STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

In the Matter of the Application of

SCHOOL ADMINISTRATORS ASSOCIATION OF NEW YORK STATE, BRENTWOOD PRINCIPALS AND SUPERVISORS ORGANIZATION, RICHARD LOESCHNER, as President of the Brentwood Principals and Supervisors Association, and DANIEL ROBINSON,

Petitioners-Plaintiffs,

For a Declaratory Judgment Pursuant to Section 3001 of the Civil Practice Law and Rules and Judgment Pursuant to Article 78 of the Civil Practice Law and Rules

DECISION and ORDER
INDEX NO. 1423-13
RJI NO. 01-13-ST4420

-against-

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE, JERRY BOONE, as President of the Civil Service Commission, the EMPLOYEE BENEFIT DIVISION OF THE NEW YORK STATE DEPARTMENT OF CIVIL SERVICE, the BRENTWOOD UNION FREE SCHOOL DISTRICT, and the BOARD OF EDUCATION OF THE BRENTWOOD UNION FREE SCHOOL DISTRICT,

Respondents-Defendants.

Supreme Court Albany County All Purpose Term, May 3, 2013
Assigned to Justice Joseph C. Teresi

APPEARANCES:

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TERESI, J.:

Brentwood[1] provides Union[2] members with health insurance through NYSHIP.[3] For the past twenty years, approximately, Petitioners[4] contend that Brentwood authorized Union members to "buyout" their NYSHIP health insurance coverage. Although not contained in any of the Brentwood - Union collective bargaining agreements, the buyout was available to all Union members who had any other health insurance coverage available, without restriction. Upon a Union member exercising their buyout option, Brentwood paid that member one half of the premium it would have otherwise paid to NYSHIP. Brentwood retained the remaining half.

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[1] "Brentwood" will hereinafter refer collectively to Brentwood Union Free School District and Board of Education of the Brentwood Union Free School District.

[2] "Union" will hereinafter refer to Brentwood Principals and Supervisors Organization.

[3] "NYSHIP" will hereinafter refer to New York State Health Insurance Program.

[4] "Petitioners" will hereinafter refer collectively to all Petitioners-Plaintiffs.

On May 15, 2012, however, DCS[5] issued Policy Memo 122r3 and restricted the buyout programs that agencies participating in NYSHIP, such as Brentwood, could offer. Such Memo clarified Policy Memo 122r2, dated March 7, 2012, which similarly curtailed buyout programs. Both Policy Memo 122r2 and 122r3[6] explicitly prohibit agencies that participate in NYSHIP from offering a buyout program to individuals whose "'[o]ther employer sponsored coverage' [is]... through NYSHIP." Policy Memo 122r3 further explained how the exclusion was to affect pre-existing buyout programs, and set conditions for the termination of those program. In sum, the Policy Memos now prohibit Brentwood from offering its prior buyout program to Union members whose other health insurance coverage is also through NYSHIP.

Although Brentwood continued to offer Union members an unrestricted buyout option into October 2012, it soon reversed course. On December 6, 2012, Brentwood issued its own Memorandum implementing the Policy Memos. With such Memorandum, Brentwood modified its NYSHIP buyout program by restricting its availability to Union members who had "other non-NYSHIP employer sponsored health coverage."

Petitioners commenced this Declaratory Judgment/CPLR Article 78 matter, challenging DCS's buyout policy and Brentwood's implementation of it. Respondents answered and asserted objections in point of law, with Brentwood also setting forth two affirmative defenses.

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[5] "DCS" will hereinafter refer collectively to New York Sate Department of Civil Service, Jerry Boone, as President of the Civil Service Commission, and the Employee Benefits Division of the New York Sate Department of Civil Service.

[6] These two memos will collectively referred to as "Policy Memos."

Additionally, DCS moved to dismiss.[7] Petitioners opposed DCS's motion. On this record, the Respondents demonstrated their entitlement to dismissal.

First, DCS demonstrated that the statute of limitations expired on Petitioners' claims against it prior to commencement.

While Petitioners framed their claims with both Declaratory Judgment and Article 78 language, "[w]here, as here, the challenge brought is to a quasi-legislative act or decision made by an administrative agency, it is well settled that the proper vehicle for such review is a CPLR article 78 proceeding and the four-month statute of limitations applies." (Capital Dist. Regional Off-Track Betting Corp. v New York State Racing and Wagering Bd., 97 AD3d 1044, 1045-46 [3d Dept 2012]; Spinney At Pond View, LLC v Town Bd. of Town of Schodack, 99 AD3d 1088 [3d Dept 2012]; New York Coalition for Quality Assisted Living, Inc. v Novello, 53 AD3d 914 [3d Dept 2008]). Petitioners effectively conceded the applicability of a four month statute of limitations, despite their Reply's incorrect assertion that they are not challenging a quasi-legislative act.

Additionally, although the parties focused their accrual arguments on notice, the applicable limitations period commenced when "the challenged determination has become final and binding (CPLR 217 [1])." (Town of Olive v City of New York, 63 AD3d 1416, 1418 [3d Dept 2009], quoting Walton v. New York State Dept. of Correctional Servs., 8 NY3d 186 [2007][internal quotation marks omitted]; Riverkeeper, Inc. v Crotty, 28 AD3d 957 [3d Dept 2006]; Owners Comm. of Elec. Rates, Inc. v Pub. Serv. Com'n of State of N.Y., 76 NY2d 779,

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[7] Because it is uncontested that DCS's Answer was timely and contained a statute of limitations "objection in point of law," Petitioners' contention that DCS's motion was untimely is irrelevant. (Lally v Johnson City Cent. School Dist., 962 NYS2d 508 [3d Dept 2013]).

780 [1990], revg. on dissenting op. of Levine, J., 150 AD2d 45 [3d Dept 1989]).

"When making the determination as to whether an agency determination is final, courts must consider the completeness of the administrative action and make a pragmatic evaluation as to whether a position has been reached that inflicts an actual, concrete injury. Consideration must also be accorded to whether further resort to administrative remedies by the complaining party might serve to ameliorate the injury." (Capital Dist. Regional Off-Track Betting Corp. v New York State Racing and Wagering Bd., supra 1046 [internal citations omitted]). "Respondents bear the burden of establishing their statute of limitations defense." (Richmond Med. Ctr. v Daines, 101 AD3d 1434, 1435 [3d Dept 2012]).

Here, DCS sufficiently established the statute of limitations accrual and expiration. On this record, it is uncontested that the Policy Memos caused the "actual, concrete injury" upon which Petitioners base their claims against DCS. The plain language of the Policy Memos is unmistakably "definitive." This record contains no further administrative remedy Petitioners pursued, or could have pursued, to ameliorate the Policy Memos' harmful effects. Rather, the Policy Memos constituted DCS's final quasi-legislative decision which restricted all NYSHIP buyout policies, including Brentwood's. With such showing, DCS demonstrated that the statute of limitations accrued on Petitioners' claims against them, at the latest, on May 15, 2012 when Policy Memo 122r3 was issued. (Owners Comm. of Elec. Rates, Inc. v Pub. Serv. Com'n of State of N.Y., supra; Schulz v Town Bd. of Town of Queensbury, 253 AD2d 956 [3d Dept 1998]). Because the applicable limitations period was just four months, Petitioners' commencement of this action/proceeding on March 8, 2013 was untimely.

In opposition, Petitioners raised no issue of fact. (Bronx-Lebanon Hosp. Ctr. v Daines,

101 AD3d 1431 [3d Dept 2012]). Although Petitioners' attorney argued in a memorandum that the statute of limitations accrued on Petitioners' claims against DCS when they received notice, his factual assertions are unauthorized, unsworn, inadmissible and of no probative value. (CPLR §2214[b]; Ulster County v CSI, Inc., 95 AD3d 1634 [3d Dept 2012]; Groboski v Godfroy, 74 AD3d 1524 [3d Dept 2010]). The only admissible proof Petitioners offered to establish their "lack of notice" theory was the affidavit of petitioner Daniel Robinson. In relevant part, Robinson declared only that he had no "idea [he] might not be able to elect the buyout for the 2013 calendar year" until December 13, 2012. Such statement, however, explains only his knowledge of Brentwood's buyout policy. It does not specifically disclaim knowledge of the Policy Memos. Nor does the affidavit establish that the other Petitioners, the Union and School Administrators Association of New York State, lacked knowledge of the Policy Memos.

