STATE OF NEW YORK
SUPREME COURT

ALBANY COUNTY

KATHY MCGROUTY, DEBORAH CONNORS, CYNTHIA PANICHI, KAREN REMILLARD, ANNA RAZZANO, ANNA MAE DECKER, MELLISSA FRUSCIO and LAUREN E. ANTHONY,

Plaintiffs,

-against-

CITY OF WATERVLIET, NEW YORK and CHARLES PATRICELLI as MAYOR OF THE CITY OF WATERVLIET, NEW YORK,

Defendants.

DECISION & ORDER

Index No.: 900742-21

(Judge Richard M. Platkin, Presiding)

APPEARANCES:

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Hon. Richard M. Platkin, A.J.S.C.

Plaintiffs are the spouses of retired City of Watervliet ("City") firefighters. They sue for a declaration that the City must reimburse them for Medicare Part B premiums. In lieu of answering, defendants move under CPLR 3211 (a) (7) for the dismissal of plaintiffs' complaint (*see* NYSCEF Doc No. 8 ["Complaint"]). Plaintiffs oppose the motion and, in the alternative, cross-move to amend the Complaint to add their retiree-spouses as party-plaintiffs. Defendants oppose the cross motion.

BACKGROUND

Plaintiffs' spouses are retired City firefighters who belonged to the Watervliet Uniformed Firefighters Association, Local 590, IAFF, AFL-CIO ("Union"). Plaintiffs allege that the City discontinued reimbursement of their Medicare Part B premiums in or about July 2017, in breach of the collective bargaining agreements ("CBAs") in effect at the time of their spouses' retirements and in disregard of the City's past practice (*see* Complaint, ¶¶ 27-39).

In a grievance arbitration between the City and the Union, an arbitrator ruled in November 2017 that the City violated Article II, Section 11 of the relevant CBA "when it discontinued reimbursing Medicare Part B premiums" of retired firefighters (NYSCEF Doc No. 9 ["Award"], p. 14). As a result, the City was required to provide reimbursement "to all active bargaining unit members who retire following January 31, 2017" (*id.*).

In March 2018, City firefighters who retired before January 31, 2017 ("Retirees"), including plaintiffs' spouses, commenced a lawsuit against the City, seeking to obtain the same relief that the arbitrator awarded to then-active firefighters. By Decision, Order & Judgment, this Court (Connolly, J.) granted summary judgment in favor of the Retirees, ruling that the City "is required to reimburse [the Retirees] for Medicare Part B premium payments that were not

reimbursed and to continue providing [such] reimbursement for [them]" (NYSCEF Doc No. 25 ["Prior Order"], p. 24). In so deciding, the Court accorded collateral estoppel effect to the arbitral Award, which was based on similar contract language (*see id.*, pp. 21-23). The Court did not rule on the propriety of the City's discontinuance of Medicare Part B premium reimbursement to spouses of Retirees, who were not parties to that lawsuit.

By this action, plaintiffs seek the same relief, arguing that, like their Retiree spouses, they improperly have been denied Medicare Part B premium reimbursement, in breach of the relevant CBAs. The Complaint alleges two causes of action, both sounding in breach of contract: one for spouses who already are participating in Medicare Part B and another for spouses not yet participating.

In moving for dismissal, the City argues that the plain language of the CBAs does not oblige it to reimburse the spouses of retired firefighters for Medicare Part B premiums (*see* NYSCEF Doc No. 7 ["MOL"], pp. 1, 4-8). In opposition, plaintiffs "take issue with" the City's position, and further argue that, "if the Court decides the plaintiff spouses are not proper parties and/or there are issues of fact concerning this, a proposed Amended Complaint is submitted [in] support of plaintiffs' Cross-Motion To Add Party Plaintiffs – specifically, their husbands" (NYSCEF Doc No. 22, Jordan Aff., ¶ 9). Defendants oppose the cross motion, arguing that the proposed pleading is patently devoid of merit, given that the plain language of the CBAs does not entitle plaintiffs to health insurance reimbursement.[1]

[1] In reply to defendants' opposition to the cross motion, plaintiffs' counsel has advised the Court that "plaintiffs Melissa Fruscio and Lauren E. Anthony no longer wish to be plaintiffs in this lawsuit" (NYSCEF Doc No. 29, ¶ 11).

ANALYSIS

On a motion to dismiss made pursuant to CPLR 3211 (a) (7), the court's "sole criterion is whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law[,] a motion for dismissal will fail" (*Polonetsky v Better Homes Depot*, 97 NY2d 46, 54 [2001] [internal quotation marks and citation omitted]). The complaint "is to be given a liberal construction, the allegations contained within it are assumed to be true and the plaintiff is to be afforded every favorable inference" (*State of New York v Jeda Capital-Lenox, LLC*, 176 AD3d 1443, 1445 [3d Dept 2019] [internal quotation marks and citations omitted]). "Dismissal of the complaint is warranted if the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery" (*Connaughton v Chipotle Mexican Grill, Inc.*, 29 NY3d 137, 142 [2017] [citations omitted]).

The CBAs in effect at pertinent times contained the following language regarding health insurance:

> [1] Health Insurance: The present health insurance shall continue in force. Current health insurance options include: [naming plans]. The City shall continue to pay one hundred percent (100%) of the cost for *each member of the bargaining unit* and *his dependents* who were employed prior to January 1, 1995. Any *member* of the bargaining unit appointed as a firefighter after January 1, 1995 shall pay part of their health insurance through payroll deduction pursuant to the following schedule:
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> | | | |
> |---|---|---|
> | First Year of Service | 1st - 12th month | 30% of costs |
> | Second Year of Service | 13th - 24th month | 30% of costs |
> | Third Year of Service | 25th - 36th month | 30% of costs |
> | Fourth Year of Service | 37th - 48th month | 30% of costs |
> | Fifth Year of Service | 49th - 60th month | 30% of costs |
>
> After 60th month of service City pays 100% of Health Insurance costs.

> [2] Employees hired on or after July 1, 2004 shall, *together with their dependents*, have the *same benefits* under this section as present employees except they shall contribute [a specified percentage][2] of the premium costs for individual and for *dependent coverage* throughout their employment with the City and throughout their *retirement*.
>
> [3] For *employees* who are currently employed by the fire department prior to July 1, 2004, the City will pay 100% of *their* health insurance costs during *their* employment and *retirement* provided *they* have fulfilled the 30% health insurance contribution as described in the existing contract (NYSCEF Doc Nos. 11-14, CBAs, art II, § 11 [emphasis added]).

Defendants contend that the CBAs do not oblige the City to reimburse spouses of retired firefighters for the cost of Medicare Part B premiums (*see* MOL, p. 1; *see also* NYSCEF Doc No. 16, ¶ 18). As construed by defendants: paragraph one is not applicable to plaintiffs, as it concerns only active employees; paragraph two does not apply because plaintiffs' spouses were hired before July 1, 2004 (*see* MOL, pp. 4-5; NYSCEF Doc No. 16, ¶¶ 3-10; Doc No. 29, ¶ 4); and paragraph three requires the provision of health insurance "during retirement" to "employees" who were hired "prior to July 1, 2004," but not to their dependents (*see* MOL, p. 5).

In opposition, plaintiffs generally "take issue with" the City's construction of the CBAs (NYSCEF Doc No. 22, Jordan Aff., ¶ 9). However, in seeking to refute defendants' argument that the proposed amended pleading is patently devoid of merit, plaintiffs assert that pertinent contract language is ambiguous. According to plaintiffs, paragraph three is ambiguous because, among other things, "the City offers more than one health insurance option. It offers individual and/or family coverage for its employees and retirees and historically has done so" (NYSCEF Doc No. 29, ¶ 5; *see also* Doc No. 30, ¶ 4). Plaintiffs also cite the City's "longstanding practice" of reimbursing them for Medicare Part B premiums (Complaint, ¶ 32).

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[2] In the 2009-2012 CBA, this contribution was reduced from 15% to 10% (*see* NYSCEF Doc No. 13; *see also* Doc No. 14 [2013-2016 CBA]).

Plaintiffs further submit the affidavit of Don Panichi, the spouse of plaintiff Cynthia Panichi. While conceding that the spouses' right to reimbursement "was not specifically spelled out in the [CBAs]," Panichi avers that "it was clear to both sides [during contract negotiations] that the reimbursement . . . was always for both the firefighters and their eligible spouses," and the City historically provided such coverage (NYSCEF Doc No. 22, Panichi Aff., ¶¶ 7-9).[3]

In construing the CBAs, the Court must be "guided by basic principles of contract interpretation, which instruct that a contract should be construed to give effect to the parties' intent as gleaned from the four corners of the document itself, provided that its terms are clear and unambiguous" (*Elmira Teachers' Assn. v Elmira City School Dist.*, 53 AD3d 757, 759 [3d Dept 2008], *lv denied* 11 NY3d 709 [2008]). "A written agreement that is clear, complete and subject to only one reasonable interpretation must be enforced according to the plain meaning of the language chosen by the contracting parties" (*Brad H. v City of New York*, 17 NY3d 180, 185 [2011] [citations omitted]; *see Ellington v EMI Music, Inc.*, 24 NY3d 239, 244-245 [2014]).

Whether an agreement is ambiguous presents a question of law (*see Consedine v Portville Cent. School Dist.*, 12 NY3d 286, 293 [2009]). "An agreement is unambiguous if the language it uses has a definite and precise meaning, unattended by danger of misconception in the purport of the [agreement] itself, and concerning which there is no reasonable basis for a difference of opinion" (*Ellington*, 24 NY3d at 244 [internal quotation marks and citations omitted]). Ambiguity exists, however, "when specific language [in the contract] is 'susceptible of two reasonable interpretations'" (*id.*, quoting *State of New York v Home Indem. