

**Matter of Chappaqua Congress of Teachers v Board of
Educ. of the Chappaqua Cent. Sch. Dist.**

2023 NY Slip Op 34921(U)

April 3, 2023

Supreme Court, Westchester County

Docket Number: Index No. 58551/22

Judge: Susan M. Cacace

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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In the Matter of the Application of
CHAPPAQUA CONGRESS OF TEACHERS
and MIRIAM LONGOBARDI as PRESIDENT of the
CHAPPAQUA CONGRESS OF TEACHERS,
BONNIE MITCHELL, GERARD SULLI, LAURA
TRIGLIA, FELICE GITTELMAN, PATRICIA GRECO,
LESLIE FELDMAN, ANITA LORRAINE JONES,
THERESA ZUCKERBERG, VIRGINIA MUNOZ,
MELANIE WEINSTEIN, PATRICIA POLLOCK,
SANDY KOWALSKI, JING CHEN, MICHAEL
BIERBAUER, MARYSE SANTINI, SUSAN
CONSTANTINI, SUSAN JOHNSON, MARY
COLEMAN, JOELEN DONOHUE, GENEVIEVE
HANLON, PATRICIA WOLFF, JEFFREY KNISELY,
BARBARA FINGEROTH, SHARON BOYCE, CAROL
HUGHES, ANN LERTORA, JANET FLETCHER,
KATHERYN WARD, ANNE BONINGTON, PHYLLIS
BELLOFATTO, GAIL READ, AND MARTIN HUGHTO

DECISION & ORDER

Index No. 58551/22

Petitioners,

- against -

BOARD OF EDUCATION OF THE CHAPPAQUA
CENTRAL SCHOOL DISTRICT, CHAPPAQUA
CENTRAL SCHOOL DISTRICT, and DR. CHRISTINE
ACKERMAN, as Superintendent of the Chappaqua
Central School District,

Respondents.

For an order and judgment pursuant to CPLR Article 78.

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CACACE, J.

The following papers, numbered one (1) through ten (10) were read on the respondents' motion to dismiss the verified amended petition for relief brought pursuant to article 78 of the Civil Practice Law and Rules (CPLR):

Papers Numbered

Summons/Notice of Amended Petition 1
Amended Verified Complaint/Petition - Exhibits 2
Memorandum of Law in Support of Verified Amended Complaint/Petition 3
Notice of Motion to Dismiss Amended Verified Complaint/Petition 4
Affirmation in Support of Motion to Dismiss 5
Affidavit in Support of Motion to Dismiss. 6
Memorandum of Law in Opposition to Motion to Dismiss 7
Affirmation in Opposition to Motion to Dismiss 8
Affidavit in Opposition to Motion to Dismiss 9
Memorandum of Law in Reply 10

Upon the foregoing papers, it is decided and ordered that the respondents’ joint motion to dismiss the amended verified petition for relief brought pursuant to article 78 of the CPLR is resolved as follows:

The petitioner Chappaqua Congress of Teachers (CCT) is an unincorporated labor association representing a membership comprised of current employees of the respondent Chappaqua Central School District (hereinafter, the District), and is the duly recognized exclusive collective bargaining agent of a collective bargaining unit comprised of such employees, whereas petitioner Michael DeBellis is the elected president of the petitioner CCT. The individually named petitioners, including Bonnie Mitchell, Gerard Sulli, Laura Triglia, Felice Gittelman, Patricia Greco, Leslie Feldman, Anita Lorraine Jones, Theresa Zuckerberg, Virginia Munoz, Melanie Weinstein, Patricia Pollock, Sandy Kowalski, Jing Chen, Michael Birbauer, Maryse Santini, Susan Constantini, Susan Johnson, Mary Coleman, Joelen Donohue, Wendy Phelps, Genevieve Hanlon, Patricia Wolff, Jeffrey Knisley, Barbara Fingerroth, Sharon Boyce, Carol Hughes, Ann Lertora, Janet Fletcher, Katheryn Ward, Anne Bonington, Phyllis Bellofatto, and Gail Read, are retired former employees of the respondent District, former

members of the petitioner CCT, and participants in the Medicare Part B insurance program. The respondent Board of Education of the Chappaqua Central School District (hereinafter, Board) is the governing body of the respondent District, and respondent Dr. Christine Ackerman is the Superintendent of the respondent Board (hereinafter, Superintendent Ackerman). The respondent District and petitioner CCT are parties to a Collective Bargaining Agreement (CBA) that remained in effect between July 1, 2021 and June 30, 2022, which provides for the extension of health care insurance benefits to retired (and current) employees of the respondent District and their spouses through their membership in the Putnam Northern Westchester Health Benefits Consortium (hereinafter, the Consortium), pursuant to their previous membership in a bargaining unit represented by the petitioner CCT during such employment, and through their present enrollment in the federally-funded Medicare Part B health insurance program available to individuals who are sixty-five (65) years of age or older. Pursuant to the terms of the CBA, the Consortium coordinates the benefits it provides to current employees, retirees and their dependants by requiring all such eligible beneficiaries to enroll in the Medicare Part B program as their primary insurance, whereas the Consortium then serves as their secondary insurance plan. As provided by the Medicare Modernization Act (MMA), Medicare Part B's enrollees are required to pay a monthly premium for their participation therein, and are further required to pay an upwardly adjusted premium, or income-related monthly adjustment amount (IRMAA), when their modified adjusted gross income (MAGI) exceeds a threshold amount, ranging from a total monthly premium of \$238.10 for individuals whose MAGI is between \$91,000.00 and \$114,000.00 (or \$182,000.00 to \$228,000.00 for those filing jointly), to a total monthly premium of \$578.30 for individuals whose MAGI is above \$500,000.00 (or \$750,000.00 for those filing

jointly) (*see* 42 U.S.C. 1395r[i][3][c][i]).

In support of the instant petition for relief, the petitioners allege through their amended verified petition that the respondent District had continuously reimbursed all retired employees (and their spouses), for the entire cost of their Medicare Part B premiums, including the IRMAA surcharge where applicable, from sometime in 2007 (following the enactment of the MMA) through mid-2018, when the respondent District unilaterally decided to cease its reimbursement of retired employees (and their spouses) for the entire cost of their Medicare Part B premiums, having elected to reimburse retired employees (and their spouses) for only their standard Medicare Part B premiums. In response to this diminution of the Medicare Part B premium reimbursement provided to retired employees (and their spouses) by the respondent District, a number of such retired employees challenged this unilateral decision made by the respondent District by commencing a proceeding pursuant to article 78 of the CPLR in 2018 (hereinafter, the Article 78 of 2018). Specifically, the Article 78 of 2018 challenged the respondent District's unilateral decision to cease reimbursing its retired employees (and their spouses) for the IRMAA surcharges they had already paid while not effectuating a corresponding reduction in the healthcare benefits being afforded to the then-current CCT members, alleging that such action by the respondents constituted a violation of their obligations under the provisions of the Retiree Health Insurance Moratorium (hereinafter, the Moratorium Law) insofar as same prohibits a school district from diminishing its contributions for health insurance benefits provided to retirees (and their dependants) without a corresponding diminution of the contributions provided by the school district to the corresponding group of active employees (*see* L. 1994, c. 729, as amended by L. 2007, c. 22). By Decision, Order and Judgment, filed and entered May 20, 2019,

this Court granted the petition for relief sought through the Article 78 of 2018, thereby determining that the respondent District's decision to cease reimbursing its retired employees (and their spouses) for the IRMAA surcharges they had already paid, while not effectuating a corresponding reduction in the healthcare benefits being afforded to the then-current CCT members, reflected a violation of the Moratorium Law, and thereupon directed the respondent District to reimburse such retired employees for the full costs of their Medicare Part B premiums (*Matter of Bailenson v Board of Educ. of the Chappaqua Central School Dist.*, Sup Ct, Westchester County, May 20, 2019, Cacace, J., index No. 70427/18, *aff'd* 194 AD3d 1039, *lv. denied* 37 NY3d 914).

Aside and apart from the litigation pursued in connection with the Article 78 of 2018, although perhaps motivated by same, petitioner CCT and its former president, then-petitioner Miriam Longobardi, and the respondents to this proceeding had entered into a Memorandum of Understanding (MOA) on December 14, 2020, thereby having agreed to terms for the respondent District's acknowledged obligation to reimburse one class of its retired employees (and their spouses) for their Medicare Part B premiums at the standard rate to the exclusion of the IRMAA surcharge, and its further obligation to reimburse a second class of retired employees (and their spouses) for their entire Medicare Part B premiums including the IRMAA surcharge. More specifically and in relevant part, the MOA provides that "[t]he District's sole obligation to reimburse unit members who retire and their spouses, where applicable, on or after July 1, 2021 shall be for medicare Part B payments at the standard rate." Although both the petitioners and the respondents were assisted by legal counsel when the MOA was negotiated and ultimately ratified, the respondent District's applied interpretation of the terms of the MOA differs from that

