STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

In the Matter of the Application of
RETIRED PUBLIC EMPLOYEES ASSOCIATION, INC.; STANLEY WINTER, as an Individual and President, Retired Public Employees Association, Inc.; ALAN DORN, as an Individual and Executive Director, Retired Public Employees Association, Inc.; HON. JULES L. SPODEK; HON. DAVID R. TOWNSEND; HELEN M. BULSON; VICTOR L. COSTELLO; JOY GODIN; FRANCIS HAMBLIN; A. JOANNE LANTZ; WILLIAM C. MOORE; JOHN H. NEARY; DAVID B. SMINGLER; KATHLEEN STALLMER; and FROSINE STOLIS,

Plaintiffs-Petitioners,

For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules,

-against-

HON. ANDREW CUOMO, Governor, State of New York; NEW YORK STATE DEPARTMENT OF CIVIL SERVICE; NEW YORK STATE CIVIL SERVICE COMMISSION; PATRICIA HITE, Acting President, New York State Civil Service Commission; NEW YORK STATE HEALTH INSURANCE PROGRAM; STATE DIRECTOR OF THE BUDGET; DIRECTOR OF EMPLOYEE RELATIONS, GOVERNOR'S OFFICE OF EMPLOYEE RELATIONS; and NEW YORK STATE COMPTROLLER as a Necessary Party,

Defendants-Respondents.

Supreme Court Albany County Article 78 Term
Hon. George B. Ceresia, Jr., Supreme Court Justice Presiding
RJI No. 01-11-ST3216 Index No. 7586-11

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DECISION/ORDER/JUDGMENT

George B. Ceresia, Jr., Justice

Respondents-Defendants ("respondents") move pursuant to CPLR 3211(a)(7) to dismiss petitioners-plaintiffs' ("petitioners") hybrid Article 78/declaratory judgment proceeding/action on the ground that petitioners' petition/complaint ("petition") fails to state a cause of action.

Petitioners are retired public employees who seek a declaration that respondents' implementation of the 2011 amendment of Civil Service Law § 167(8) is invalid, an injunction against implementing Civil Service Law § 167(8), and return of monies paid by public retirees as a result of respondents' implementation of Civil Service Law § 167(8). New York State ("State") makes subsidized health insurance available to current and retired public employees through various providers including respondent New York State Health Insurance Program ("NYSHIP"). Until 1983, the State paid 100 % of the health insurance premiums for retirees. The State then determined to continue paying 100 % of the health premiums for those retirees who retired prior to January 1, 1983 and only 90 % (or 75 % of their dependants' coverage) for employees who retired thereafter.

Civil Service Law § 167(1)(a),which was enacted in 1983, provides that:

> "The full cost of premium or subscription charges for the coverage of retired state employees who are enrolled in the statewide and the supplementary health benefit plans established pursuant to this article and who retired prior to January first, nineteen hundred eighty-three shall be paid by the state. Nine-tenths of the cost of premium or subscription charges for the coverage of state employees and retired state employees retiring on or after January first, nineteen hundred eighty-three who are enrolled in the statewide and supplementary health benefit plans shall be paid by the state. Three-quarters of the cost of premium or subscription charges for the coverage of dependents of such state employees and retired state employees shall be paid by the state. Except as provided in paragraph (b) of this subdivision, the state shall contribute toward the premium or subscription charges for the coverage of each state employee or retired state employee who is enrolled in an optional benefit plan and for the dependents of such state employee or retired state employee the same dollar amount which would be paid by the state for the premium or subscription charges for the coverage of such state employee or retired state employee and his or her dependents if he or she were enrolled in the statewide and the supplementary health benefit plans, but not in excess of the premium or subscription charges for the coverage of such state employee or retired state employee and his or her dependents under such optional benefit plan. For purposes of this subdivision, employees of the state colleges of agriculture, home economics, industrial labor relations, and veterinary medicine, the state agricultural experiment station at Geneva, and any other institution or agency under the management and control of Cornell university as the representative of the board of trustees of the state university of New York, and employees of the state college of ceramics under the management and control of Alfred university as the representative of the board of trustees of the state university of New York, shall be deemed to be state employees whose salaries or compensation are paid directly by the state.

