SUPREME COURT - STATE OF NEW YORK

Present:

HON. ARTHUR M. DIAMOND
Justice Supreme Court

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TRIAL PART: 10

JOHN JARONCZYK, as President of the Sheriff Officers Association, Inc., and NASSAU COUNTY SHERIFF'S CORRECTION OFFICERS BENEVOLENT ASSOCIATION, INC.,

Petitioners,

NASSAU COUNTY

INDEX NO: 12934-13

-against-

MOTION SEQ. NO:1,2,3

NASSAU COUNTY INTERIM FINANCE AUTHORITY; JON KAIMAN, as Chairman and Director of the Nassau County Interim Finance Authority; GEORGE J. MARLIN, JOHN R. BURAN, DERMOND THOMAS and CHRISTOPHER P. WRIGHT, as Directors of the Nassau County Interim Finance Authority; EDWARD MANGANO, in his official capacity as County Executive of Nassau County; GEORGE MARAGOS, in his official capacity as Nassau County Comptroller, and the COUNTY OF NASSAU,

Respondent.

SUBMIT DATE: 1/17/14

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The following papers having been read on this motion:

Notice of Petition (Seq #1).....1
Petition & Memorandum In Support.....2
Respondent (County) Motion to Dismiss (Seq #2).....3
Memorandum of Law (County) in Support.....4
Respondent (NIFA) Motion to Dismiss (Seq. #3).....5
Respondent (NIFA) Memorandum of Law.....6
Petitioner Memorandum In Opposition.....7
Respondent Reply Affirmation (County).....8
Respondent Reply Memorandum of Law (County)..9
Respondent (NIFA) Reply Memorandum of Law.....10

Petitioners, John Jaronczyk, as President of the Sheriff Correction Officers Benevolent Association, Inc. and Nassau County Sheriff's Correction Officers Benevolent Association, Inc., bring this proceeding [Mot. Seq. 001], pursuant to CPLR Article 78, seeking a judgment:

> (1) declaring each and every challenged Resolutions adopted by the respondent, Nassau County Interim Finance Authority to be violations of the NIFA Act, *infra*, and declaring the respondent Nassau County Interim Finance Authority to be without authority to impose wage freezes;
>
> (2) enjoining the respondents from taking any action to implement the challenged Resolutions; and,
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> (3) ordering the respondents, Edward Mangano, in his official capacity as County Executive of Nassau County, George Maragos, in his official capacity as Nassau County Comptroller and the County of Nassau, to comply with all outstanding obligations under the applicable collective bargaining agreements that have been suspended as a consequence of the challenged Resolutions including, without limitation, payment of back pay, and any other make whole remedies.

The respondents, County of Nassau, Edward Mangano, in his official capacity as the County Executive of Nassau County, and George Maragos, in his official capacity as the Nassau County Comptroller (collectively referred to herein as the "County Respondents"), move [Mot. Seq. 002], pursuant to CPLR§ 3211(a)(1), (a)(5), (a)(7) and CPLR § 7804(f), for an Order, dismissing the petitioners' Verified Petition in it's entirety.

The respondent, Nassau County Interim Finance Authority, together with it's current and former directors including respondents Jon Kaiman, as Chairman and Director of the Nassau County Interim Finance Authority, and George J. Marlin, John R. Buran, Dermond Thomas, and Christopher P. Wright, as Directors of the Nassau County Interim Finance Authority (collectively referred to herein as "NIFA"), move [Mot. Seq. 003], pursuant to CPLR§ 3211(a)(1), (a)(5), (a)(7) and CPLR §7804(f), for an Order, dismissing the Verified Petition in it's entirety.

The petition and motions are determined as herein set forth below.

It is noted at the outset that this proceeding is one of three litigations brought before this Court by three separate unions, each challenging respondent NIFA's imposition of the 2011, 2012 and 2013 wage freezes on the grounds that NIFA's authority to impose such wage freezes expired in 2008 at the end of the Interim Finance Period as defined in the NIFA Act, *infra*. The petitioners

in the three litigations are as follows: (I) "the PBA" for the proceeding bearing Index No. 602947/2013; (ii) "the CSEA" for the proceeding bearing Index No. 12600/2013; and (iii) "the SCOBA" for this proceeding bearing Index No. 12934/2013.

Background[1]

In 2000, Nassau County (the "County") was descending into insolvency. The County was $2.7 billion in debt. Debt service alone was nearly one-fourth of budgeted spending and with dwindling cash reserves, the County could no longer maintain fiscal stability (JA-117, ¶11). Rating agencies downgraded the County's debt to one level above junk status (JA-117, ¶13). Ultimately, as noted in the legislative history of this Act:

> [A] home rule message recommended by the county executive of the county, approved by a vote of the county Legislature, request[ed] the enactment of [the NIFA Act, *infra*] and in the public interest to accomplish the objective of improving market reception for the necessary sale of bonds and other obligations of the county by discouraging certain practices which have occurred in the past and providing direction and assistance in budgetary and financial matters to restore the county to fiscal health, while retaining the county's right to operate independently as a municipal corporation of the state of New York.
> (McKinney's [2011] Cons. Laws of New York, Book 42, Article 10–D, Historical and Statutory Notes, p. 280)

Thus, after the unanimous request of the Nassau County Legislature, the State of New York created the Nassau County Interim Finance Authority through State legislation (the "NIFA Act" or "Act"), codified at New York Public Authorities Law §§3650-3672, to rescue Nassau County from the brink of bankruptcy and prevent regression towards insolvency. NIFA was created as a public benefit corporation to oversee the County's finances. Indeed, the legislative findings recognized the State's important interest in resolving the crisis:

> It is in the public interest and is the policy of this state to assist municipalities such as the county of Nassau in attempting to provide, without interruption, services essential to their

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[1]References to the facts below are largely obtained, where indicated, from the parties' "Statement of Material Facts Not in Dispute Pursuant to [Federal] Local Rule 56.1" submitted by the parties in connection with the appeal before the Second Circuit Court of Appeals, *infra*. The Statement of Material Facts is incorporated in the Joint Appendix ("JA") submitted by the parties before the Second Circuit. Said Joint Appendix is annexed as Exhibit 1 to the affirmation of Alan M. Klinger dated October 21, 2013 which the PBA Petitioners submitted in support of the Article 78 petition [Index No. 602947/13]. References to the facts are abbreviated herein as "JA-__."

> inhabitants while meeting their obligations to the holders of their outstanding securities. The impairment of the credit of the county of Nassau may affect the ability of other municipalities in the state to issue their obligations at normal interest rates. Such effect is a matter of state concern (McKinney's [2011] Cons. Laws of New York, Book 42, Article 10–D, Historical and Statutory Notes, pp. 279-280; *see also, Matter of County of Nassau v. Nassau County Interim Finance Authority*, 33 Misc. 3d 227, 248 [Sup. Ct. Nassau 2011]).

The Act provided that NIFA would be governed by a panel of directors, appointed by the governor, who serve four year terms without compensation (Pub. Auth. Law §3653[1]).

The bailout provided by the NIFA Act included $105 million in State taxpayer grants to the County and the issuance by NIFA of bonds to refinance and restructure the County's debt, without normal restrictions of the Local Finance Law, at more manageable rates (JA-118, ¶17; JA-122, ¶35). As noted by this Court in a prior determination of the County's Article 78 proceeding against NIFA[2]:

> The Act authorized NIFA to issue bonds and notes for various County purposes and to closely oversee the County's budget and finances. Pursuant to the Act, the County was provided with a $100 million state subsidy ($25 million per year through 2004) as well as a State grant of $5 million to assist the County in streamlining the tax certiorari process. NIFA has issued in excess of $1.6 billion in bonds for the County's benefit and assisted the County by restructuring maturing debt, refinancing existing debt and borrowing money (*Matter of County of Nassau v Nassau County Interim Fin. Auth, supra*).

NIFA will exist until its bonds are retired, which is currently scheduled for 2025.

The NIFA Act created three distinct periods of oversight: an initial "Interim Finance Period"; an ensuing period of "monitoring and review"; and, when triggered by fiscal decline, a "Control Period" to restore fiscal balance.

Thus, NIFA oversight commenced with the Interim Finance Period governed by Section 3667 of the NIFA Act which bears the heading "County Financial Plans." In this phase, NIFA had the power and responsibility to impose budget discipline on the County by approving annual four-year financial plans, the first year of each plan being the annual budget. The NIFA Act, in its "Definitions" Section defines "Interim Finance Period" as follows:

> 14. "Interim finance period" means the period of time from the effective date of this title until the date when (a) [NIFA] shall determine, based on annual audit reports furnished [by

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[2] *Matter of County of Nassau v Nassau County Interim Fin. Auth*, 33 Misc. 3d 227 [Sup. Ct. Nassau 2011] [Diamond, J.]

the County] in accordance with this title, that for each fiscal year, through and including fiscal year two thousand eight, that the county has adopted and adhered to budgets covering all expenditures the results of which did not show a major operating funds deficit when reported in accordance with generally accepted accounting principles, subject to the provisions of this title, and shall further determine that in the then current fiscal year there is a substantial likelihood that the results of the county's operations will not show a deficit in the major operating funds when so reported and (b) the chief fiscal officer shall certify that securities sold by or for the benefit of the county during the fiscal year immediately preceding such date and the then current fiscal year in the general public market satisfied the financing requirements of the county during such period and that there is a substantial likelihood that such securities can be sold in the general public market from such date through the end of the next succeeding fiscal year in amounts which will satisfy substantially all of the capital and seasonal financing requirements of the county during such period in accordance with the financial plan then in effect (Public Authorities Law §3651[14]).

The State Legislature determined that NIFA would impose this new budget discipline in 2000 through 2004 while exercising two finance powers; to wit:

(I) the power to channel State taxpayer subsidies to the County (Public Authorities Law §3667[1]); and,

(ii) the power to issue new NIFA bonds (McKinney's [2011] Cons. Laws of New York, Book 42, Article 10–D, Historical and Statutory Notes, p. 280)[3].

In 2003, however, over the County Executive's objection who maintained that an extension was "unnecessary and redundant" because there was already "a mechanism for continuing oversight: a Control Period," the State Legislature amended the Act to extend the Interim Finance Period through the close of 2007, which became the final deadline for NIFA to issue new bonds (Public Authorities Law §3656[2]; Letter from Thomas R. Suozzi, July 21, 2003, in N.Y. Bill Jacket, 2003 S.B. 5543, ch. 314).