applied by the petitioners, as the respondent District asserts that it understood that it was only obligated to reimburse its retired employees (and their spouses) for their entire Medicare Part B premiums including the IRMAA surcharge until July 1, 2021, whereas the petitioners understood that the respondent District was obligated to reimburse its retired employees (and their spouses) who had retired prior to July 1, 2021 for their entire Medicare Part B premiums including the IRMAA surcharge and was only required to reimburse its retired employees (and their spouses) who had retired on or after July 1, 2021 at the standard rate to the exclusion of the IRMAA surcharge. Ultimately, these differing interpretations of the MOA applied by the petitioners and the respondents is alleged by the petitioners to have become apparent to them when the respondent District acted in December 2021 through January 2022 to provide all of its retired employees (and their spouses) with reimbursement for only their Medicare Part B premiums, to the exclusion of the IRMAA surcharges, they had already paid without regard for whether they had retired prior to July 1, 2021 (hereinafter, the challenged determination).

The petitioners allege, in substance, that their interpretation of the MOA lead them to believe that the respondent District continued to be obligated to reimburse its retired employees (and their spouses) who had retired prior to July 1, 2021 for their entire Medicare Part B premiums including the IRMAA surcharge, and only those employees who had retired on or after July 1, 2021 would be subject to the respondent District's diminished reimbursement of them for only their Medicare Part B premiums to the exclusion of the IRMAA surcharges. Consequently, when it was made known to the petitioners that the respondent District was depriving its retired employees of reimbursement for their entire Medicare Part B premiums, including the IRMAA surcharges, irrespective of the date of their retirement - before or after July 1, 2021 - the instant

litigation ensued. The petitioners commenced this CPLR article 78 proceeding to challenge the respondent District's unilateral decision to cease reimbursing its retired employees who had retired prior to July 1, 2021 for their entire Medicare Part B premiums and their IRMAA surcharges, while not effectuating a corresponding reduction in the healthcare benefits being afforded to current CCT members, as they allege that such action by the respondents constituted a violation of their obligations under the Moratorium Law (as well as the MOA) insofar as same prohibits a school district from diminishing its contributions for health insurance benefits provided to retirees (and their dependants) without a corresponding diminution of the contributions provided by the school district to the corresponding group of active employees (*see* L. 1994, c. 729, as amended by L. 2007, c. 22).

On March 31, 2022, petitioner CCT and its current president, petitioner Michael Debellis, commenced this proceeding upon the filing of verified petition seeking hybrid relief in the form of a judgment pursuant to article 78 of the CPLR, and for declaratory relief under article 30 of the CPLR, raising a series of grounds upon which they, in effect, sought to persuade this Court to vacate, annul and otherwise reverse the respondents' challenged determination pursuant to both the Moratorium Law and the MOA, in an effort to obtain relief that would provide for the respondents' reimbursement of the respondent District's retired employees who had been members of petitioner CCT during their employment and had retired therefrom prior to July 1, 2021, for the cost of their respective Medicare Part B premiums and corresponding IRMAA surcharges that had been withheld from them through the challenged determination. The respondents had jointly opposed that petition for relief through the filing of a motion to dismiss that proceeding pursuant to CPLR 3211(a)(2), (3) and (7), whereby they alleged that the

petitioners lacked standing and capacity to sue to assert their claims under the Moratorium Law, and that the petitioners had failed to comply with the grievance procedure required by the CBA to challenge an alleged breach of the MOA. In response thereto the petitioners sought permission, by motion, to amend their pleadings by adding thirty-two (32) individually named petitioners to this article 78 proceeding pursuant to CPLR 3025(b), and to excuse their late notice pursuant to General Municipal Law (GML) §50-e(5).¹ Notably, the respondents elected to refrain from interposing any objection to the petitioners' amendment application and untimely notice. Thereupon, by Decision and Order dated October 31, 2022, this Court granted the petitioners' respective applications brought pursuant to CPLR 3025(b) and GML § 50-e(5).

Thereafter, the petitioners filed the instant amended verified petition on November 15, 2022, by which they now seek hybrid relief in the form of a judgment pursuant to article 78 of the CPLR, and in the form of declaratory relief pursuant to article 30 of the CPLR. More specifically, the petitioners seek an order of this Court (1) directing the respondents to comply with the MOA by reimbursing the District's retired employee members of petitioner CCT who had retired prior to July 1, 2021 for the cost of their respective Medicare Part B premiums and corresponding IRMAA surcharges that had been withheld from them through the challenged