Moreover, Petitioners proffered no proof to rebut DCS's showing of notice. In support of its motion, DCS submitted the affidavit of the Director of its Employee Benefits Division, who was personally involved in the NYSHIP buyout policies. He stated that the Policy Memos were mailed to Brentwood's Chief Executive Officer. They were further distributed by being posted on a website for Health Benefit Administrators and mailed to a "courtesy list." Although the Director did not specifically state that Petitioners actually received the Policy Memos, he did state that the Union was authorized to access, upon request, the website. The Union was also authorized to be included, again upon request, on the "courtesy list." Moreover, the Policy Memos were the topic of discussion, more than four months prior to commencement, at DCS's October 2012 annual regional meetings. Despite such showing, not one of the Petitioners offered an admissible allegation of fact specifically denying receipt or knowledge of the Policy Memos.

Upon this record, DCS sufficiently demonstrated its entitlement to dismissal of Petitioners' claims against it.

Brentwood, with its first affirmative defense, also established its entitlement to dismissal by demonstrating that the Public Employment Relations Board (hereinafter "PERB") has exclusive jurisdiction over Petitioners' claim against it.

PERB has jurisdiction over a public employee's challenge to a public employer's unilateral decision to discontinue a past practice not contained in the parties' collective bargaining agreement. (Chenango Forks Cent. School Dist. v New York State Pub. Empl. Relations Bd., 95 AD3d 1479, 1480 [3d Dept 2012]; Roma v Ruffo, 92 NY2d 489, 495 [1998]). Moreover, as correctly noted by Brentwood, "[w]here a public employee alleges that a public employer has failed to negotiate the terms and conditions of employment an improper employer practice (see Civil Service Law §209-a [1] [d]), PERB has exclusive jurisdiction to resolve the dispute between the parties." (New York City Tr. Auth. v New York State Pub. Empl. Relations Bd., 19 NY3d 876, 879 [2012]).

Here, PERB has exclusive jurisdiction over Petitioners' claim against Brentwood. Petitioners set forth a single cause of action (their fifth) against Brentwood. They specifically alleged that Brentwood "violated the Taylor Law by relying on [Policy Memo 122r3] as the basis on which to unilaterally discontinue the buy-out past practice benefit." Such alleged failure to negotiate the discontinuance of its prior buyout program fits squarely within an improper employer practice charge, over which PERB holds exclusive jurisdiction. Moreover, Petitioners concede that they have already commenced, with PERB, an improper practice charge against Brentwood on their claims herein.

Additionally, Brentwood is not a necessary party to Petitioners' claims against DCS, which all focus on the creation and validity of the Policy Memos. It is uncontested that Brentwood was not involved in creating the Policy Memos. Rather, it was merely implementing them when it revoked its prior buyout policy. Because Petitioners' fifth cause of action challenged such implementation and Brentwood did not "perform[] the challenged action" that underlies the balance of Petitioners' claims, it was not a necessary party to Petitioners' causes of action against DCS. (White v County of Sullivan, 101 AD3d 1552, 1553 [3d Dept 2012], quoting McNeill v Town Bd. of Town of Ithaca, 260 AD2d 829 [3d Dept 1999]). In addition, because Petitioners' claims against DCS have been dismissed above, Brentwood cannot be a necessary party to them.

Accordingly, the Petition/Complaint is dismissed. To the extent not specifically addressed above, the parties' remaining contentions have been examined and found to be either lacking in merit or moot.

This Decision and Order is being returned to the attorneys for DCS. A copy of this Decision and Order and all other original papers submitted on this motion are being delivered to the Albany County Clerk for filing. The signing of this Decision and Order shall not constitute entry or filing under CPLR §2220. Counsel is not relieved from the applicable provision of that section respecting filing, entry and notice of entry.

So Ordered.

Dated: May 9, 2013
Albany, New York

JOSEPH C. TERESI, J.S.C.

PAPERS CONSIDERED:

1. Notice of Petition/Complaint, dated March 4, 2013; Petition/Complaint, March 4, 2013; Affidavit of Richard Loeschner, dated March 4, 2013, with attached Exhibits 1-6.
2. Answer, dated April 24, 2013, with attached Exhibit 1; Affidavit of Stacy O'Connor, dated April 24, 2013, with attached Exhibits A-B.
3. Notice of Motion, dated April 25, 2013, Answer, dated April 25, 2013, with attached Exhibits 1(A-E).
4. Affidavit of Stacy O'Connor, dated April 9, 2013, Affidavit of Robert Fullem, dated May 2, 2013.