Subsequently however, in 2007, the State Legislature again extended the Interim Finance Period (but not NIFA's power to issue new bonds) for an additional year, noting that the County

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[3]"It is further found and declared that authorization for the Nassau county interim finance authority to issue debt shall be for fours years only (other than any refinancing of authority debt) and the agreements for financial and budgetary discipline between such interim finance authority and the county shall be for only such Interim Finance Period as is necessary under the standards set forth in this act to restore the county of Nassau to fiscal integrity" (McKinney's [2011] Cons. Laws of New York, Book 42, Article 10–D, Historical and Statutory Notes, p. 280).

continued to project significant budget gaps. The Legislature found that NIFA's "insight, expertise and guidance [was] needed and necessary for the foreseeable future" (N.Y. Bill Jacket 2007, S.B. 6014, ch. 364).

The Interim Finance Period ultimately expired in 2008.

Upon expiration of the Interim Finance Period in 2008, NIFA began a period of observational oversight, governed primarily by Section 3668 of the NIFA Act, which bears the heading "Monitoring and Review" (Public Authorities Law §3668).

In this phase, NIFA continued to review and if necessary audit County budgets and borrowing, but no longer had the power to approve an annual financial plan unless a decline in County finances triggered NIFA's obligation to order a Control Period (Public Authorities Law §3668).

Throughout its existence, NIFA is and has been obligated to monitor whether a decline in County finances requires a corrective oversight phase governed by Section 3669 of the Act which bears the heading "Control Period" (Public Authorities Law §3669). Pursuant to this Section, NIFA is empowered to prevent the County from slipping back toward insolvency.

The Act at §3669 entitled "Control Period" reads at subsection (1), in pertinent part, as follows:

> 1. The authority shall impose a Control Period upon its determination at any time that any of the following events has occurred or that there is a substantial likelihood and imminence of such occurrence: (a) the county shall have failed to pay the principal of or interest on any of its bonds or notes when due or payable, (b) the county shall have incurred a major operating funds deficit of one percent or more in the aggregate results of operations of such funds during its fiscal year assuming all revenues and expenditures are reported in accordance with generally accepted accounting principles, subject to the provisions of this title, © the county shall have otherwise violated any provision of this title and such violation substantially impairs the marketability of the county's bonds or notes, (d) the chief fiscal officer's certification at any time, at the request of the authority or on the chief fiscal officer's initiative, which certification shall be made from time to time as promptly as circumstances warrant and reported to the authority, that on the basis of facts existing at such time such officer could not make the certification described by paragraph (b) of this subdivision in the definition of Interim Finance Period in section thirty-six hundred fifty-one of this title, or (e) the authority makes the finding required under paragraph (g) of subdivision two of section thirty-six hundred sixty-seven of this title. The authority shall terminate any such Control Period when it determines that none of the conditions which would permit the authority to impose a Control Period exist.***

(Public Authorities Law §3669[1]).

Thus, while NIFA bonds remain outstanding, the Act:

(I) prohibits the County from filing for bankruptcy protection, and

(ii) requires NIFA to order a Control Period to ensure a return to fiscal balance if the County faces a proscribed deficit level or other defined financial hardships. (Public Authorities Law §§3669[1]; 3670[1]).

Thus, during a Control Period, NIFA *reassumes* the authority it had during the Interim Finance Period to approve the County's four year financial plans (Public Authorities Law §3669[2][a]-[c]). In addition, NIFA also assumes new powers in the Control Period to, *inter alia*, approve new County contracts (Public Authorities Law §3669[2][d]), approve new County borrowing (Public Authorities Law §3669[2][e]), and, as is pertinent to this proceeding, order a temporary, prospective wage freeze on County employees (Public Authorities Law §3669[3]).

NIFA's authority to order wage freezes is spelled out, in pertinent part, as follows:

> 3. Authorization for wage freeze.
> (a) During a Control Period, upon a finding by the authority that a wage freeze is essential to the adoption or maintenance of a county budget or a financial plan that is in compliance with this title, the authority, after enactment of a resolution so finding, may declare a fiscal crisis. Upon making such a declaration, the authority shall be empowered to order that all increases in salary or wages of employees of the county . . . are suspended. Such order may also provide that all increased payments for holiday and vacation differentials, shift differentials, salary adjustments according to plan and step-ups or increments for employees of the county . . . are, in the same manner, suspended. . . . ***The suspensions authorized hereunder shall continue until one year after the date of the order and, to the extent of any determination of the authority that a continuation of such suspensions, to a date specified by the authority, is necessary in order to achieve the objectives of the financial plan, such suspensions shall be continued to the date specified by the authority, which date shall in no event be later than the end of the Interim Finance Period***. . . .[Emphasis Added]

Thus, the pre-requisites for a wage freeze are: (i) a Control Period, and (ii) NIFA Resolutions finding necessity and declaring a fiscal crisis.

On January 26, 2011, NIFA ordered a Control Period upon projecting a substantial 2011 budget deficit. Specifically, on January 26, 2011, NIFA enacted its Resolutions imposing a Control Period pursuant to Public Authorities Law §3669(1)(b) on the grounds that there existed a substantial likelihood and imminence of the County incurring a major operating fund deficit of one percent or

more in aggregate result of operations during 2011. The County resisted State oversight and filed a proceeding against NIFA in this Court pursuant to Article 78 of the CPLR which provides the exclusive means under New York law to challenge an order of a State public authority (*Matter of County of Nassau v Nassau County Interim Fin. Auth, supra*).

In *Matter of County of Nassau v Nassau County Interim Fin. Auth, supra*, the County contended that NIFA's power to order a Control Period expired at the end of the Interim Finance Period, and that even if NIFA had the authority to impose a Control Period, it's decision to impose a Control Period was nonetheless arbitrary and capricious since, it argued, the statutory prerequisite of a 1% deficit had not been met. This Court dismissed the claim and held – in a ruling also significant to the determination of this proceeding – that NIFA retained the power to impose a Control Period while its bonds remain outstanding (*Id.* at 248, 257-258). Indeed, this Court held in it's previous determination, dated March 11, 2011, in pertinent part, as follows:

> ***When subdivisions two and four of section 3667, and section 3669 of the Public Authorities Law are all construed together, a fair meaning of the NIFA act is revealed. There is no explicit statutory authority nor is there any fair meaningful interpretation of the legislative history and statutory language of those statutes that would support petitioners proposition that the Control Period must be exercised by NIFA during the Interim Finance Period. The parties all agree that the Interim Finance Period expired in 2008. However, NIFA's authority that expired in 2008 is the authority to conduct an annual audit, and to issue new debt obligations on behalf of Nassau County. (PAL § 3651[14]). The county's obligation to submit a four year plan, and annual reports to NIFA under PAL § 3667(2) also expired. But the county still had an obligation to provide quarterly reports to NIFA under PAL § 3667(4) while bonds remained outstanding, and NIFA's authority to declare a Control Period under PAL § 3669(1) continued while the bonds remain outstanding.
> ***
> Nevertheless, what justifies the imposition of a Control Period here is a finding that there exists a substantial likelihood and imminence of the county incurring a major operating funds deficit of one percent or more in the aggregate results of operations during its fiscal year 2011 applying GAAP. (Public Authorities Law § 3669(1)(b)). Interpreting the Act as permitting NIFA to impose a Control Period does not violate any principles of statutory construction: NIFA is not being permitted to impose a Control Period based solely on the county's failure to adopt a balanced budget; rather, it is based upon the substantial likelihood and imminence of a one percent deficit.
> (*Id.* at 248, 257-258).

Nearly two months following NIFA's declaration of a Control Period, on March 24, 2011, NIFA unanimously invoked the power under the NIFA Act to declare a fiscal crisis and impose a one

year wage freeze (JA-290-91). NIFA found that the County could not hope to achieve the fiscal balance required by the Act without a wage freeze (JA-276-77). NIFA also found that the freeze would help reduce the number of inevitable layoffs of County personnel, which would be a better overall result for the employees whose jobs were spared and the County residents for whom a larger workforce would remain available to deliver essential services (JA-286-87).

Thus, on March 24, 2011, NIFA passed two Resolutions on March 24, 2011, to wit, Resolution No. 11-303 and Resolution No. 11-304 (JA-278-289; JA-290-91). Resolution No. 11-303 made a finding that a wage freeze "is essential to the adoption and maintenance of a budget for Nassau County that is in compliance with the NIFA Act" (JA-278). Resolution No. 11-304 "declar[ed] a fiscal crisis" and ordered an immediate suspension of "all increases in salary or wages of the employees of the County" and "all increased payments for holiday and vacation differentials, shift differentials, salary adjustments according to plan, and step-ups and increments for employees of the County" that would otherwise take effect after March 24, 2011 (JA-290-91).[4]

Counsel for the petitioners maintain herein that by authorizing a suspension of all wage increases, the Resolutions directed the County to breach the terms of the collective bargaining agreements and other agreements (including Court ordered interest arbitration awards) it entered into with, *inter alia*, the police unions (the petitioners herein). One of those arbitration awards, the 2007 PBA Award, was an interest arbitration award that set forth the terms and conditions of a required successor contract for the PBA and its members, including wage increases (the "2007 PBA Award"). The 2007 PBA Award was confirmed by the Supreme Court Nassau County on September 17, 2007 and judgment was entered by the Nassau County Clerk on October 19, 2007.

After carefully analyzing the County's financial outlook and determining that in the face of continuing fragility of the County's finances, a wage freeze was essential, on March 22, 2012 and March 14, 2013, NIFA again unanimously invoked the power under the NIFA Act to declare a fiscal

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[4]Ultimately, even with the savings of the wage freeze, the County laid off more than 300 personnel in 2011 (JA-131, ¶63). However, because the police were able to challenge layoffs through their arbitration awards, all layoffs were of non-police personnel, such as the CSEA, who enjoy no such protections. (JA-129-30, ¶¶56-57; JA-131 ¶63).

crisis and impose one year wage freezes.[5] Indeed, as required by the NIFA Act, NIFA, each year, adopted Resolutions (I) finding that a wage freeze was essential to the adoption and maintenance of a financial plan and budget for the County, (ii) declaring that the County was experiencing a financial crisis, and (iii) ordering the imposition of a one year wage freeze.

Meanwhile, approximately one week following NIFA's imposition of it's first wage freeze, on April 1, 2011, the PBA petitioners commenced an action in the United States District Court for the Eastern District of New York, i.e., *Carver v. Nassau County Interim Finance Authority*, against, *inter alia*, NIFA, seeking a temporary restraining order and preliminary injunction on the grounds that respondents violated Article I, Section 10 of the United States Constitution, the Contracts Clause. The District Court (Wexler, J.) denied the temporary restraining order but allowed for discovery before a hearing on a preliminary injunction.