¹Through their proposed amendment, the petitioners sought to add 32 individual petitioners, including Bonnie Mitchell, Gerard Sulli, Laura Triglia, Felice Gittelman, Patricia Greco, Leslie Feldman, Anita Lorraine Jones, Theresa Zuckerberg, Virginia Munoz, Melanie Weinstein, Patricia Pollock, Sandy Kowalski, Jing Chen, Michael Birbauer, Maryse Santini, Susan Constantini, Susan Johnson, Mary Coleman, Joelen Donohue, Wendy Phelps, Genevieve Hanlon, Patricia Wolff, Jeffrey Knisley, Barbara Fingerroth, Sharon Boyce, Carol Hughes, Ann Lertora, Janet Fletcher, Katheryn Ward, Anne Bonington, Phyllis Bellofatto, and Gail Read, all of whom are retired employees of the respondent District, former members of the petitioner CCT, and participants in the Medicare Part B insurance program (hereinafter, collectively referred to as the individual petitioners).

determination, (2) enjoining the respondents from breaching, and otherwise directing them to comply with both the CBA and MOA, (3) directing the respondents to reimburse those petitioners who had retired from employment with the respondent District prior to July 1, 2021, and were not reimbursed for the full amount of the IRMAA surcharges they had paid in addition to their Medicare Part B premiums, (4) directing the respondents to cease and desist any violations of the Moratorium Law upon the entry of a judgment finding that the respondents had violated the Moratorium Law by their failure to reimburse the District's retired employees who had been members of petitioner CCT during their employment with the respondent District and had retired prior to July 1, 2021, for the cost of their respective Medicare Part B premiums and corresponding IRMAA surcharges that had been withheld from them through the challenged determination, (5) awarding and reimbursing those petitioners who had retired from employment with the respondent District prior to July 1, 2021 for the cost of their respective Medicare Part B premiums and corresponding IRMAA surcharges that had been withheld from them from on or about July 1, 2021 through the present time as a consequence of the challenged determination, and (6) enjoining the respondents from future violations of the Moratorium Law.

In opposition to the instant amended verified petition, the respondents have filed a pre-answer motion to dismiss this proceeding pursuant to CPLR 7804(f), CPLR 404(a), and CPLR 3211(a)(2), (3), (5) and (7), seeking the dismissal of the instant petition upon the respondents' claims that (1) petitioners CCT and DeBellis lack the requisite standing to maintain this proceeding pursuant to CPLR 3211(a)(2) and (3), thereby depriving this Court of subject matter jurisdiction, (2) that the amended verified petition fails to state a cause of action for breach of contract related to the terms of the MOA pursuant to CPLR 3211(a)(5) based upon their claim

that an alleged violation of the MOA's terms is subject to binding arbitration of the grievance, (3) the instant proceeding was commenced untimely by each of the individual petitioners, including petitioners Mitchell, Sulli, Triglia, Gittelman, Greco, Feldman, Jones, Zuckerberg, Munoz, Weinstein, Pollock, Kowalski, Chen, Birbauer, Santini, Constantini, Johnson, Coleman, Donohue, Phelps, Hanlon, Wolff, Knisley, Fingerroth, Boyce, Hughes, Lertora, Fletcher, Ward, Bonington, Bellofatto, and Read, all of whose claims are consequently barred by the applicable statute of limitations pursuant to CPLR 3211(a)(5), and all of whom have failed to raise a cause of action against the respondents pursuant to CPLR 3211(a)(7), (4) that petitioner Hughes lacks the requisite standing to maintain this proceeding and has failed to raise a cause of action against the respondents pursuant to CPLR 3211(a)(2), (3) and (7), thereby further depriving this Court of subject matter jurisdiction, and (5) that the instant proceeding was commenced untimely by petitioner Fletcher, whose claim is consequently barred by the applicable statute of limitations pursuant to CPLR 3211(a)(5).

Discussion and Analysis

Upon consideration of the respondents' jointly filed pre-answer motion to dismiss the instant amended verified petition upon their challenge to the standing of the organizational petitioners to bring and maintain the instant proceeding pursuant to CPLR 3211(a)(2), including the CCT in its capacity as a labor association comprised entirely and exclusively of members who are current employees of the respondent District, and Michael DeBellis in his capacity as the elected president of the CCT, the Court notes that such a challenge to standing constitutes a