In 2011 when faced with severe fiscal challenges, the Executive and Legislature sought to reduce the State's costs for subsidizing health care costs for those who participate in NYSHIP by further reducing the State's percentage of contribution. To this end, Civil Service Law § 167(8) was amended to permit further reductions in the State's contributions on behalf of employees in the event that the State and unions agreed to such reductions. The

statute also specifically authorizes the President of the Civil Service Commission to implement the same reductions in contributions on behalf of retirees and employees who are not subject to the negotiated agreements. Civil Service Law § 167(8) states that:

> "**Notwithstanding any inconsistent provision of law**, where and to the extent that an agreement between the state and an employee organization entered into pursuant to article fourteen of this chapter so provides, the state cost of premium or subscription charges for eligible employees covered by such agreement may be modified pursuant to the terms of such agreement. **The president, with the approval of the director of the budget, may extend the modified state cost of premium or subscription charges for employees or retirees not subject to an agreement referenced above** and shall promulgate the necessary rules or regulations to implement this provision (emphasis added)."

The State and Civil Service Employee Association ("CSEA") agreed to a 2 % increase in employee contributions to health care. After the State and a union agreed to the changes, the President of the Civil Service Commission applied the same contribution formula to "retirees," who retired after 1983 pursuant to Civil Service Law § 167(8).

Petitioners challenge the 2 % increase in the retirees' contribution to retirees' health care premiums on three grounds. Petitioners urge that respondents' action must be invalidated because it (1) violates Civil Service Law § 167(1)(a) and is therefore ultra vires; (2) violates the Contract Clauses contained in the United States Constitution, Article 1, Section 10(1) and the New York State Constitution, Article 1, Section 6; and (3) violates the New York State Constitution, Article 3, Section 1 because the legislative power of the State is vested in the Legislature and the Legislature has not delegated authority to respondents to increase contributions by retirees.

CPLR 3211(a)(7) provides that "[a] party may move for judgment dismissing one or more causes of action asserted against him on the ground that:... the pleading fails to state a cause of action." On a CPLR 3211(a)(7) motion, the Court's role is limited to deciding whether the facts as alleged in the petition fit within a cognizable legal theory (Maas v Cornell Univ., 94 NY2d 87, 91 [1999]; Cron v Hargro Fabrics, 91 NY2d 362, 366 [1998]). When doing so, the Court must afford the petition a liberal construction, accept as true the allegations contained therein, and accord the proponent of the cause of action the benefit of every favorable inference and cognizable legal theory (Hurrell-Harring v State of New York, 15 NY3d 8, 20 [2010]; EBC I, Inc. v Goldman, Sachs & Co., 5 NY3d 11, 19 [2005]; SUS, Inc. v St. Paul Travelers Group, 75 AD3d 740, 741-742 [3d Dept., 2010]; Shebar v Metropolitan Life Ins. Co., 25 AD3d 858, 859 [3d Dept., 2006]; Skibinsky v State Farm Fire & Cas. Co., 6 AD3d 975, 976 [3d Dept., 2004]; 1455 Washington Ave. Assoc. v Rose & Kiernan, Inc., 260 AD2d 770, 771 [3d Dept., 1999]).

Further, whatever can reasonably be implied from allegations in the pleadings and petitioners' supporting affidavits must be deemed to be true (Cron v Hargro Fabrics, 91 NY2d 362, 366 [1998]; Korenman v Zaydelman, 237 AD2d 711, 713 [3d Dept., 1997]). Unlike motions for summary judgment, the Court's sole inquiry on this motion to dismiss is whether the facts alleged in the petition fit within a cognizable legal theory.

With respect to the first cause of action, the petitioners, in advancing the argument that the 2% increase in retirees' contribution to their health care premiums violates Civil Service Law § 167 (1) (a), ignore the 2011 amendment to said section which added subdivision (8). In this respect, they fail to address the statutory basis of respondents'

challenged actions and fail to address the question of whether respondents complied with Civil Service Law § 167(8).