Thereafter, on April 22, 2011, the PBA petitioners filed an Amended Complaint invoking federal supplemental jurisdiction to assert two additional state claims challenging the validity of the Resolutions under the NIFA Act, including the claim that NIFA lacked the statutory authority to impose a wage freeze after the expiration of the Interim Finance Period.

Following discovery, the parties moved for summary judgment. By Memorandum and Order dated February 14, 2013, the District Court (Wexler, J.) granted the PBA petitioners summary judgment and ruled that the Resolutions violated subsection 3669(3) of the NIFA Act (*Carver v. Nassau County Interim Finance Authority,* 923 F.Supp.2d 423 [EDNY 2013]). After finding the Resolutions invalid, the Court determined that it "need reach neither the Constitutional issue raised, nor the additional statutory ground raised by the Unions" (*Id.* at 429).

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[5]On March 22, 2012, NIFA passed Resolution Nos. 12-365 and 12-366 imposing a wage freeze for 2012 (Klinger Aff., Ex. 3)

On March 14, 2013, NIFA passed Resolution Nos. 13-417 and 13-418 imposing a wage freeze for 2013 (Klinger Aff., Ex. 4).

The NIFA respondents appealed to the United States Court of Appeals for the Second Circuit, challenging the District Court's jurisdiction to reach the state claim as well as the merits of the decision.[6]

On September 20, 2013, the Second Circuit Court of Appeals issued a decision – *Carver v. Nassau County Interim Finance Authority*, 730 F.3d 150 [2nd Cir. 2013] – vacating and remanding the District Court's decision on the grounds that the District Court abused its discretion in exercising supplemental jurisdiction over the state statutory interpretation claim. The Second Circuit found that the case presented an "unresolved question of state law" and the "construction of a significant provision of an extraordinary consequential legislative scheme" (*Id.* at 154) which rendered it better suited to be resolved by the New York state courts "because the manner in which the statute is construed implicates significant state interests" (*Id*). Notably, the Second Circuit did not address the merits of the District Court's determination that the NIFA Act does not permit a wage freeze beyond the Interim Finance Period.

Following the federal court litigation, the PBA, the CSEA and the (instant) SCOBA petitioners each commenced a proceeding in this Court challenging NIFA's imposition of the 2011, 2012 and 2013 wage freezes on the grounds that NIFA's authority to impose such wage freezes expired in 2008 at the end of the Interim Finance Period as defined in the Act.[7]

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[6]The PBA petitioners also brought federal actions in the Eastern District of New York challenging the Resolutions imposing the 2012 and 2013 wage freezes with similar claims (Carver, et. al. v. NIFA, et. al., 12 CV-3716 and Carver, et. al. v. NIFA, et. al., 13-CV-3951). Discovery in both of those actions, since they involved substantially the same legal issues as the first wage freeze action, was stayed pending resolution of the appeal in the Second Circuit.

[7]The federal District Court has issued an Order staying the petitioners three federal actions challenging the constitutionality of the wage freezes under the Contracts Clause, pending the resolution of the state claims raised in these proceedings (Carver, et. al. v. NIFA, et. al., No. 11-cv-1614 [LDW], Memorandum and Order [EDNY, Sept. 25, 2013]).

Decision

Timeliness

CPLR § 3211(a)(5) permits the respondents to seek and obtain a dismissal of one or more claims asserted against them on the ground that the cause of action is barred by the statute of limitations.

This much is clear and undisputed. For more than 30 months (from March 2011 through September 2013), the petitioners herein chose not bring this Article 78 proceeding or otherwise challenge the wage freeze(s) in the courts of this State. Instead, they filed a series of lawsuits in federal court, which culminated in a Second Circuit decision ordering dismissal of their state claims for lack of supplemental jurisdiction (*Carver v. Nassau County Interim Finance Authority, supra*).

The statute of limitations in an Article 78 proceeding is four months (CPLR § 217[1]). CPLR § 217(1) provides that the four months start to run when:

> the determination to be reviewed becomes final and binding upon the petitioner ... or after the respondent's refusal, upon the demand of the petitioner ... to perform its duty ....

For the purposes of CPLR § 217, an administrative determination becomes final and binding on the date that it becomes effective (*Matter of Calvert v. Westchester Co. Personnel Office*, 128 AD2d 523 [2nd Dept. 1987]). Accordingly, the four month statute of limitations for challenging the respondents enactment of the Wage Freeze Resolutions began to run on March 24, 2011, March 22, 2012 and March 14, 2013 when NIFA enacted the final and binding Resolutions for Wage Freezes I, II and III, respectively, which allegedly aggrieved the petitioners herein (*106 Mile Transport Assocs. v. Koch*, 656 F. Supp. 1474 [SDNY 1987]).

Pursuant to these enactments, and under the ordinary application of CPLR § 217(1), the petitioners herein had until June 24, 2011 to challenge the enactment of Wage Freeze I; June 22, 2012 to challenge the enactment of Wage Freeze II; and June 14, 2013 to challenge the enactment of Wage Freeze III.

The claims are best summarized as follows:

NIFA Wage Freeze I (Effective March 24, 2011)

Caption of Original Filing	Petitioner	Date on which NIFA Act Claim First Was Made	Within Four Month Limitations Period (Y/N)
Carver, et. al. v. NIFA, et. al., EDNY (Case No.: 11-CV-01614), 2d. Cir. (13-801, 13-840)	PBA	April 22, 2011	Yes
Jaronczyk, et. al. v. NIFA, et. al., EDNY (Case No.: 11-CV-2743)	SCOBA	March 7, 2013	No
Laricchiuta, et. al. v. NIFA, et. al., EDNY (Case No.: 11-CV-1900)	CSEA	March 18, 2013	No

NIFA Wage Freeze II (Effective March 22, 2012)

Caption of Original Filing	Petitioner	Date on which NIFA Act Claim First Was Made	Within Four Month Limitations Period (Y/N)
Carver, et. al. v. NIFA, et. al., EDNY (Case No.: 12-CV-3716)	PBA	July 26, 2012	No
Jaronczyk, et. al. v. NIFA, et. al., EDNY (Case No.: 13-CV-1091)	SCOBA	March 1, 2013	No
Laricchiuta, et. al. v. NIFA, et. al., EDNY (Case No.: 13-CV-1331)	CSEA	March 13, 2013	No

NIFA Wage Freeze III (Effective March 14, 2013)

Caption of Original Filing	Petitioner	Date on which NIFA Act Claim First Was Made	Within Four Month Limitations Period (Y/N)
Carver, et. al. v. NIFA, et. al., EDNY (Case No.: 13-CV-3951)	PBA	July 12, 2013	Yes
Jaronczyk, et. al. v. NIFA, et. al., EDNY (Case No.: 13-CV-4097)	SCOBA	July 18, 2013	No
Laricchiuta, et. al. v. NIFA, et. al., EDNY (Case No.: 13-CV-3898)	CSEA	July 11, 2013	Yes

Thus, the only claims that survive the CPLR § 217(1) application are the PBA Petitioners' challenge to Wage Freezes I and III which were advanced on April 22, 2011 and July 12, 2013, respectively, and the CSEA Petitioners' challenge to the enactment of Wage Freeze III which was advanced on July 11, 2013, respectively. The balance of all claims, including the SCOBA petitioners' challenges to all three wage freezes are stale under CPLR § 217(1).

However, Federal law at 28 U.S.C. §1367(d) provides generally for the tolling of statutes of limitations with regard to state law claims during their pendency in federal court "for a period of 30 days after [dismissal in federal court] unless State law provides for a longer tolling period."

28 U.S.C. §1367(d) provides as follows:

> §1367. Supplemental jurisdiction
> ***
> (d) The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.

On September 20, 2013, the Second Circuit Court of Appeals, without at all addressing the federal claims (much less on the merits), declined to exercise supplemental jurisdiction over the state statutory interpretation claims and issued a decision vacating and remanding the District Court's decision (*Carver v. Nassau County Interim Finance Authority, supra*). The petitioners herein by virtue of 28 U.S.C. §1367(d), thus had until October 20, 2013, to commence the instant proceedings. However, the SCOBA petitioners did not commence the instant Article 78 proceedings re-asserting their state claims until October 23, 2013; the PBA petitioners commenced their Article 78 proceeding on October 29, 2013; and, the CSEA petitioners commenced their Article 78 proceeding on October 17, 2013. Thus, each of the petitioners commenced suit well beyond the 30 day deadline set forth in the federal "tolling" statute 28 U.S.C. §1367(d).

Despite the foregoing, the petitioners herein rely upon CPLR §205(a) which provides, in pertinent part, as follows:

> 205. Termination of action
>
> (a) New action by plaintiff. If an action is timely commenced and is terminated in any other manner than by a voluntary discontinuance, a failure to obtain personal jurisdiction over the defendant, a dismissal of the complaint for neglect to prosecute the action, or a final

> (a) New action by plaintiff. If an action is timely commenced and is terminated in any other manner than by a voluntary discontinuance, a failure to obtain personal jurisdiction over the defendant, a dismissal of the complaint for neglect to prosecute the action, or a final judgment upon the merits, the plaintiff,***, may commence a new action upon the same transaction or occurrence or series of transactions or occurrences within six months after the termination provided that the new action would have been timely commenced at the time of commencement of the prior action***.

CPLR §205(a) is a remedial statute. The statute implements the "vitally important" policy preference for the determination of action on the merits (*Carrick v. Central General Hospital*, 51 NY2d 242 [1980]; *Winston v. Freshwater Wetlands Appeals Bd.*, 224 AD2d 160 [2nd Dept. 1996]). As stated therein, a litigant has a six-month grace period within which to recommence an action which has been dismissed on grounds other than voluntary discontinuance, lack of personal jurisdiction, neglect to prosecute, or the entry of a final judgment on the merits (CPLR §205[a]; *see also, Goldstein v. UDC*, 64 AD3d 168, 177 [2nd Dept. 2009]).

As noted above, the federal court's dismissal of the petitioners' claims was based upon a failure to obtain supplemental jurisdiction over their state law claims. Thus, none of the grounds for dismissal precluding the application of CPLR § 205(a) are applicable. This, in turn, permits the petitioners herein to advance their state claims in this (state) court by March 20, 2014 (six months following the federal court's determination dismissing the petitioners' claims).

As noted above, the petitioners herein all commenced these proceedings prior to March 20, 2014, thereby rendering their instant applications timely.

The respondents herein argue that as the petitioners did not include a claim that NIFA did not have the authority to issue the wage freeze in their (federal) 2011 complaint when it was originally filed, instead advancing that state claim in federal court later in their amended pleading, they were not put on notice until that later date thereby rendering the application of CPLR§205(a) inapplicable and rendering their wage freeze claim untimely. This Court is not so persuaded.