threshold determination which must be addressed at the outset of a proceeding to confirm that the party seeking review has met their burden to establish that they are a proper party to adjudicate the merits of a particular dispute (*see Society of Plastics Indus. v County of Suffolk*, 77 NY2d 761, 769). Although the Court recognizes that it is limited to examining the amended verified petition and its supporting affidavits in order to determine whether the organizational petitioners have established their standing through the averments set forth therein, such allegations are to be deemed true and are to be considered in the light most favorable to the petitioners (*see Society of Plastics Indus. v County of Suffolk*, 77 NY2d at 771-772; *see also Schlemme v Planning Bd. of City of Poughkeepsie*, 118 AD3d 893; *10 East Realty, LLC v Incorporated Village of Valley Stream*, 17 AD3d 472, 473; *Matter of John John, LLC v Planning Bd. of Town of Brookhaven*, 15 AD3d 486). “Under the applicable three-part test for associational or organizational standing, such petitioner must demonstrate (1) that one or more of its members has standing to sue, (2) that the interests advanced are sufficiently germane to its purpose to satisfy the court that it is an appropriate representative of those interests, and (3) that the participation of individual members is not required to assert the claim or to afford complete relief to it” (*Matter of Aeneas McDonald Police Benevolent Assn. v City of Geneva*, 92 NY2d 326, 331; *see Matter of Patrolmen’s Benevolent Assn. of Southampton Town, Inc. v Town of Southampton*, 79 AD3d 891, 892; *see also Westchester County Dept. of Pub. Safety Police Benevolent Assn., Inc. v Westchester County*, 35 AD3d 592).

Here, there is no dispute that the CCT is the duly recognized exclusive collective bargaining agent of a collective bargaining unit comprised exclusively of members who are current employees of the respondent District, and that its function on behalf of its membership

encompasses its representation of the interests of current employees vis-a`-vis the terms and conditions of their current employment in a manner consistent with its obligations pursuant to Civil Service Law §§ 203, 204(2) and 209-a(1)(d). As a result, the Court recognizes that the individual petitioners, as retirees of the respondent District, cannot be understood to be part of the CCT bargaining unit following their retirement, irrespective of their previous membership in the CCT bargaining unit during the period of their prior employment with the respondent District (*see Adamo v City of Albany*, 156 AD3d 1017, 1019; *see also Agor v Board of Educ.*, *Northeastern Clinton Cent. Sch. Dist.*, 115 AD3d 1047, 1049). Indeed, as the United States Supreme Court has instructed, retirees “plainly do not share a community of interests broad enough to justify inclusion of [them] in [a] bargaining unit” because retirees do not have an interest in “wage rates, hours, working conditions, and all other terms of active employment” (*Allied Chem. & Alkali Workers v Pittsburgh Glass*, 404 US 157, 173). Consequently, insofar as the proof of the organizational petitioners’ standing is concerned, the Court is constrained to conclude that since neither petitioners CCT nor DeBellis have successfully demonstrated that any one of CCT’s current members would individually have standing to bring and maintain this proceeding that solely seeks to vindicate the rights of its former members, and since the organizational petitioners have similarly failed to demonstrate that the respondent District’s challenged diminution of health benefits to retirees is sufficiently germane to the interests of its current members to persuade this Court that CCT is an appropriate representative of those interests, these organizational petitioners, CCT and DeBellis, lack the requisite standing to maintain the causes of action raised through this proceeding (*see Rudder v Pataki*, 93 NY2d 273, 278; *Matter of Dental Socy. of State of N.Y. v Carey*, 61 NY2d 330, 333-334; *Matter of Dairylea*

Coop. v Walkley, 38 NY2d 6, 9; *Society of Plastics Indus. v County of Suffolk*, 77 NY2d at 775; *Matter of Sierra Club v Town of North Castle*, 200 AD3d 694, 695; *Matter of Long Is. Pine Barrens Socy. v Town of Southampton*, 301 AD2d 528; *Matter of Save Our Main St. Bldgs. v Greene County Legislature*, 293 AD2d at 909; *Matter of Long Is. Pine Barrens Socy. v Town of Brookhaven*, 213 AD2d 484). Accordingly, the respondents' motion to dismiss this proceeding pursuant to CPLR 3211(a)(2) and (3) is granted to the extent brought by petitioners CCT and DeBellis based upon their lack of the requisite standing to maintain this proceeding.

Turning next to consider the respondents' challenge to the timeliness of the commencement of this proceeding by the remaining petitioners Mitchell, Sulli, Triglia, Gittelman, Greco, Feldman, Jones, Zuckerberg, Munoz, Weinstein, Pollock, Kowalski, Chen, Birbauer, Santini, Constantini, Johnson, Coleman, Donohue, Phelps, Hanlon, Wolff, Knisley, Fingerroth, Boyce, Hughes, Lertora, Fletcher, Ward, Bonington, Bellofatto, and Read (hereinafter, the individual petitioners) within the applicable limitations period, the Court notes that the statute of limitations applicable to the instant petition brought pursuant to article 78 of the CPLR is governed by CPLR 217, which provides that "a proceeding against a body or officer must be commenced within four months after the determination to be reviewed becomes final and binding upon the petitioner" (*see* CPLR 217[1]; *see also* *Platt v Town of Southampton*, 46 AD3d 907, 908). Although there is dispute between the parties concerning when the limitations period should be understood to have begun in relation to the individual petitioners, the Court's consideration of the respondents' statute of limitations argument first requires determination of the date when the respondents' challenged determination became final and binding upon the individual petitioners within the meaning of CPLR 217(1). In this regard, the courts of this state

have held that a challenged determination will be considered “final and binding” when the aggrieved petitioner is impacted thereby, and knows that he or she is aggrieved (*see Matter of Edmead v McGuire*, 67 NY2d 714, 716; *see also Mundy v Nassau County Civ. Serv. Commn.*, 44 NY2d 352, 357; *Matter of James v Wing*, 281 AD2d 627, *lv. denied* 96 NY2d 721).

