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 06/13/2023, 06/14/2023

MOTION SEQ. NO. 003 004

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77

were read on this motion to/for PARTIES - ADD/SUBSTITUTE/INTERVENE.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 78, 79, 80, 81

were read on this motion to/for PARTIES - ADD/SUBSTITUTE/INTERVENE.

The underlying petition arises out of allegations by Petitioners that Respondents have unlawfully attempted to strip Medicare-eligible retirees and their dependents of their promised healthcare benefits[1]. The City seeks to switch retirees to a Medicaid Advantage Plan ("MAP") provided by Aetna Life Insurance Company. The petition seeks to annul the amending of the health insurance offered to New York City retirees. The Court's decision addresses two motions to intervene.

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

Legal Standard

CPLR §1012(a)(2) provides that, upon timely motion, a party has a right to intervene in an action "when the representation of the person's interest by the parties is or may be inadequate and the person is or may be bound by the judgment." CPLR §1013 states in relevant part that intervention "may be permitted ... when the person's claim or defense and the main action have a common question of law and fact. The court shall consider whether the intervention will unduly delay the determination of the action or prejudice the substantial rights of any party." "Pursuant to CPLR 7802(d), a court 'may allow other interested persons' to intervene in a special proceeding." *Greater New York Health Care Facilities Ass'n v DeBuono*, 91 NY2d 716, 720 [1998].

Motion Sequence 003

Non-party Aetna Life Insurance Company ("Aetna"), moves this court for an order pursuant to CPLR § 1012 and CPLR § 1013, and in the alternative pursuant to CPLR § 7802, allowing the Proposed Intervenor to intervene in the instant action for the purpose of opposing the instant petition. The argument set forth by Aetna as a proposed intervenor is that their economic interest and detailed knowledge of the MAP is not adequately represented by the City. Aetna's motion to intervene is denied.

The motion by Aetna is denied because the Court finds that allowing this entity to intervene is not appropriate. Aetna argues that their economic stake in the instant action, as well as their ability to provide more comprehensive explanations of the MAP scheme, indicate that their interest is not represented by the City and other respondents. However, the current respondents are capable of articulating the position of how and why the proposed MAP may fulfil their obligations to the retirees and Aetna's interests in the instant action are adequately

represented. It is well established that the right to intervene is within the court's discretion. The Court having determined that the movant's arguments in favor of intervention by right or permissive intervention are not persuasive and that intervention by the movant will likely unduly delay the determination of the action.

Aetna will be permitted to have the position of amicus curiae during this litigation, and the documents they have submitted to date have been considered.

Motion Sequence 004

Non-party New York Municipal Labor Committee (MLC) moves to intervene in the instant action in opposition to the petition, pursuant to CPLR § 7802(d), § 1012, and § 1013, or in the alternative, to be granted leave to file an amicus curiae brief.

The motion to intervene is denied. The crux of MLC's argument is that their legal strategy decisions differ from that of the current respondents, and their collective bargaining relationship with the City shows that they possess distinct interests from the latter. The Court does not find this reasoning persuasive. The Court finds that intervention is not necessary in this matter, because the current respondents are advancing MLC's position, putting forth relevant facts and perspectives, and representing their interests in the instant action. The motion to intervene is thus denied.

However, the documents submitted by MLC to date have been considered and MLC is permitted to file an amicus brief setting forth its position. Accordingly, it is hereby

ADJUDGED that the motion to intervene by Aetna Life Insurance Company is denied; and it is further

ADJUDGED that the motion to intervene by New York Municipal Labor Committee (MLC) is denied.

7/6/2023
DATE

LYLE E. FRANK, J.S.C.

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