While CPLR§ 203(f) indicates that the original pleading must have given notice of the transactions or occurrences to be proven pursuant to the amended pleading, the respondents' interpretation of CPLR§ 205(a) as a relation back statute is incorrect. Indeed, pursuant to CPLR§ 203(f), a "claim asserted in an amended pleading is deemed to have been interposed at the time the claims in the original proceeding were interposed." Accordingly, the claim that NIFA did not have

statutory authority to issue the 2011 wage freeze is deemed to have been interposed when the original lawsuit was pursued in federal court, and not at the time of the amendment nor the time when this special proceeding was commenced.

In any event, even where a cause of action is pursued outside the limitations period in an amended complaint, the interplay of CPLR §203(f) and §205(a) renders the cause of action timely even after the termination of a related litigation so long as the new litigation is pursued within six months (*Bank of New York v. Midland Avenue Development Co.*, 248 AD2d 342 [2nd Dept. 1998]).

Indeed, this Court also cannot overlook that:

> The function of the statute [CPLR§ 205(a)] is to ameliorate the potentially harsh effect of the statute of limitations in certain cases, in which at least one of the fundamental purposes of the statute of limitations has in fact been served, and the defendant has been given timely notice of the claim being asserted by or on behalf of the injured party; the statute is remedial in nature and its broad and liberal purpose is not to be frittered away by narrow construction, and the important consideration is that by invoking judicial aid, a litigant gives timely notice of a present purpose to his or her adversary to maintain his or her rights before the courts. The very function of the provision is to provide a second opportunity to the claimant who has failed the first time around because of some error pertaining neither to the claimant's willingness to prosecute in a timely fashion nor to the merits of the underlying claim. By its terms, the statute operates as a toll of the statute of limitations following the "termination" of an "action" and will not apply following the mere denial of a motion.
> (75A N.Y. Jur. 2d Limitations and Laches § 310 [Feb. 2014]; *see also, George v. Mt. Sinai Hospital*, 47 NY2d 170 [1979]).

While an administrative proceeding is not an "action" within the meaning of this statute (*Montella v. Safir,* 290 AD2d 261 [1st Dept. 2002]), this Court notes that the petitioners' claims in *federal court* were cast in the form of an action seeking plenary relief, and were not a challenge to any agency determination. Accordingly, this Court herewith finds that the petitioners' instant claims as to each wage freeze are all timely.

Having determined that the claims are timely, this Court nonetheless does take pause to specifically dismiss the petitioners' contention that each wage freeze was a continuing violation and established a continuing course of conduct by NIFA which did not alter the status quo and only extended the circumstances that were established as the result of the 2011 wage freeze determination. Petitioners submit, albeit erroneously, *supra*, that as the 2011 wage freeze litigation was timely, the remaining claims must also be accepted as timely. This argument is entirely meritless.

The continuing violation theory has consistently been rejected by the Courts of this State and, indeed, here, the harm alleged by the petitioners (each wage freeze) emanates from the distinct acts of passing two Resolutions for each separate wage freeze, *supra*. This Court will not allow a finding that a continuing harm flowed from what were fully completed, separate, and discrete acts to infinitely extend the Statute of Limitations. As noted above, this would also vitiate the purpose underlying the four month Statute of Limitations period afforded by the Legislature for Article 78 proceedings, especially here where the delivery of vital government services is at issue (*Carrick v. Central General Hospital, supra*; *see also, Mary K. v. Levy*, 109 AD3d 587 [2nd Dept. 2013]; *Federation of Mental Health Centers, Inc. v. De Buono*, 275 AD2d 557 [3rd Dept. 2000]; *see also, generally, Flanagan v. Mount Eden Gen. Hosp.*, 24 NY2d 427 [1969]). The wage freezes were not continuous acts, *infra*. Rather, the undisputed evidence herein confirms that each wage freeze was limited to one year from the date of the wage and salary suspension orders. Accordingly, the petitioners' continuing violations theory is meritless.[8]

Accordingly, this Court herewith finds that despite the fact that most of the petitioners claims challenging the respondents' Resolutions to each of the three wage freezes are untimely under ordinary application of CPLR §217[1] and even 28 U.S.C. §1367(d), pursuant to the concurrent applications of CPLR §203(a) and (f), this Court nonetheless finds that each of the petitioners' challenges to Wage Freezes I, II, and III survive the respondents' motion for an Order seeking dismissal of the proceeding pursuant to CPLR § 3211(a)(5) on statute of limitations grounds.

NIFA's Statutory Authority

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[8]The petitioners also advance other meritless assertions for their extension of the statute of limitations to these proceedings, including: (1) the underlying purpose of the statute of limitations, both in general and with specific regard to CPLR § 217, are not served by holding that any of petitioners' claims were not timely interposed; (2) in the end, CPLR §103[c] permits to the court to "make whatever order is required" to ensure that "a civil judicial proceeding shall not be dismissed solely because it is not brought in the proper form...;" (3) where a proceeding as here is brought in the nature of a writ of prohibition, challenging an action of an agency made in excess of the jurisdiction granted to it by the Legislature, it is not subject to the statute of limitations; and, (4) that their members suffered "direct, immediate and proximate" harm when the wage freeze Resolutions were enacted. This Court will not specifically address each of these claims; suffice it to say that this Court finds said claims to all be unavailing and entirely meritless.

In determining motions to dismiss under CPLR § 7804(f) or 3211, only the allegations of the petition may be considered (*Rovello v. Orofino Realty Co.*, 40 NY2d 633 [1976]), and "affidavits may be received for a limited purpose only, serving normally to remedy defects in the complaint" (*Id.* at 636).

CPLR § 3211(a)(1) permits the respondents to seek and obtain a dismissal of one or more causes of action asserted against them on the grounds that the respondents have a defense founded upon documentary evidence. When a motion to dismiss based upon documentary evidence is made pursuant to CPLR § 3211(a)(1), the respondents must show that "the documentary evidence upon which the motion is predicated resolves all factual issues as a matter of law and definitely disposes of the plaintiff's claim" (*Unadilla Silo Co. v. Ernst & Young*, 234 AD2d 754 [3rd Dept. 1996]; *see also, Leon v. Martinez*, 84 NY2d 83 [1994]).

CPLR § 3211(a)(7) permits the respondents to seek a dismissal of a cause of action asserted against them when the petitioner allegedly fails to state a cause of action in the pleading.

In deciding a motion made pursuant to CPLR §3211(a)(7), the court must determine whether the pleader has a cognizable cause of action (*Leon v. Martinez*, *supra*; *Well v. Yeshiva Rambam*, 300 AD2d 580 [2nd Dept. 2002]). In so doing, the pleading must be liberally construed in the light most favorable to the plaintiffs/petitioners, and all allegations must be accepted as true (*511 West 232nd Street Owners Corp. v. Jennifer Realty Co.*, 98 NY2d 144 [2002]; *Well v. Yeshiva Rambam*, *supra*). If, from the facts alleged in the pleading and the inferences which can be drawn from the opposition to the motion, the court determines that the pleader has a cognizable cause of action, the motion to dismiss must be denied (*Sokoloff v. Harriman Estates Development Corp*, 96 NY2d 409 [2001]).

Petitioners advance two principal arguments in support of their applications, pursuant to CPLR §7803(2) and §7803(3), for a Judgment of this Court that NIFA's actions in enacting a wage freeze were made in excess of it's statutory authority and were in violation of lawful procedure and/or affected by error of law. First, the express language and plain meaning of the NIFA Act prohibits NIFA from imposing a wage freeze beyond the Interim Finance Period ending in 2008 and thus NIFA acted beyond its statutory authority when it passed the Resolutions imposing wage freezes for three consecutive years. And, second, the NIFA Act does not permit it to enact Resolutions in contravention of State Court Judgments.

The County Respondents and NIFA each oppose the petitioners' application and in turn separately move to dismiss the petitions pursuant to CPLR§ 3211(a)(1), (7) and 7804(f). Respondents maintain, *inter alia*, that, contrary to the petitioners' interpretation of the NIFA Act, the plain language of the NIFA Act, as well as the legislative history and intent behind the Act, demonstrates that NIFA was within its authority as promulgated by the New York State Legislature to impose a wage freeze after the expiration of the Interim Finance Period.

Pursuant to CPLR§ 7803(2) and (3):

> The only questions that may be raised in a proceeding under this article are:
> ***
> 2. whether the body or officer proceeded, is proceeding or is about to proceed without or in excess of jurisdiction; or
>
> 3. whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion, including abuse of discretion as to the measure or mode of penalty or discipline imposed;***

The law is settled. Judicial review of the determinations of an agency, including those of a public benefit corporation such as NIFA, is limited to questions of law (*Gress v. Brown,* 20 NY3d 957 [2012]; *see also, Matter of Khan v. New York Sate Dept. of Health*, 96 NY2d 879 [2001]). Although the proper interpretation of a statute ordinarily presents an issue of law reserved for the courts, the Court of Appeals has recognized that "[a]n administrative agency's interpretation of the statute it is charged with implementing is entitled to varying degrees of judicial deference depending upon the extent to which the interpretation relies upon the special competence the agency is presumed to have developed in its administration of the statute" (*Matter of Rosen v. Public Empl. Relations Bd.*, 72 NY2d 42, 47 [1988]). "Where the interpretation of a statute or its application involves knowledge and understanding of underlying operational practices or entails an evaluation of factual data and inferences to be drawn therefrom, the courts regularly defer to the governmental agency charged with the responsibility for administration of the statute" (*Kurcsics v. Merchants Mut. Ins. Co.*, 49 NY2d 451, 459 [1980]; *see also, Matter of Industrial Liaison Comm. of Niagara Falls Area Chamber of Commerce v. Williams*, 72 NY2d 137 [1988]). When such deference is appropriate, the courts will not disturb the agency's interpretation of the provision if it is supported by a rational

basis (*Fisher v. Levine*, 36 NY2d 146, 150 [1975]; *Matter of Van Teslaar [Levine]*, 35 NY2d 311, 318 [1974]).

By contrast, where "the question is one of pure statutory reading and analysis, dependent only on accurate apprehension of legislative intent, there is little basis to rely on any special competence or expertise of the administrative agency" (*Kurcsics v. Merchants Mut. Ins. Co.*, *supra* at 459). In such circumstances, the judiciary need not accord any deference to the agency's determination, and is free to ascertain the proper interpretation from the statutory language and legislative intent (*Matter of Van Teslaar [Levine]*, *supra* at 318).

Statutory construction is the function of the courts (*Mounting & Finishing Co. v. McGoldrick*, 294 NY 104 [1945]). The courts are responsible for definitively resolving the legal question of the applicability of a statute to a particular situation (*Meier v. Ma-Do Bars*, 106 AD2d 143 [3rd Dept. 1985]) and are constitutionally bound to give effect to the expressed will of the Legislature (*Finger Lakes Racing Ass'n. v. New York State Racing & Wagering Bd.*, 45 NY2d 471 [1978]).

In this case, the question of law hinges upon whether the last sentence of the Public Authorities Law §3669(3)(a) authorizes NIFA to impose a wage freeze after the expiration of the Interim Finance Period which undisputedly occurred in 2008.

To this extent, this Court notes that the Legislature has defined with precision both the underlying purpose of the legislative scheme, *infra*, and has also expressly provided that the NIFA Act "shall be liberally construed to assist the effectuation of the public purposes furthered thereby" (Public Authorities Law §3672).

Initially, however, this Court notes that NIFA issued three separate wage freeze Resolutions each lasting for one year (PBA Verified Petition, ¶¶ 9-10, 62-91, 120-22; CSEA Verified Petition, ¶¶ 2, 47-65; SCOBA Verified Petition, ¶¶29-37, 39, 45, 49). Indeed, the temporary nature of each wage freeze is demonstrated by the language of the wage freeze Resolutions themselves which specifically recite that the wage freezes would continue for one year (JA 290-91 [Wage Freeze I Resolution]; Klinger Aff, Ex. 3 [Wage Freeze Resolution II] and Ex. 4 [Wage Freeze III Resolution]). Nothing in these Resolutions suggests a determination by NIFA that continuing the freeze to another specified end date was required to achieve the objective of the County's financial plan. Accordingly, any claim by the petitioners that the wage freezes should be invalidated because

they "are part of a multi-year wage freeze" or the County's four year plan which provides for savings from anticipated wage freezes in each of the budgets for the four fiscal years until 2015, is dismissed at the outset.

Plain Meaning

The statutory paragraph at issue, with the determinative sentence, emphasized in bold italics, reads, in pertinent part, as follows:

> 3. Authorization for wage freeze.
> (a) During a Control Period, upon a finding by the authority that a wage freeze is essential to the adoption or maintenance of a county budget or a financial plan that is in compliance with this title, the authority, after enactment of a resolution so finding, may declare a fiscal crisis. Upon making such a declaration, the authority shall be empowered to order that all increases in salary or wages of employees of the county . . . are suspended. Such order may also provide that all increased payments for holiday and vacation differentials, shift differentials, salary adjustments according to plan and step-ups or increments for employees of the county . . . are, in the same manner, suspended. . . . ***The suspensions authorized hereunder shall continue until one year after the date of the order and, to the extent of any determination of the authority that a continuation of such suspensions, to a date specified by the authority, is necessary in order to achieve the objectives of the financial plan, such suspensions shall be continued to the date specified by the authority, which date shall in no event be later than the end of the Interim Finance Period.*** . . . (Public Authorities Law §3669[3][a]).

In interpreting a statute, the intent of the Legislature is the controlling or most important factor (*State of New York v. Ford Motor Co.*, 74 NY2d 495 [1989]; *Carr v. New York State Bd. of Elections*, 40 NY2d 556 [1976]). Accordingly, the primary rule of construction of statutes is to ascertain and declare the intention of the Legislature (*Long v. State of New York*, 7 NY3d 269 [2006]; *Matter of M.B.*, 6 NY3d 437 [2006]) and carry such intention into effect (*Long v. State of New York, supra*; *State of New York v. Patricia II*, 6 NY3d 160 [2006]).

Generally, the intent of the Legislature is ascertained from the words and language used or from the language used in the act read in connection with the ends of interpretation and surrounding circumstances (*Estate of Agioritis*, 52 AD2d 128 [1st Dept. 1976] *aff'd* 40 NY2d 646 [1976]).

As the clearest indicator of legislative intent is the statutory text, the starting point in any case of interpretation must always be the language itself, giving effect to the plain meaning thereof (*Flores v. Lower E. Side Serv. Ctr., Inc.*, 4 NY3d 363 [2005]). Where the language of the statute is

clear, it is presumed that the intent is reflected in the words chosen by the Legislature and the plain meaning they express (*A.J. Temple Marble & Tile v. Union Carbide Marble Care*, 87 NY2d 574 [1996]). Thus, the plain meaning must be given effect by this Court (*Charter Development Co., L.L.C. v. City of Buffalo*, 6 NY3d 578 [2006]; *Judge Rotenberg Educational Center v. Maul*, 91 NY2d 298 [1998]).

There is no reason to depart from the legislative text or resort to other means of interpretation such as the rules of construction, where the language is unambiguous and the result is not absurd (*Raritan Development Corp. v. Silva*, 91 NY2d 98 [1997]; *Marcus Assoc. v. Town of Huntington*, 45 NY2d 501 [1978]). The court may not ignore a statute's language in an effort to divine or construct a legislative intent that could easily have been articulated by the Legislature when it drafted the statute (*New York State Crime Victims Bd. v. T.J.M. Productions, Inc.*, 176 Misc. 2d 777 [Sup. Ct. New York 1998] *aff'd*, 265 AD2d 38 [1st Dept. 2000]).

When the law is doubtful or ambiguous however, judicial inquiry into legislative intent is appropriate as an aid to statutory interpretation (*Finger Lakes Racing Ass'n, Inc. v. New York State Racing & Wagering Bd.*, *supra*). In those circumstances, the Court is permitted to look behind the words of the statute and use established rules of construction to assist in ascertaining the true intention of the law (*Thomas v. Bethlehem Steel Corp.*, 95 AD2d 118 [3rd Dept. 1983] *aff'd* 63 NY2d 150 [1984]).

In this case, the following remains clear and undisputed: the first sentence of the Public Authorities Law § 3669(3)(a) authorizes NIFA "[d]uring a Control Period" to declare a fiscal crisis; and, that the next sentence states that "[u]pon making such a declaration, NIFA shall be empowered to order" a wage freeze. Thus, it is clear and undisputed that the plain meaning of this language is that NIFA's wage freeze power is available during a Control Period.

The determinative issue in this case however rests upon the meaning of the last sentence of this section which addresses how long a wage freeze, once ordered, "shall continue." The determinative sentence reads in full as follows:

> *The suspensions authorized hereunder shall continue until one year after the date of the order* ***and****, to the extent of any determination of the authority that a continuation of such suspensions, to a date specified by the authority, is necessary in order to achieve the objectives of the financial plan, such suspensions shall be continued to the date specified by*

> *the authority, which date shall in no event be later than the end of the Interim Finance Period*, provided that such suspensions shall terminate with respect to employees who have agreed to a deferral of salary or wage increase upon the certification of the agreement by the authority pursuant to paragraph (b) of this subdivision (Public Authorities Law §3669[3][a] [Emphasis Added]).

Based upon a plain and simple reading of this express language, it is clear to this Court that this sentence provides for two scenarios. First, that a freeze "shall continue until one year after the date of the order." And, second, that NIFA is authorized to continue the freeze to a specified date, *only if* NIFA first makes a specific determination that the specified end date is necessary to achieve the objectives of the County's financial plans. That is, the second scenario contemplates that *should* NIFA determine that a suspension must be continued beyond the one year period in order to achieve the objectives of the financial plan, it may not be extended beyond the end of the Interim Finance Period. The second scenario provides for a conditional alternative, which in this case, was inoperative as NIFA made no specific determination that the freeze would span for multiple years, *supra*.

Petitioners submit that the determinative phrase – "which date shall in no event be later than the end of the Interim Finance Period" – applies uniformly to any wage freeze, regardless of whether imposed for one year or extended to a date specified. According to the petitioners, while the first provision limits NIFA's ability to impose a wage freeze to one year periods, the second provision speaks to the "continuation of such suspensions" and grants NIFA the authority to continue to impose wage freezes on a year-to-year basis to a date specified by the authority as "necessary in order to achieve the objections of the financial plan."

According to the petitioners, although a wage freeze may admittedly be imposed during a Control Period, they argue that the Interim Finance Period acts as a limitation on NIFA's powers to impose a wage freeze during a Control Period. That is, according to the petitioners, both NIFA's ability to freeze wages, and to continue freeze wages, are restricted to the end of the Interim Finance Period as they submit that last provision applies to <u>any</u> authorized suspension. Thus, according to the petitioners, the Act "unambiguously" – specifically through the Legislature's use of the word "and" – extinguishes all existing wage suspensions at the end of the Interim Finance Period and

precludes NIFA from suspending wages after that date because the final limiting clause makes no distinctions between a wage freeze imposed for one year or to a date specified. This Court disagrees.

Initially, this Court notes that the petitioners' effort to limit the wage freeze power to the Interim Finance Period is strikingly resonant of this Court's previous contentions in it's Article 78 proceeding against NIFA to overturn the Control Period ordered by NIFA on January 26, 2011. There, the County unsuccessfully claimed that NIFA's power to declare a Control Period ended with the Interim Finance Period. This Court disagreed and said reasoning is equally applicable to the facts at hand. Although the petitioners herein (now) concede NIFA's continuing power to order a Control Period, they instead claim that only one NIFA power during a Control Period – the power to freeze wages – somehow expired. To that end, this Court has already specifically noted:

> Pursuant to Public Authorities Law § 3669(3), NIFA has the power to declare an unlimited fiscal crisis and freeze wages until the end of the Control Period*** (*County of Nassau v. Nassau County Interim Finance Authority*, *supra* at 238).

Accordingly, the petitioners' instant claims that the wage freeze power was tied to the Interim Finance Period are merit less. Interpreting the statutory provision at issue herein, this Court finds that a plain reading of the Public Authorities Law §3669(3) indicates that the Interim Finance Period operates as a limitation on NIFA's power to continue a wage suspension beyond the one year period authorized by statute. Indeed, this interpretation is supported by Section 3669(3)'s heading itself – "Authorization for a wage freeze" – and the operative introduction which sets forth when NIFA can impose a wage freeze – "During a Control Period..." This language does not contain any reference to the Interim Finance Period and instead states as follows:

> 3. Authorization for wage freeze. (a) During a Control Period, upon a finding by the authority that a wage freeze is essential to the adoption or maintenance of a county budget or a financial plan that is in compliance with this title, the authority, after enactment of a resolution so finding, may declare a fiscal crisis.***

Accordingly, the only predicates to the imposition of a wage freeze that are identified by the Legislature are (a) during a Control Period; and (b) the declaration of a fiscal crisis. Indeed, this Court notes that no where in the Public Authorities Law §3669(3)(a), is there any reference to any time limitation to the authorization to impose a wage freeze during a Control Period; instead, this

Court finds that the language of the statute, when read as a whole, supports the finding that NIFA was authorized to freeze wages *at any time* during a Control Period.

As stated above, the Interim Finance Period is not the predicate for instituting a wage freeze (Public Authorities Law §3669[1]). However, the Interim Finance Period acts as a limitation upon NIFA's authority to impose a wage freeze – that is, NIFA does not maintain the authority to freeze wages during any Control Period, only during a Control Period instituted while the Interim Finance Period is in effect.

The petitioners' emphasis on the differences between the phrases "a Control Period" and "any Control Period" in different subsections of Public Authorities Law §3669 is entirely misplaced given that section 3669(3)(a) used the construction "a Control Period" because not every Control Period would involve a fiscal crisis warranting a wage freeze.

Similarly, this Court finds that the petitioners' contention that the use of the word "and" in the final sentence of Section 3669(3)(a) makes the conditional phrase of the sentence always applicable – i.e., the conditional language becomes unconditional – is equally misplaced. Relying upon *Leader v Maroney, Ponzini & Spencer*, 97 NY2d 95 [2001], the petitioners argue that the Legislature's use of the word "and," as opposed to the word "or," connects two different components (both requirements) of this sentence: the duration of a wage freeze and the period of time for which such suspensions may be continued (i.e., until the end of the Interim Finance Period). The petitioners also point out that the absence of any punctuation marks suggesting that the portion of the sentence referring to the Interim Finance Period applies only to suspensions continued to a "date specified by the authority" is also noteworthy and important. This Court is not so persuaded and finds the petitioners' arguments entirely misplaced and meritless.

First, interpreting the conditional phrase of the sentence to be always applicable renders the conditional phrase a dead letter. The conditional clause serves no purpose if it is always applicable. This Court cannot deem this to have been the Legislature's intent behind the wage freeze provision the statute (*Brown v. Wing*, 93 NY2d 517 [1999]; *Levine v. Bornstein*, 4 NY2d 241 [1958]).

Second, use of the word "and" followed by a conditional phrase creates a general default option "and" a specific conditional alternative.[9] The first alternative is the default, and the second is conditional and controls only if the condition is satisfied. The conditional language of the sentence presents the two options as alternatives, regardless of the choice of conjunction – "and/or." Indeed, substituting "or" for "and" in this particular context would not change the meaning of the sentence (*Davis Constr. Corp. v County of Suffolk,* 95 AD2d 819 [2nd Dept. 1983]).

To that end, this Court notes that the Legislature has enacted precisely the opposite rule, as follows:

> § 365. "Or" construed as "and" and vice versa
>
> Generally, the words "or" "and" in a statute may be construed as interchangeable when necessary to effectuate legislative intent.
> (McKinneys Statutes §365).

Thus, the substitution of one for the other is frequently resorted to in the interpretation of statutes when the evident intention of the lawmakers require it (*People ex rel. Municipal Gas Co. of City of Albany v Rice*, 138 NY 151, 159 [1893]; *Matter of Allstate Ins. Co. v Libow*, 106 AD2d 110, 117 [2nd Dept. 1984]).

Third, contrary to the petitioners' interpretation, this Court finds that the conditional phrase – "to the extent of any determination of the authority that a continuation of such suspensions, to a date specified by the authority, is necessary in order to achieve the objectives of the financial plan" – does not grant NIFA the authority to continue to impose wage freezes on a year to year basis to a date specified by the authority. Based upon a plain reading of this section of the statute in its entirety, this Court finds that the statute very clearly contemplates two different types of wage freezes – a one year freeze and a multi year freeze, which the conditional language indicates would end before the expiration of the Interim Finance Period. That is, in the second half of the Public Authorities Law § 3669(3)(a), the Legislature contemplated circumstances whereby the wage freeze would be continued beyond the one year period. Accordingly, if NIFA determined the wage freeze should

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[9]The Court is persuaded by NIFA's example highlighting a general default option "and" a specific conditional alternative: "My vacations shall end Sunday and, to the extent I need an additional travel day, my vacations shall end Monday."

continue beyond one year, the statute then places a limitation on NIFA's authority to extend it unless the Interim Finance Period is in effect which would ensure the temporary nature of any freeze imposed. During the Interim Finance Period, a wage freeze could have continued beyond the one year period without the necessity of an additional declaration of a fiscal crisis by NIFA. After the expiration of the Interim Finance Period, however, a wage freeze can only last for one year, with no continuation. NIFA could impose a subsequent, i.e., *new* wage freeze, but only upon a *new* declaration of a fiscal crisis based on the budgetary and other relevant conditions existing at that subsequent point in time. Thus, only during the Interim Finance Period, a time of increased statutory oversight by NIFA, could NIFA impose and then continue a wage freeze for longer than one year based on a single declaration of a fiscal crisis.

Indeed, to conclude that NIFA may impose a wage freeze only during an Interim Finance Period would misinterpret the operative clauses in the second half of the statute without providing proper regard to the heading and first sentence, *supra*, which state that NIFA has the authority to enact a wage freeze "during a Control Period." If NIFA had no authority to enact a wage freeze beyond the expiration of the Interim Finance Period, then the statute's first sentence would be rendered meaningless. Well established rules of statutory construction provide that all parts of a statute are intended to be given effect and that a construction rendering part of the statute meaningless should be avoided (*Majewski v. Broadalbin-Perth Cent. Sch. Dist.*, 91 NY2d 577, 587 [1998]; *In re OnBank & Trust Co.*, 90 NY2d 725, 731 [1997]; *Rocovich v. Consolidated Edison Co.*, 78 NY2d 509, 515 [1991]).

In addition to claiming that Act creates two types of freezes, the petitioners also advance contrary claims that rather than creating two types of wage freezes, the final clause of the disputed sentence – provided that such suspensions shall terminate with respect to employees who have agreed to a deferral of salary or wage increase – envisions a one year period with year-to-year extensions to a date specified by NIFA. That is, petitioners claim that this sentence somehow implies that the two possible end dates of a freeze ("one year after the date of the order" and "a date specified by the authority") are to be treated equally for all purposes. The statutory language however cannot support this construction, which gives meaning to the conditional clause but in the process

renders the one year limitation meaningless (*Brown v. Wing*, *supra*; *Levine v. Bornstein*, *supra*; *Rosner v. Metropolitan Property and Liability Ins. Co.*, 96 NY2d 475 [2001]).

Moreover, this Court takes special note of the fact that the Legislature failed to state that NIFA was empowered to freeze wages only during an Interim Finance Period. No where does the Legislature spell out the wage freeze authority as one of the powers conferred during the Interim Finance Period and this Court finds the omission is indicative of the Legislature's intent to tie the wage freeze provision to the Control Period, which as noted above, can occur outside an Interim Finance Period. A clear and plain construction of the statute leads this Court to conclude that only when NIFA might seek to extend a wage freeze beyond one year does the additional condition of the Interim Finance Period arise. Indeed, such an interpretation would also be consistent with its underlying purpose, to secure the general welfare in times of fiscal crisis, *infra* (*Meyers Bros. Parking Systems, Inc. v. Sherman*, 87 AD2d 562 [1st Dept. 1982] *aff'd* 57 NY2d 653 [1982]).

Moreover, this Court cannot overlook the fact that the courts are always justified in departing from the literal meaning of words when necessary to preserve the intent of the Legislature, *infra* (*People v. Cubiotti*, 4 Misc.2d 44 [Civ. Ct. Rochester 1956]). In this case, the Legislature has expressly provided that the NIFA Act "shall be liberally construed to assist the effectuation of the public purposes furthered hereby" (Public Authorities Law §3672). The entire purpose of the NIFA Act was to place the County on sound financial ground over the long term. To narrowly read the Public Authorities Law §3669(3)(a) to mean that all wage suspensions would be extinguished at the end of the Interim Finance Period would fly in the face of the express language of the Public Authorities Law §3672 mandating "liberal[] construc[tion]." In addition, this reading would contradict the legislative intent of protecting not only the County's long term fiscal stability while NIFA bonds remain outstanding but also furthering the State's interest in halting the spread of fiscal distress by precluding the County from filing for bankruptcy protection, *infra*.

Petitioners argue that the plain language of the NIFA Act states that the duration of a wage freeze "shall in no event be later than the end of the Interim Finance Period" which undisputedly expired in 2008, years before the wage freeze was enacted. According to the petitioners, this establishes that NIFA was without the statutory authority to freeze wages when it passed the

challenged Resolutions in 2011, 2012 and 2013. This Court finds however that petitioners' construction is misplaced.

Lifting a fragment of the law in issue out of context and interpreting its meaning without reference to the balance of the operative language, is inappropriate and violative of the rules of statutory construction (McKinneys Statutes §97). To this extent, this Court in it's previous decision, *Matter of County of Nassau v Nassau County Interim Fin. Auth*, *supra* at 244, has already held and explained:

> A fundamental rule of statutory construction when construing statutes under the same legislative act, namely, section 3667 and section 3669 of the Public Authorities Law, is that the court must "take the entire act into consideration, or look to the act as a whole, and all sections of a law must be read together to determine its fair meaning." (Statutes § 97, at 213.) "A general expression or a single sentence detached from its context does not reveal the purpose of the statute as a whole, and particular provisions, therefore, should not be torn from their places and, so isolated, be given a special meaning at variance with the general purpose and spirit of the enactment." (Statutes § 97, at 214.)

The petitioners' improperly isolate a single sentence within the provision from the rest of the subsection and attempt to detach the provision itself from the Act's Control Period section in order to improperly achieve a "meaning at variance with the general purpose and spirit of the enactment" (*Matter of County of Nassau v Nassau County Interim Fin. Auth*, *supra*). This Court however cannot ignore the wage freeze provision's first two sentences which plainly grant NIFA the power to order a wage freeze during the Control Period upon declaring a fiscal crisis.

The petitioners' also argue that the structure of the NIFA Act also indicated an intent to limit a wage freeze to the Interim Finance Period. They submit that the Public Authorities Law § 3669(3)(a) is located in a separate subsection of section 3669 from other subsections granting NIFA powers during a Control Period and therefore the Legislature intended that the wage freeze power be limited to the Interim Finance Period. This argument is entirely meritless.

Indeed, this Court finds that a proper construction of the Act takes into consideration that the power to order a freeze is contained in section 3669 which bears the heading "Control Period" and comprises subsections dedicated to NIFA's powers and obligations during a Control Period (*Effective Communications W. v Board of Coop. Educ. Servs. of Sole Supervisory Dist. of Cattaraugus, Erie & Wyoming Counties*, 57 AD2d 485 [4th Dept. 1977]). To the extent that the

structure of the statute is indicative of the legislative intent, this Court finds that the wage freeze power is tied to the Control Period. Indeed, the legislative history also supports this Court's conclusion that the wage freeze power was a function of a Control Period that could be ordered by NIFA even after the end of the Interim Finance Period, *infra* (see e.g., New York Bill Jacket, 2007 S.B. 6014, Ch. 364).

The final clause is a proviso that implies nothing and curtails the sentence only to the extent specifically spelled out in the proviso.

> § 212. Provisos
>
> The purpose of a proviso is to restrain the enacting clause, to except something which would otherwise have been within it, or in some measure to modify it. (McKinneys Statutes, §212).

The fact that the Legislature fashioned a proviso to limit a wage freeze (by exempting employees who agreed to an acceptable wage deferral) indicates no other, unstated limitation on the wage freeze power. Indeed, if the Legislature wanted a general halt to any wage freeze at the expiration of the Interim Finance Period as the petitioners contend, then the proviso was the most obvious clause to impose such a limitation. The Legislature chose not do so, and this, the Court finds noteworthy.

In addition, under the petitioners' reading of the Public Authorities Law §3669(3)(a), the term "which date" in the last sentence of subdivision (3)(a) has two antecedents earlier in the sentence: (I) "the date of the order," and (ii) "the date specified by" NIFA. However, the petitioners offer no reason or explanation as to why the phrase "which date" would be singular if the Legislature had intended it to refer back to two different types of antecedent dates. This Court is again persuaded by the Legislature's express words. If the State Legislature had intended the term "which date" to refer back to two antecedent dates, then the provision would read "which date***S***," – plural. This, it did not do. The Legislature has ruled as follows:

> 254. Ascertainment of antecedents
>
> Relative or qualifying words of clauses in a statute ordinarily are to be applied to the words or phrases immediately preceding, and are not to be construed as extending to others more remote, unless the intent of the statute clearly indicates otherwise.
> (Statutes, §254).

The Court of Appeals long ago explained in *Foote v. People*, 56 NY 321 [1874] as follows:

> [I]t is a rule in construction, that a relative word refers to the next antecedent; unless by so doing, the meaning of the sentence would be impaired. The word "which," in the phrase "which offences," is a relative word (*Id.* at 328).

In the exact same way, the phrase in this case "which date" is relative; it applies only to the immediate antecedent – "the date specified by the authority" – rather than the opening clause of the sentence.

This Court also notes that the relative clause – "which date" – cannot apply both to the date on which a freeze may be imposed ("the date of the order") and also to the different date on which a purported "multi-year" freeze would end ("the date specified by the authority"). According to this Court, to cover those two very different dates, one would say "dates," plural. By using the singular, the Legislature unmistakably communicated its intention that the "which date" clause reach only its immediate antecedent.

Petitioners' reliance upon the last section of the final sentence of the Public Authorities Law § 3669(3)(a), to support their argument that this clause applies equally to all wage suspensions and, therefore, the Interim Finance Period clause immediately preceding it must also apply to all suspensions, including on year wage freezes, and not just multi year suspensions is also unavailing and entirely unsupported. The sentence reads as follows:

> The suspensions authorized hereunder shall continue until one year after the date of the order and, to the extent of any determination of the authority that a continuation of such suspensions, to a date specified by the authority, is necessary in order to achieve the objectives of the financial plan, such suspensions shall be continued to the date specified by the authority, which date shall in no event be later than the end of the Interim Finance Period, *provided that such suspensions shall terminate with respect to employees who have agreed to a deferral of salary or wage increase upon the certification of the agreement by the authority pursuant to paragraph (b) of this subdivision.*

Indeed, this Court finds that this last clause defines when the wage freezes terminate, as does the preceding clause referencing the Interim Finance Period. If both clauses applied to <u>all</u> wage freezes, they would logically be joined together. However, they are not combined, leading this Court to believe that the final clause applies to all wage freezes whereas the preceding clause involving the impact of the Interim Finance Period applies solely to the multi year wage freezes discussed in the text preceding it. The separation of these two clauses means to this Court that they apply to different

types of wage freezes. The Interim Finance Period limitation applies only to multi year wage freezes, whereas the limitation based on an agreement to a deferral applies to all wage freezes. Thus, this Court finds, the one year wage freezes in issue in this proceeding are not restricted to the Interim Finance Period.

The punctuation of the disputed sentence also lends itself to this Court's finding that the reference to the "Interim Finance Period" applies only to suspensions to a "date specified by the authority." Contrary to the petitioners' contention, this Court finds that if the "which date" clause were referring back to the one year wage freeze language, this Court notes that it would have made sense to add a comma before (not just after) the word "and" – i.e., "The suspensions authorized hereunder shall continue until one year after the date of the order, and, to the extent..." (*Matter of Van Patten v La Porta*, 148 AD2d 858 [3rd Dept. 1989]; *Tyrrell v Mayor of City of N.Y.*, 159 NY 239 [1899]).

Without the additional comma, the conditional clause following the word "and" stands alone, and the "which date" clause is subordinate only to the conditional clause.

Finally, the petitioners' reliance upon the Buffalo Fiscal Stability Authority Act (Public Authorities Law §§3850, et. seq.) and the New York State Financial Emergency Act for the City of New York (N.Y. Unconsol. Law §§5401, et. seq.) is entirely misplaced. Apart from the fact that the petitioners' comparisons are problematic in that the language, purpose and structure of each act is materially different from the NIFA Act herein, as this Court previously held in its determination of the County's Article 78 proceeding against NIFA:

> [P]etitioners' referencing the language of other state legislative acts enacted for the City of Buffalo and Erie County in order to interpret the NIFA Act is an improper application of the rule of statutory construction. Section 97 of chapter six entitled "Construction and Interpretation" of the Book of Statutes requires that the court only construe the parts of a single legislative act as a whole to determine its fair meaning and legislative intent. It does not apply to comparing separate unrelated legislative acts with one another*** (*Matter of County of Nassau v. Nassau County Interim Fin. Auth.*, supra at 252).

Thus, the petitioners' comparison to the Buffalo Fiscal Stability Authority Act is thus an improper application of statutory construction and flies squarely in the face of this Court's prior decision.

Similarly, petitioners' argument that this Court should rely upon the Federal District Court's interpretation of the NIFA Act which purportedly relied upon "the plain language" and concluded that the NIFA Act was "clear" is meritless. Judge Wexler's decision is not controlling precedent as the Second Circuit made it clear that the District Court lacked any authority to opine on the issue (*Carver v. Nassau County Interim Finance Authority*, *supra*).

Accordingly, this Court finds that given the plain meaning of the text of the statute, NIFA had the authority to impose a wage freeze during a Control Period beyond 2008. Under the statute, NIFA had the authority to take additional, significantly more burdensome, action and freeze wages during a Control Period, but only after first issuing a declaration that there is a "fiscal crisis" in the County. This standard is different from the threshold requirement of an imminent budget deficit required to invoke a Control Period. The authority to freeze wages requires more than the mere existence of a Control Period – it also requires the declaration of a fiscal crisis. This Court cannot find any other predicates or limitations placed upon NIFA before it was permitted to enact a wage freeze.

Legislative Intent

In addition to the plain language, *supra*, this Court finds that the legislative intent of the statute also favors interpreting the NIFA Act to uphold NIFA's authority to impose wage freezes.

The Court of Appeals has specifically relied on the "meaning and purpose" behind a similar act enacted by the Buffalo Fiscal Stability Authority, stating:

> While examining the specific language of statutory provisions is part of our inquiry, we must also look to the underlying purpose and the statute's history as "[w]e are mindful that in 'the interpretation of statutes, the spirit and purpose of the act and the objects to be accomplished must be considered. The legislative intent is the great and controlling principle'" (*Meegan v. Brown*, 16 NY3d 395, 403 [2011] [citations omitted]).

The Court of Appeals went on to explain:

> [T]he entire purpose of the statute was to place the City of Buffalo on sound financial ground over the long term. In order to accomplish such purpose, BFSA was empowered to freeze wages and salary increments until the City's growth and stability were renewed. The intent of the statute supports the City's position (*Id*).

In addition, as stated above, the Legislature expressly provided that the NIFA Act "shall be liberally construed to assist the effectuation of the public purposes furthered thereby" (Public Authorities Law §3672).

The petitioners contend that the construction of the language also comports with the purposes of the Act which, when passed in 2000, created NIFA to deal with the immediate risk of County insolvency. According to the petitioners, the Act contemplated that after NIFA's initial assistance of cash and credit, the County would ultimately wean itself from heightened oversight and control. To that end, petitioners' submit that NIFA was not granted the same authority and powers throughout its existence; rather, its authority is commensurate with the period at issue as delineated in the Act, with the greatest powers of oversight bestowed upon NIFA during the Interim Finance Period. According to the petitioners, this scheme reflected the legislative intent that, over time, NIFA would play a more limited role. These arguments are entirely unavailing.

Apart from the fact that nothing in the statute states as much or expresses this "intention," the petitioners' implication that the extraordinary power of a wage freeze must have been intended for use during the Interim Finance Period, is contrary to their contention that the Control Period is a period of "heightened oversight." Since this period of heightened oversight can occur at any time, it simply cannot be that the NIFA's "greatest powers" were limited to the Interim Finance Period.

Moreover, and as noted above, the entire purpose of the NIFA Act was to place the County on sound financial ground over the long term. In passing the NIFA Act, the Legislature concluded that the continued fiscal difficulties in the County were "contrary to the public interest of the county and the state and seriously threaten[ed] to cause a decline in the general prosperity and economic welfare of the inhabitants of the county and the people of this state" (Senate Bill 7930, 2000 NY ALS 84 [2000]). The Legislature went on to explain that "[s]uch effect is a matter of state concern."

"Given the fundamental ambiguity of the relevant statutory provisions, deference is appropriately given to the State agency's interpretation in this case" (*Golf v. New York State Dep't of Soc. Servs.*, 91 NY2d 656, 667 [1998]). That NIFA and the petitioners offer two fundamentally different visions of the core power granted in a complex and carefully balanced statutory scheme meant to govern the county finances while more than $1.6 billion in NIFA bonds remain outstanding, and that the statutory terms including "Control Period," "Interim Finance Period" "fiscal crisis", etc.

are highly specialized, warrant substantial deference to NIFA's interpretation of its own enabling legislation (*Barenboim v. Starbucks Corp.*, 21 NY3d 460, 470-71 [2013]; *Ruggiere v. Bloomberg*, 55 AD3d 840 [2nd Dept. 2008]).