With regard to the Court’s determination of the commencement date of the limitations period applicable to this proceeding, the Court notes that the respondents submit that twenty-two (22) of the total of thirty-two (32) individual petitioners, specifically Bellofatto, Bierbauer, Boyce, Chen, Coleman, Constantini, Donohue, Fingerroth, Gittelman, Hanlon, Hughto, Johnson, Jones, Knisely, Kowalski, Lertora, Mitchell, Munoz, Santini, Ward, Weinstein and Wolff, had received notice of the respondent District’s determination to cease its pre-existing practice of reimbursing its retirees for the IRMAA surcharges they had paid when the respondent District clearly and unequivocally communicated this alteration/diminution of such benefits to them by letter dated August 16, 2018 (hereinafter, the Chow Letter),² when the respondent District explicitly advised all of its retired former employees (including these petitioners) that as of December 2018, the respondent District would only be reimbursing them for their Medicare Part B premiums and would decline all future requests for reimbursement of corresponding IRMAA surcharges. Therefore, the Court finds that the limitations period for these twenty-two (22) individual petitioners commenced when the respondent District mailed the challenged determination to each of them on August 16, 2018 (*see Matter of Edmead v McGuire*, 67 NY2d at 716; *see also Matter of Biondo v State Bd. of Parole*, 60 NY2d 832, 834).

²On behalf of the respondent District, this letter was issued by John Chow in his capacity as the respondent District’s then-Assistant Superintendent for Business.

With regard to the Court's determination of the commencement date of the limitations period applicable to the remaining ten (10) of the total of thirty-two (32) individual petitioners, the respondents submit that nine (9) of the remaining ten (10) individual petitioners, specifically Bonington, Hughes, Pollock, Sulli, Triglia, Zuckerberg, Greco, Feldman and Fletcher,³ were not recipients of the Chow Letter of August 16, 2018, and were never recipients of an IRMAA surcharge reimbursement benefit from the respondent District prior thereto, due to their respective retirements from the respondent District subsequent to August 16, 2018, which indicates that each of them were aware at all times throughout their retirement that the respondent District would not be reimbursing them for any of the IRMAA surcharges they had previously paid. The respondents support this claim through reference to the evidence they have adduced through the affidavit of Jacqueline Petricha Silipigni, the respondent District's Benefits Assistant, and the documentary exhibits annexed thereto. More specifically, the Silipigni affidavit reveals that subsequent to the issuance of the Chow Letter on August 16, 2018, the respondent District commenced a practice whereby, on an annual basis, it sent its retirees a standardized form/notice to be filled-out and returned which, *inter alia*, communicated to each of them that they would be reimbursed by the respondent District for the standard Medicare Part B premium they had paid, without indicating, referencing, or otherwise suggesting in any manner that their respectively paid IRMAA surcharges would also be reimbursed by the respondent District (hereinafter, the Annual Form/Notice). Consequently, the respondent District

³This number excludes petitioner Carol Hughes, whom the petitioners concede is not a proper petitioner to this proceeding through the affirmation of counsel submitted in opposition to the respondents' motion to dismiss, thereby obviating the need for further consideration of the timeliness of her entry into this case.

supplemented the Silipigni affidavit with annexed copies of the respective Annual Forms/Notices that eight (8) of these nine (9) individual petitioners, excepting Janet Fletcher who had not retired until July 1, 2021, had received and returned to the respondent District in either one or more of the years of 2019, 2020 and 2021. Of course, as none of these individual petitioners had ever been recipients of reimbursement of their previously paid IRMAA surcharges by the respondent District due to their respective retirements subsequent to the respondent District's cessation of that practice as of August 16, 2018, there was no need for the respondent District to advise them of this change to its pre-existing policy of providing reimbursement to retirees for their previously paid IRMAA surcharges because this policy change had pre-dated their respective retirements.

