York City municipal workers and their Medicare-eligible dependents (collectively, “Retirees”).

The New York City Correction Captains Association is the certified bargaining representative for all employees of the New York City Department of Correction who hold the competitive civil service title of Correction Captain pursuant to New York City Administrative Code (“Administrative Code”) Title 12, Chapter 3 (the “New York City Collective Bargaining Law”).

Uniformed EMTs, Paramedics & Fire Inspectors FDNY, Local 2507, District Council 37, AFSCME, AFL-CIO, represents Emergency Medical Technicians and Paramedics who provide life-saving medical care to the citizens of New York City, and Fire Protection Inspectors who ensure fire safety and the lives of New York City citizens by inspecting buildings and ensuring compliance with City regulations. Local 2507’s members respond to emergencies, provide life-saving care, and operate

in dangerous conditions. They were first responders on 9/11, when they risked their lives and, in some cases, developed serious medical conditions as a result of their service to the City.

The International Organization of Masters, Mates & Pilots, AFL-CIO (“MM&P”) represents maritime professionals employed aboard all types of vessels in the inland waters of the United States and upon the high seas. Organized in 1887 in New York Harbor, the membership of MM&P includes the unlicensed crew members of the Staten Island Ferries as well as some 5000 other mariners employed in the U.S. Merchant Marine in licensed and unlicensed capacities. MM&P offices and hiring halls are located in major ports on all coasts of the United States, including the Great Lakes, Puerto Rico, and Hawaii.

United Association (“UA”) Plumbers Local 1 represents members who work in commercial, industrial, and service applications in commercial and residential construction. Its workforce provides sophisticated piping systems from underground installations to final connections of fixtures and equipment. Its members all graduate from the UA certified and accredited joint apprenticeship training program, providing New York City with the best journeymen in the industry. From Yankee Stadium and Citi Field, to airports, hotels, educational institutions, and residential homes, its members keep New York City flowing.

Local Union 924, District Council 37, AFSCME, AFL-CIO, founded in 1945, represents City employees in an entry-level prevailing rate public service construction title. The primary function of the City employees in this title is to assist the skilled trade titles that work in public service, but employees in Local Union 924 also carry out multiple other responsibilities, such as demolition, heavy lifting, and landscaping.

These Unions' leaders know what their predecessors did to protect their members to build a strong labor movement in New York City. They know what their predecessors gave up so that current members would have the benefits they have today.

As union leaders, their respective jobs are to protect those benefits as a floor and build upon them going forward. Retirees earned and paid for their benefits. If union leaders do not protect those benefits, it will open a Pandora's box for the City to repeatedly seek to diminish benefits for their retirees until there is nothing. It is wrong for the City to sell off benefits for current retirees because once that occurs, the City will keep expecting unions to keep agreeing to do it, over and over, leaving retirees, who have no say in the process, much less than they were originally promised and relied upon when making critical life choice decisions.

Simply put, the City has attempted to diminish Retirees' health benefits for the City's financial benefit, ignoring the City's obligations under Administrative Code Section 12-126.

The City should not be forcing Retirees from traditional Medicare plus a Medicare Supplement into an inferior privatized Medicare plan (confusingly called "Medicare Advantage") wrought with prior authorizations and narrow networks, and which Retirees' doctors and hospitals do not accept.

Retirees were promised both verbally and in writing that they would have a choice of health plans, including traditional Medicare and a Medicare Supplement paid for by the City. Under Administrative Code Section 12-126, the City is obligated to pay the full cost of health coverage up to the HIP-HMO rate for every Retiree.

Retirees accepted reduced wages, compared to their private sector counterparts, because of the City's promise of "deferred compensation" which included in part, a choice of health plans, including traditional Medicare plus a Medicare Supplement paid for by the City, and a pension.

Petitioners-Respondents were right to litigate this issue. The City has not only attempted to diminish a promised benefit, renege on a promise the City made to Retirees, but it has also made it more difficult for the City to attract workers to City jobs. Who would want to work for the City, knowing that the promises made

to them after years of loyal service could be walked back in retirement when they are no longer employees?

While the Unions are in the Municipal Labor Committee (“MLC”), an administrative umbrella association, the opinions of the MLC are not always in line with those of the Unions.

The Unions know of no other instance in which the MLC has participated in taking away promised health care for City retirees, and this is a bad precedent and one which should not go unnoticed.

Petitioners-Respondents and other *amici curiae* have demonstrated that the Medicare Advantage plan at issue here is not comparable to the healthcare that most Retirees currently receive – traditional Medicare plus a Medicare Supplemental Plan, Senior Care – because Medicare Advantage plans have limited networks of healthcare providers and prior authorizations, which delay and deny care, resulting in decreased quality of care for patients and higher costs for taxpayers.

The Court of Appeals should affirm the order below.

ARGUMENT

POINT I

ADMINISTRATIVE CODE SECTION 12-126 REQUIRES THE CITY TO PROVIDE HEALTH INSURANCE COVERAGE FOR RETIREES AND TO PAY FOR SUCH INSURANCE UP TO A MAXIMUM AMOUNT.

The Petitioners-Respondents' brief details that Administrative Code Section 12-126 ("Section 12-126") requires the City to provide health insurance coverage for Retirees and to pay for such insurance up to a maximum amount. We endorse the arguments in that brief. The statutory source of the healthcare rights of Retirees is Administrative Code § 12-126, which requires the City to provide health insurance coverage to Retirees, among others, and to pay for such insurance up to this maximum amount (the "statutory cap"). The statute states, in relevant part: "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." Administrative Code § 12-126(b)(1). "Health insurance coverage" is defined to mean the City's entire "program of [health] benefits." *Id.* § 12-126(a)(iv). Section 12-126 clearly requires the City to pay up to the statutory cap for *any* health insurance plan a Retiree selects.

The City's Health Benefits Program has always offered Retirees a selection of health insurance plans and for the past 56 years, the City has funded whichever plan a Retiree has chosen for him or herself. The right to lifelong City-funded health insurance of one's choice is a major reason why the Unions' members worked for the City.

POINT II
RETIREES DO NOT HAVE THEIR OWN UNIQUE STATUTORY
CAP THAT IS PEGGED TO A PLAN THAT COSTS \$7.50 PER PERSON
PER MONTH (A FRACTION OF THE COST OF THEIR EXISTING
HEALTH INSURANCE), AS CLAIMED BY THE CITY.

Because the City failed to make the argument in Supreme Court that Retirees are subject to their own unique statutory cap of the HIP VIP Premier Medicare Plan (commonly known as “HIP-VIP”) of \$7.50 per person per month, the argument is not preserved for this Court’s review. Further, contrary to the City’s position, HIP-VIP does not and has never set the statutory cap for Retirees. We adopt the Petitioners-Respondents’ arguments in their brief.

In addition, we note the absurdity of the City’s argument that a statutory cap for Retirees would be pegged to a plan that costs only \$7.50 per person per month.

CONCLUSION

For the reasons set forth above, the City's arguments regarding Section 12-126 are meritless, as both Supreme Court and Appellate Division correctly held, and *amici curiae* Unions request that this Court affirm the order below.

Dated: January 23, 2024
Bronx, New York

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WORD COUNT CERTIFICATION

I hereby certify pursuant to 22 N.Y.C.R.R. Section 500.13(c)(1) that the foregoing brief was prepared on a computer using Microsoft Office Word, using typeface Times New Roman 14. The total number of words in this brief is 1,428.

Dated: Bronx, New York
 January 23, 2024

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