This Court is also persuaded by the historical background to the NIFA Act. As noted above, the Act contemplated that NIFA would continue "[m]onitoring and review" of County finances after the expiration of the Interim Finance Period (Public Authorities Law §3668) and indeed would assume "control" over County finances to remedy fiscal decline and restore fiscal balance until NIFA's bonds are retired (Public Authorities Law §3669). It would make no sense for NIFA to lose the power to freeze wages while its bonds remain outstanding.

Moreover, as noted above, the function of the Interim Finance Period was two fold and had two principal features. First, NIFA had the responsibility to approve or disapprove the County's annual four year financial plan (Public Authorities Law §3667[2]) with the idea being that the County was being restored to fiscal health and needed enhanced supervision in the years immediately following the passage of the Act. And, second, NIFA was issuing new bonds (Public Authorities Law §3656[2]). If NIFA were forced to declare a Control Period during this (interim) finance period, it made sense for NIFA to be able to assure prospective bondholders that any wage freeze would continue to a specified date to the extent necessary to achieve four-year financial plan objective. But, once the County emerged from the Interim Finance Period, and once NIFA's authority to issue new bonds lapsed, a default rule for continuation of a wage freeze (one year) was deemed sufficient.

Finally, this Court cannot overlook the fact that the remedial purpose of the Act also strongly favors NIFA's reading which better enables NIFA to protect the County's long term fiscal stability while NIFA bonds remain outstanding and furthers the State's interest in halting the spread of local fiscal distress while the County is prohibited by the Act from filing for bankruptcy protection (*Meegan v. Brown*, *supra*). The New York Court of Appeals in *Meegan v. Brown*, held that the important public purpose of a control board's wage freeze power requires a broad remedial interpretation of the underlying legislation (*Id.* at 403). As noted above, the Act provides:

> "The provisions of this title shall be liberally construed to assist the effectuation of the public purposes furthered hereby" (Public Authorities Law §3672).

The legislative findings accompanying the NIFA Act recognized that a "condition of fiscal difficulties is contrary to the public interest of the county and the state and seriously threatens to cause a decline in the general prosperity and economic welfare of the inhabitants of the county and the people of this state" (Public Authorities Law, ch 42, art. 10-D, title 1, historical and statutory notes, pp. 279-280). These findings also recognized the imperative that "proper safeguards are imposed to preclude the recurrence of such conditions and prevent a situation of undue burden on the taxpayers of the county" (*Id*). Extinguishing wage freeze powers frustrates the Act's legislative purpose. By recognizing that the important wage freeze power remains available while NIFA bonds remain outstanding, on the other hand, furthers the remedial purpose of the Act.

Moreover it cannot be overlooked that as the Court of Appeals long ago held in *People v. Ryan*, 274 NY 149, 152 [1937]:

> In the interpretation of statutes, the spirit and purpose of the act and the objects to be accomplished must be considered. The legislative intent is the great and controlling principle. Literal meanings of words are not to be adhered to or suffered to 'defeat the general purpose and manifest policy intended to be promoted;' all parts of the act must be read and construed together for the purpose of determining the legislative intent, and if the statute is ambiguous and two constructions can be given, the one must be adopted which will not cause objectionable results or cause inconvenience, hardship, injustice or mischief or lead to absurdity*** (citations omitted).

Thus, contrary to the petitioners' contentions, this Court may consider the potential for hardship to it's unionized members in construing the statute *only if* the legislative intent is unclear or the statute is ambiguous. Here, as determined above, both the legislative intent and the plain language of the statute require a holding that NIFA was empowered to impose a wage freeze. As the legislative intent is the "great and controlling principle," that the respondents' proposed construction might "cause an objectionable result" is not determinative (*Id*; *see also Ferres v. City of New Rochelle*, 68 NY2d 446, 451 [1986]).

When "liberally construed" to effect the "public purposes furthered" by the NIFA Act, as the Legislature unequivocally instructs this Court to do, it cannot reasonably be disputed that the public purpose of the NIFA Act cannot liberally be construed, as petitioners' suggest, to restrain NIFA from taking action it has concluded is in the best interests of the County.

2007 PBA Interest Arbitration Award

Pursuant to the Public Authorities Law §3669[3]:

> 3. Authorization for wage freeze. (a) During a Control Period, upon a finding by the authority that a wage freeze is essential to the adoption or maintenance of a county budget or a financial plan that is in compliance with this title, the authority, after enactment of a resolution so finding, may declare a fiscal crisis. Upon making such a declaration, the authority shall be empowered to order that all increases in salary or wages of employees of the county and employees of covered organizations which will take effect after the date of the order *pursuant to collective bargaining agreements, other analogous contracts or interest arbitration awards, now in existence or hereafter entered into, requiring such salary increases as of any date thereafter are suspended.*

The express language of the NIFA Act limits its ability to suspend wages pursuant to "collective bargaining agreements," "other analogous contracts," or "interest arbitration awards." The petitioners argue however that the increases provided for by the 2007 PBA Award were ordered by this Court and therefore, constitute a court judgment not covered by this statute. Accordingly, the petitioners submit that NIFA lacked the authority to freeze the PBA's wages when it enacted the Resolutions imposing wage freezes for 2011 and 2012.

The petitioners, relying upon a purportedly analogous situation instituted in New York City in the 1970s pursuant to the New York State Financial Emergency Act of the City of New York, argue that even if NIFA had the authority to impose a wage freeze beyond the expiration of the Interim Finance Period, it nonetheless lacked the ability to freeze wages awarded to the Police Benevolent Association in connection with the interest arbitration award issued on or about June 29, 2007, which was confirmed by this Court on September 17, 2007 and judgment was entered by the Nassau County Clerk on October 19, 2007. The petitioners point out that the Court of Appeals in *Patrolmen's Benevolent Assoc. of the City of N.Y. v. City of N.Y.*, 41 NY2d 205, 206-07 [1976] found that the wage freeze did not apply to the judicially confirmed award and as such, the respondents' actions substantially impairing the terms of an enforceable judicially confirmed state court judgment are outside the statutorily conferred authority of NIFA and violate the Public Authorities Law §3669(3)(a) as well as the terms of the Resolutions themselves. This Court disagrees.

First, as stated above, the petitioners' comparison of the NIFA Act to the New York City Act is improper and has been previously rejected by this Court (*County of Nassau v. Nassau County Interim Finance Authority*, *supra* at 249).

Second, the Court of Appeals in *Patrolmen's Benevolent Assoc. of the City of N.Y. v. City of N.Y.*, *supra*, held, in pertinent part, as follows:

> The statute under scrutiny in this case suspends wage increases "pursuant to collective bargaining agreements or other analogous contracts." In this case, the wage increase did not "take effect" by virtue of a collective bargaining agreement, but rather it took effect as the result of a judicially mandated remedy embodied in a judgment. Even if it would be constitutionally permissible for a statute to suspend a judgment, nowhere is there language which would suggest this legislative intent; nor can it be said that the language employed permits an interpretation which would broaden the scope of the statute so as to encompass such increases***. Hence, where as here the statute describes the particular situations in which it is to apply, "an irrefutable inference must be drawn that what is omitted or not included was intended to be omitted or excluded" *** (*Patrolmen's Benevolent Assn. of City of N.Y. v City of New York*, *supra* at 208).

Contrary to the holding above, in this case, the NIFA Act specifically states that the wage freezes would also apply to "interest arbitration awards." This is a critical and noteworthy distinction between the New York City Act and the NIFA Act in that whereas the New York City Act limits the application of any wage freeze to "collective bargaining agreements or other analogous contracts," the NIFA Act contains additional language extending the wage freeze to "interest arbitration awards."

Third, this Court cannot overlook the fact that pursuant to CPLR §7510, entitled "Confirmation of award":

> The court **shall** confirm an award upon application of a party made within one year after its delivery to him, unless the award is vacated or modified upon a ground specified in section 7511 (Emphasis Added).

When read together with CPLR §7514 entitled "Judgment on an award" which reads "a judgment **shall** be entered upon the confirmation of an award" [emphasis added], this Court notes that when the Legislature drafted the NIFA Act to expressly include wage increases that otherwise would take effect pursuant to "interest arbitration awards," they undoubtedly contemplated that, pursuant to the CPLR , those interest arbitration awards could, under certain circumstances, be

confirmed and judgment entered by the Court. The judgment obtained was not separate and apart from the interest arbitration award itself; it did not confer new rights but determined what rights already existed.

Moreover, this Court cannot overlook the fact that the NIFA Act was drafted after the Court of Appeals' decision in *Patrolmen's Benevolent Ass'n of the City of N.Y. v. City of N.Y., supra.* This suggests to this Court that the Legislature recognized and rejected the Court of Appeals' decision and extended NIFA's wage freeze authority to interest arbitration awards to avoid the outcome in *Patrolmen's Benevolent Ass'n of the City of N.Y. v. City of N.Y., supra*, going forward.

The Legislature's omission of the term "judgments" from the NIFA Act is not determinative to the facts at hand. Nor does this Court find it reasonable to conclude that by omitting the term, the Legislature intended for interest arbitration awards to be subject to a wage freeze unless and until they are enforced by judgment. Indeed, the addition of the term "judgments" to the NIFA Act would be superfluous in light of the already existing statutory language in CPLR §7510 and §7514.

Accordingly, this Court finds that NIFA properly extended the wage freeze to increases contemplated by the 2007 PBA Award (Public Authorities Law §3669[3][a]; *see also, Matter of Buffalo Professional Firefighters Assn., Inc., IAFF Local 282 (Masiello)*, 105 AD3d 1436 [4th Dept. 2013]).

Thus, the plain meaning of the entire NIFA Act and an analysis of the Legislature's intent supports the conclusion that NIFA properly extended the wage freeze to the PBA interest arbitration award.

Conclusion

Given the express language, plain meaning, and legislative intent behind the NIFA Act, specifically at Section 3669, this Court finds that the respondent NIFA did not exceed its authority to impose wage freezes in 2011, 2012 and 2013.

In addition, as the NIFA Act empowers NIFA to suspend all increases in salary or wages that will take effect "pursuant to collective bargaining agreements, other analogous contracts or interest arbitration awards" (Public Authorities Law §3669[3][a]), the 2007 PBA Award is also within the ambit of NIFA's wage freeze powers.

Accordingly, the respondents separate motions, pursuant to CPLR § 3211(a)(1), (a)(7) and CPLR § 7804(f), each for an Order, dismissing the petitioners' Verified Petition in it's entirety are granted.

Petitioners' application seeking a judgment pursuant to CPLR §7803(2) and (3), is denied in it's entirety and the proceedings are herewith dismissed.

The parties' remaining contentions have been considered by this Court and do not warrant discussion.

All applications not specifically addressed are herewith denied.

Settle Judgment on Notice.

This constitutes the Decision and Order of the Court.

ENTER

DATED: March 11, 2014

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