In any event, without the need to distinguish between those of these nine (9) individual petitioners who had received and returned the Annual Form/Notices to the respondent District in either 2019, 2020 and/or 2021, the Court recognizes that each of these nine (9) remaining individual petitioners had been expressly made aware that the respondent District would be reimbursing them for only the standard Medicare Part premiums they had paid prior to the start of 2022. Therefore, although the limitations period for each of these nine (9) individual petitioners commenced in either 2019, 2020 or 2021 when each of them received (and later returned) the Annual Form/Notice from the respondent District prior to the end of calendar year 2021, the Court concludes that the limitations period for each of these nine (9) individual petitioners commenced no later than December 31, 2021 (*see Matter of Edmead v McGuire*, 67 NY2d at 716; *see also Matter of Biondo v State Bd. of Parole*, 60 NY2d at 834).

Consequently, having recognized that the entire group of thirty-two (32) individual

petitioners were not parties to this proceeding when it was originally commenced by the filing of a verified petition by the organizational petitioners, CCT and DeBellis, on March 31, 2022, but rather were later added as petitioners upon the filing of an amended verified petition on November 15, 2022, the 4-month limitations period extending between its commencement on December 31, 2021 and the individual petitioners' entry into this proceeding on November 15, 2022 was far exceeded by nearly 7-months (*see* CPLR 217[1]; *see also* *Platt v Town of Southampton*, 46 AD3d at 908). Although not conceding the untimeliness of the individual petitioners' commencement of this action upon the filing of the instant amended verified petition on November 15, 2022, the petitioners seek to overcome argument concerning the untimeliness of their entry into this proceeding by invoking the relation-back doctrine made available pursuant to the terms of CPLR 203(f) in an effort to persuade this Court that the individual petitioners should be deemed to have entered this proceeding when the original organizational petitioners had commenced this proceeding on March 31, 2022. More specifically, CPLR 203(f) would permit the Court to deem the individual petitioners' current claims asserted in their amended verified petition of November 15, 2022, to have been timely brought more than 7-months earlier on March 31, 2022 when the original verified petition was filed by the organizational petitioners.

In this regard, the Court recognizes that even if it were to assume that the individual petitioners are considered to be united in interest with the organizational petitioners, the petitioners have failed to demonstrate that their failure to include the individual petitioners as parties in their original filing was the product of a mistake as to the identity of any one of their number at the time when the original pleading was filed (*see* *Buran v Coupal*, 87 NY2d 173; *see* *Matter of Ayuda Re Funding, LLC v Town of Liberty*, 121 AD3d 1474; *see also* *Windy Ridge*

Farm v Assessor of Town of Shandaken, 45 AD3d 1099, *aff'd* 11 NY3d 725). Rather, the petitioners' mistaken failure to include the individual petitioners as parties to this proceeding when the original verified petition was filed is reflective of a failure on their part to appreciate the legal parameters, requirements and limitations of organizational standing, which, as an error of law, is not the type of mistake contemplated by the relation-back doctrine (*see Matter of Germain v Town of Chester Planning Bd.*, 178 AD3d 926, 927; *see also Avila v. Distinctive Dev. Co., LLC*, 120 AD3d 449, 450; *Flederbach v Fayman*, 57 AD3d 474, 475; *Cardamone v Ricotta*, 47 AD3d 659, 660–661; *Somer & Wand v Rotondi*, 251 AD2d 567; *State of New York v Gruzen Partnership*, 239 AD2d 735; *Yovane v White Plains Hosp. Ctr.*, 228 AD2d 436). Consequently, given that the petitioners have “failed to demonstrate a mistake as to the identity of the proper party or parties at the time of the original pleading,” which is necessary to the application of the relation-back doctrine,” the Court finds that the petitioners may not avail themselves of relief from the untimeliness of the individual petitioners' entry into this proceeding pursuant to the terms of the look-back doctrine provided by CPLR 203(f) (*Mensch v Planning Bd. of Vil. of Warwick*, 189 AD3d 1245, 1249; *see Finck v VL 10 1620 New Highway, LLC*, 203 AD3d 892; *see also Germain v Town of Chester Planning Bd.*, 178 AD3d at 928; *Matter of Ferruggia v Zoning Bd. of Appeals of the Town of Warwick*, 5 AD3d 682, 683).

Accordingly, as the individual petitioners may not avail themselves of the look-back doctrine, and as the adduced evidence reveals that none of their number entered this proceeding until the filing of the amended verified petition that named them as petitioners hereto on November 15, 2022, the Court finds that the entry of all thirty-two (32) individual petitioners into this case at that time was untimely done in excess of the applicable 4-month limitations period,

and thereupon, the respondents' motion to dismiss this proceeding to the extent brought by the remaining thirty-two (32) individual petitioners pursuant to CPLR 3211(a)(5) is hereby granted.

Moreover, to the extent that the petitioners have collectively urged this Court to find that their plenary breach of contract causes of action raised through this proceeding should survive dismissal upon the lack of organizational standing borne by organizational petitioners CCT and DeBellis, and should similarly survive dismissal upon the untimeliness of the entry into this proceeding of the remaining balance of individual petitioners, this Court recognizes that all such remaining causes of action derive from claims that are based upon disputed interpretation and/or performance of obligations pursuant to the terms of a collectively bargained agreement that exists between the organizational petitioners and the respondents. Consequently, the remaining causes of action raised through this proceeding, which directly relate to the terms, enforcement and/or alleged breach CBA and its MOA which was negotiated between the organizational petitioners and the respondents, were, at all times relevant to the issues raised through this proceeding, subject to the grievance procedure provided for and required by the CBA to address any challenges relating to its terms.

Consistent therewith, the common law of this State has applied a so-called exhaustion doctrine in a variety of contexts within the purview of article 78 of the CPLR, providing that "when there are further administrative steps available to secure a change in result, a party must pursue them before going to court" (*Matter of Geherin*, 75 AD2d 991; see *Carter v State of New York Executive Dept., Div. of Parole*, 95 NY2d 267, 270; see also *Matter of Mateo v Board of Educ. of City of New York*, 285 AD2d 552, 553). Furthermore, it is well-settled that those covered by a collective bargaining agreement which provides grievance procedures relating to a

particular labor dispute must exhaust the administrative remedies contained therein prior to being permitted to seek judicial review by litigating the dispute in the courts (*see Matter of Plummer v Klepak*, 48 NY2d 486, *cert. denied* 445 US 952; *see also Spano v Kings Park Cent. School Dist.*, 61 AD3d 666, 670-671; *Matter of Amoroso-LePore v Grant*, 56 AD3d 663, 664; *Matter of Murray v Downey*, 48 AD3d 817, 818; *Matter of Hammond v Village of Elmsford*, 8 AD3d 484). In this regard, the courts have rejected a rigid approach to the requirement that all administrative remedies must be exhausted prior to seeking judicial review, as it has been repeatedly held that the exhaustion doctrine need not be followed “when an agency’s action is challenged as either unconstitutional or wholly beyond its grant of power, or when resort to an administrative remedy would be futile, or when its pursuit would cause irreparable injury” (*Watergate II Apartments v Buffalo Sewer Auth.*, 46 NY2d 52, 57). Furthermore, the exhaustion doctrine may be excused where an aggrieved can establish that his or her bargaining agent breached its duty of fair representation in the handling of the grievance (*see Buff v Village of Manlius*, 115 AD3d 1156; *see also Matter of McLaughlin v Hankin*, 132 AD3d 675, 676), which occurs when a bargaining agent’s conduct toward the aggrieved member of the collective bargaining unit is arbitrary, discriminatory, or reflects bad faith (*see Ponticello v County of Suffolk*, 225 AD2d 751; *see also Matter of Garvin v New York State Pub. Empl. Relations Bd.*, 168 AD2d 446).

Accordingly, as the petitioners concede their previous election to refrain from pursuing such grievance procedures under the terms of the CBA in deference to the exclusive pursuit of their plenary claims that are based upon disputed interpretation and/or performance of obligations pursuant to the terms of the CBA and its MOA through this hybrid proceeding, without offering any justification for that election which could have excused same, the Court is constrained to

conclude that the petitioners have impermissibly failed to exhaust their administrative remedies available to them under the CBA (*see Matter of Plummer v Klepak*, 48 NY2d 486, *cert. denied* 445 US 952; *see also Spano v Kings Park Cent. School Dist.*, 61 AD3d 666, 670-671; *Matter of Julicher v Town of Tonawanda*, 61 AD3d 1384; *Matter of Amorosano-LePore v Grant*, 56 AD3d 663, 664; *Matter of Murray v Downey*, 48 AD3d 817, 818; *Matter of Dorme v Slingerland*, 41 AD3d 596; *Matter of Hammond v Village of Elmsford*, 8 AD3d 484; *Matter of O'Connor v Police Commn. of Town of Clarkstown*, 301 AD2d 654).

Based upon the foregoing, the respondents' motion to dismiss the instant petition pursuant to CPLR 7804(f) and CPLR 3211(a)(2), (3) and (5) is granted, and this proceeding is hereby dismissed.

The foregoing constitutes the Decision and Order of this Court.

Dated: White Plains, New York
April 3, 2023



Honorable Susan Cacace

Acting Justice of the Supreme Court

SUSAN CACACE
WESTCHESTER COUNTY
COURT JUDGE

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