Even assuming for the purposes of the argument that the petitioners had acknowledged Civil Service Law § 167(8)'s existence, petitioners' assumption that Civil Service Law § 167(8) has no effect must be rejected. It is fundamental that a court, in interpreting statutes, should attempt to effectuate the Legislature's intent (Matter of Majewski v Broadalbin-Perth Cent. School Dist., 91 NY2d 577, 583 [1998]; Patrolmen's Benevolent Assn. v City of New York, 41 NY2d 205, 208 [1976]; McKinney's Cons Laws of NY, Book 1 Statutes § 92, pp 176-177). Legislation should be interpreted so as to give effect to every provision. A construction that would render a provision superfluous is to be avoided (Amorosi v South Colonie Independent Cent. School Dist., 9 NY3d 367, 373 [2007]; Matter of Majewski v Broadalbin-Perth Cent. School Dist., 91 NY2d 577, 587 [1998]; Matter of OnBank & Trust Co., 90 NY2d 725, 731 [1997]; Matter of Roosevelt Raceway v Monaghan, 9 NY2d 293, 305-306 [1961]; Statutes § 98[a]).

The Court also rejects petitioners' assumption that until Civil Service Law § 167(1)(a) is repealed it imposes an unalterable obligation on the State to make health care contributions at the prior rate for public retirees. Since the Legislature clearly did not express an intent to invalidate Civil Service Law § 167(8) with Civil Service Law § 167(1)(a) (see Matter of Dutchess County Dept., of Social Servs. [Day] v Day, 96 NY2d 149, 153 [2001]; see also McKinney's Cons Law of NY, Book 1, Statutes § 221), Civil Service Law § 167(1)(a) and Civil Service Law § 167(8) should be construed "'in a way that renders them internally compatible'" (Matter of Dutchess County Dept., of Social Servs. [Day] v Day, 96 NY2d 149,

153 [2001]; Troy Police Benevolent and Protective Ass'n.,Inc. v City Of Troy, 299 AD2d 710 [3d Dept., 2002]). Read in conjunction with Civil Service Law § 167(8), Civil Service Law § 167(1)(a) only governs the State's level of contribution until such time as the State and a union agree to changes in the contribution levels and the President of the Civil Service Commission acts pursuant Civil Service Law § 167(8) to apply the changed contributions to retirees.

Petitioners' argument that Civil Service Law § 167(1)(a) is not affected by Civil Service Law § 167(8) is at odds with the statutory language. Civil Service Law § 167(8) begins with the phrase "[n]otwithstanding any inconsistent provision of law." Phrases such as "notwithstanding any provision of law to the contrary" or "notwithstanding any law to the contrary," are verbal formulations frequently employed by the Legislature where it intends to preempt any other potentially conflicting statute, wherever found in the State's laws (People v Mitchell, 15 NY3d 93, 97 [2010]; Niagara County v. Power Authority of State, 82 AD3d 1597, 1601 [4th Dept., 2011]). Thus, where implementation of Civil Service Law § 167(8)'s provisions results in different levels of contribution from those that would result from applying other laws such as Civil Service Law § 167(1)(a), Civil Service Law § 167(8)'s provisions takes precedence.

Petitioners' failure to support their conclusory allegations that respondents' determination to apply the formula to retirees is arbitrary and capricious, without authority and ultra vires also requires that their first cause of action be dismissed. To meet their burden, petitioners need to support their conclusions by providing specific facts and analysis. Petitioners' unsupported conclusory statements are insufficient by themselves to state a cause

of action (Matter of Federation of Mental Health Centers, Inc. v De Buono, 275 AD2d 557, 561 [3d Dept., 2000]; Matter of Kirk v Bahou, 73 AD2d 770, 771 [3d Dept., 1979]; Matter of Gagnon v Board of Educ. of Manhasset Union Free School Dist., 119 AD2d 674, 675 [2d Dept., 1986]; Matter of Reisman v Codd, 54 AD2d 878 [1st Dept., 1976]).

The Court disagrees with petitioners' argument that "[t]here is nothing in the language or structure of the statute [or legislative history of the statute] which indicates that the Legislature intended to affect any change in the percentage of contribution to be paid by the State for medical coverage of State retirees." As noted previously, Civil Service Law § 167(8) specifically states that:

> "The president, with the approval of the director of the budget, may extend the modified state cost of premium or subscription charges for employees or **retirees** not subject to an agreement referenced above and shall promulgate the necessary rules or regulations to implement this provision. (emphasis added)"

The starting point in construing statutes is the statutory text, the clearest indicator of legislative intent. The Court first determines whether there is a "plain meaning." Words of ordinary import in a statute are to be given their usual and commonly understood meaning, unless it is clear from the statutory language that a different meaning was intended (Matter of Drew v Schenectady County, 88 NY2d 242, 246 [1996]). If the words employed by the legislature have a definite meaning, which involves no absurdity or contradiction, then there is no room for construction and courts have no right to add to or take away from that meaning (Matter of Majewski v Broadalbin-Perth Cent. School Dist., 91 NY2d 577 [1998]; Tompkins v Hunter, 149 NY 117, 122-123 [1896]; Statutes § 92, p 182). When the Legislature specifically authorized modification of the State's premium subscription contributions on

behalf of "retirees," the Legislature clearly intended to authorize changes in the percentage of contribution to be paid by the State for medical coverage of State retirees.

The Court also rejects petitioners' belated alternate argument that the Court should "harmonize" Civil Service Law § 167(8) and Civil Service Law § 167(1)(a) by inserting a new provision that protects retirees who retired before October 1, 2012 and ordering respondents not to apply the 2 % increase to those retirees. Pursuant to the doctrine of separation of powers, courts may not legislate, rewrite, or extend legislation (In re Adoption of Malpica-Orsini, 36 NY2d 568, 570 [1975]). Courts are not permitted to substitute their judgment for that of a legislative body as to the wisdom and expediency of the legislation (In re Adoption of Malpica-Orsini, 36 NY2d 568, 570 [1975]).

Nor may the Court force respondents' to apply Civil Service Law § 167(8) as though an unwritten statutory provision existed. Mandamus is available only to enforce a clear legal right where the public official has failed to perform a duty enjoined by law (CPLR § 7803[1]; New York Civil Liberties Union v State, 4 NY3d 175, 183-184 [2005]; Matter of Legal Aid Socy. of Sullivan County, Inc. v Scheinman, 53 NY2d 12, 16 [1981]). Thus, mandamus does not lie to enforce the performance of a duty that is discretionary, as opposed to ministerial (see Matter of Brusco v Braun, 84 NY2d 674, 679 [1994]). A discretionary act "involve[s] the exercise of reasoned judgment which could typically produce different acceptable results whereas a ministerial act envisions direct adherence to a governing rule or standard with a compulsory result" (Tango v Tulevech, 61 NY2d 34, 41 [1983]).

Neither Civil Service Law § 167(8) nor Civil Service Law § 167(1)(a) distinguishes between former public employees who retired prior to October 1, 2011 and those who retired

afterward. Although Civil Service Law § 167(8) leaves the President of the Civil Service Commission administrative discretion in determining whether and how to apply changes to unrepresented employees and retirees, the statute does not preclude the President of the Civil Service Commission from applying those changes to retirees who retired before October 1, 2011. Were the Court to grant petitioners' request, the Court would either be rewriting the statute by adding new statutory language or substituting the Court's judgment for the discretionary judgment of the President of the Civil Service Commission. The Court is not permitted to do either.

The Court next rejects petitioners' claim that respondents have applied Civil Service Law § 167(8) retroactively by applying the new contribution rates to retirees who retired prior to October 1, 2011. There has been no retroactive application of Civil Service Law § 167(8). The respondents have not proposed to apply the changes so as to affect the State's level of contributions prior to October 1, 2011. Prospective application of the changes in the level of contributions made on behalf of retirees who retired prior to October 1, 2011 does not constitute retroactive application of Civil Service Law § 167(8).

In the Court's view, respondents' determination to apply the terms of the collective bargaining agreement between the State and CSEA to retirees had a rational basis by virtue of the enactment of Civil Service Law § 167 (8). In addition, the Court rejects petitioners' suggestion that the Legislature acted irrationally in determining that changes in the contribution formula for employees that were agreed to by unions could be applied to retirees as well.

As noted previously, the doctrine of separation of powers bars courts from legislating, rewriting, or extending legislation (In re Adoption of Malpica-Orsini, 36 NY2d 568, 570 [1975]). Courts are not permitted to substitute their judgment for that of a legislative body as to the wisdom and expediency of the legislation (In re Adoption of Malpica-Orsini, 36 NY2d 568, 570 [1975]). There is a further presumption that the legislative body has investigated and found facts necessary to support the legislation, as well as the existence of a situation showing or indicating its need or desirability. Thus, if any state of facts, known or to be assumed, justify the law, the court's power of inquiry ends (In re Adoption of Malpica-Orsini, 36 NY2d 568, 571 [1975]). Viewed from this perspective, the Court must sustain the challenged legislation if it could be said to be "reasonably related to some manifest evil which, however, need only be reasonably apprehended" (Town of Huntington v Park Shore Country Day Camp of Dix Hills, Inc., 47 NY2d 61, 65-66 [1979]; Lighthouse Shores v Town of Islip, 41 NY2d 7, 11-12 [1976]; Matter of Electrical Inspectors v Village of Lynbrook, 293 AD2d 537, 538 [2d Dept., 2002]). Thus, if on any interpretation of the facts known or reasonably to be perceived, the statute falls within the embrace of the respondents' authority it is invulnerable to petitioners' attack (Town of Huntington v Park Shore Country Day Camp of Dix Hills, Inc., 47 NY2d 61, 65 [1979]).

The burden of proof is upon the party challenging legislation and even the presence of empirical evidence that casts doubt upon the basis for legislation is not conclusive proof of irrationality. So long as there is evidence that the question is at least debatable, the legislative judgment is not irrational and the Court may not countermand the legislature (Town of North Hempstead v Exxon Corp., 53 NY2d 747, 749 [1981]).

The Court finds that the Legislature's determination to permit respondents to apply the same terms as are agreed to by the State and a union to unrepresented employees and retirees is not irrational on its face. Petitioners have failed to support their suggestion that Civil Service Law § 167(8) is irrational with specific allegations demonstrating that the interests of public employees in continued state contributions to their health care are so different from the interests of retirees in the contributions as to render Civil Service Law § 167(8)'s grant of discretion to the President of the Civil Service Commission irrational.

The Court now turns to petitioners' second cause of action, which asserts that respondents' implementation of Civil Service Law § 167(8) violates the Contract Clause. The Court approaches the constitutional testing of Civil Service Law § 167(8) with certain well-established principles in mind: that the courts are not permitted to substitute their judgment for that of the Legislature as to the wisdom and expediency of the legislation; that a legislative enactment carries with it an exceedingly strong presumption of constitutionality; that, while this presumption is rebuttable, unconstitutionality must be demonstrated beyond a reasonable doubt; that every intendment is in favor of the statute's validity; that the party alleging unconstitutionality has a heavy burden; and that only as a last resort will courts strike down legislative enactments on the ground of unconstitutionality (In re Adoption of Malpica-Orsini, 36 NY2d 568, 570 [1975]).

Legislative enactments are invested with an exceedingly strong presumption of constitutionality (Town of Huntington v Park Shore Country Day Camp of Dix Hills, 47 NY2d 61, 65 [1979]; Marcus Assoc. v Town of Huntington, 45 NY2d 501, 505 [1978]; Matter of G&C Transp., Inc. v McGrane, 97 AD3d 817, 817 [2d Dept., 2012]). To succeed

in challenging a piece of legislation on constitutional grounds, petitioners must shoulder the very heavy burden of demonstrating beyond a reasonable doubt that the statute violates the Constitution (Schulz v State of New York, 84 NY2d 231, 241 [1994]; Wiggins v Town of Somers, 4 NY2d 215, 218 [1958]).

The operative question here is whether amending Civil Service Law § 167(8) has operated as a substantial impairment of a contractual relationship (General Motors Corp. v Romein, 503 US 181, 186 [1992]; Allied Structural Steel Co. v Spannaus, 438 U.S. 234, 244, [1978]). Three components must be considered: whether there is a contractual relationship, whether a change in law impairs that contractual relationship, and whether the impairment is substantial (General Motors Corp. v Romein, 503 US 181, 186 [1992]).

There is no need to reach the second and third components. In the Court's view, petitioners' Contract Clause argument must be rejected by reason that there is no "contract" that entitles petitioners to continued State contributions to public retirees health care at the same levels as they received prior to enactment of Civil Service Law § 167(8). Petitioners' second cause of action depends on petitioners' argument that Civil Service Law § 167(1)(a) continues to impose an unalterable obligation on the State to make health care contributions for public retirees at the same rate. As noted previously, Civil Service Law § 167(8) provides for changing the level of the State contributions set forth in Civil Service Law § 167(1)(a).

Petitioners have failed to allege the existence of an actual contract during the period of their employment which provided that the State is obliged to continue contributing to public retirees' health care at the level applicable at the time of retirement. Thus, petitioners'

position is clearly distinguishable from that of retirees whose future health care coverage was assured in collective bargaining agreements that unambiguously provided for continued coverage at a fixed rate for retirees at all times subsequent to their retirement (Hudock v Village of Endicott, 28 AD3d 923, 924 [3d Dept., 2006]; Della Rocco v City of Schenectady, 252 AD2d 82, 84 [3d Dept., 1998]; Myers v City of Schenectady, 244 AD2d 845 [3d Dept., 1997]; DiBattista v County of Westchester, 35 Misc3d 1205(A), 2008 WL 8783343 [Westchester Co., 2008]).

The Court further disagrees with the contention that retirees' health insurance benefits enjoy the same level of protection as pension benefits and the State is therefore obliged to continue making contributions to retirees health care at the same level. 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 (Matter of Lippman v Board of Educ. of Sewanhaka Cent. High School Dist., 66 NY2d 313, 315, 317 [1985]). 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.

Turning to petitioner's third cause of action, the petitioners allege that respondents' implementation of Civil Service Law § 167(8) violates the New York State Constitution, Article 3, Section 1 because the legislative power of the State is vested in the Legislature and the Legislature has not delegated authority to respondents to increase contributions by retirees. The Court finds that the Legislature properly authorized an adjustment in the

contributions for health care premiums of retirees through enactment of Civil Service Law § 167(8).

The Court also rejects an argument, not found in the petition, that the Legislature's delegation of authority to modify the rates to the President of the Civil Service Commission violated the State Constitution because the Legislature did not provide adequate standards and guidelines for exercising the authority to implement Civil Service Law § 167(8). The petitioners fail to support their argument with any specific factual allegations and fail to meet their burden of establishing a constitutional violation. As stated in Dalton v Pataki (5 NY3d 243 [2005]) "there need not be a specific and detailed legislative expression authorizing a particular executive act as long as 'the basic policy decisions underlying the regulations have been made and articulated by the Legislature' " (id., at 262-263,quoting Bourquin v Cuomo, 85 NY2d 781, 785 [1995]).

As noted previously, legislative enactments are invested with an exceedingly strong presumption of constitutionality (Town of Huntington v Park Shore Country Day Camp of Dix Hills, 47 NY2d 61, 65 [1979]; Marcus Assoc. v Town of Huntington, 45 NY2d 501, 505 [1978]; Matter of G&C Transp., Inc. v McGrane, 97 AD3d 817, 817 [2d Dept., 2012]). To succeed in challenging a piece of legislation on constitutional grounds, petitioners must shoulder the very heavy burden of demonstrating beyond a reasonable doubt that the statute violates the Constitution (Schulz v State of New York, 84 NY2d 231, 241 [1994]; Wiggins v Town of Somers, 4 NY2d 215, 218 [1958]).

Petitioners' conclusory statements of law in their memorandum of law do not meet that burden. The petitioners have failed to present specific allegations that would support

their conclusion that the Legislature ceded any fundamental policy responsibility to make social and political policy to the President of the Civil Service Commission. Petitioners have failed to present specific allegations that would support a conclusion that the Legislature failed to set forth reasonable standards for respondents. Petitioners have failed to present specific allegations that would support a conclusion that respondents have promulgated regulations that are outside of the scope of the legislative delegation or contradict Civil Service Law § 167(8).

Affording the petition here a liberal construction, accepting the allegations contained therein as true, and according petitioners the benefit of every favorable inference, petitioners have failed to state any valid cause of action. The Court notes a significant difference between declaratory judgment actions (see CPLR § 3001) and other kinds of actions. The general rule is that on a motion to dismiss the complaint in a declaratory judgment action for failure to state a cause of action, the only question is whether a proper case is presented for invoking the jurisdiction of the court to make a declaratory judgment, and not whether the plaintiff is entitled to a declaration favorable to him or her (Washington County Sewer Dist. No. 2 v White, 177 AD2d 204, 206 [3d Dept., 1982]). Thus, where no issue of fact needing resolution is raised by the pleadings, as is the case here, judgment may be rendered on the merits in the defendant's favor on the defendant's motion to dismiss the complaint (Village of Woodbury v Brach, 99 AD3d 697, 699 [2d Dept., 2012]; Spilka v Town of Inlet, 8 AD3d 812, 813 [3d Dept., 2004]; Washington County Sewer Dist. No. 2 v White, supra, at 206). The approved procedure for accomplishing this purpose is to deny the motion to dismiss the complaint (thereby retaining jurisdiction of the controversy) and then

to declare the rights of the parties (St. Lawrence Univ. v Trustees of Theol. School of St. Lawrence Univ., 20 NY2d 317, 325 [1967]; Washington County Sewer Dist. No. 2 v White, supra, at 206).

Accordingly, it is

ORDERED, that respondents' motion to dismiss the petition is granted and the petition and all relief requested in the petition/complaint are denied; and it is further

ORDERED, that respondents' motion to dismiss the declaratory judgment action is denied; and it is further

ADJUDGED and DECLARED, that the administrative implementation of an increase in the percentages of contributions for medical benefits under NYSHIP payable by State retirees and/or their dependents participating in NYSHIP in excess of that set forth in Civil Service Law § 167(1)(a) effective October 1, 2011 is valid; and it is further

ADJUDGED and DECLARED, that the emergency regulation filed on September 27, 2011 and to take effect on October 1, 2011, and published in the State Register in an issue dated October 12, 2011 promulgated by the New York State Department of Civil Service implementing the increase in the percentages of contributions for NYSHIP by retirees participating in NYSHIP is valid.

This shall constitute the decision, order and judgment of the Court. The original decision/order/judgment is returned to the attorney for the respondents. All other papers are being delivered by the Court to the County Clerk for filing. The signing of this decision/order/judgment and delivery of this decision/order/judgment does not constitute

entry or filing under CPLR Rule 2220. Counsel is not relieved from the applicable provisions of that rule respecting filing, entry and notice of entry.

This shall constitute the decision, order and judgment of the Court. The original decision/order/judgment is returned to the attorney for the respondents. All other papers are being delivered by the Court to the County Clerk for filing. The signing of this decision/order/judgment and delivery of this decision/order/judgment does not constitute entry or filing under CPLR Rule 2220. Counsel is not relieved from the applicable provisions of that rule respecting filing, entry and notice of entry.

ENTER

Dated: December 17, 2012
Troy, New York

George B. Ceresia, Jr.
Supreme Court Justice

Papers Considered:

1. Notice of Petition dated December 7, 2011;
2. Complaint-Petition dated November 30, 2011, with exhibits annexed;
3. Affidavit of Harvey Randall dated December 7, 2011;
4. Memorandum of Law dated January 20, 2012, with exhibits annexed;
5. Notice of Motion dated February 24, 2012;
6. Affirmation of Charles J. Quackenbush dated February 24, 2012, with exhibits annexed;
7. Memorandum of Law dated February 24, 2012;
8. Memorandum of Law dated April 9, 2012;
9. Memorandum of Law dated April 19, 2012.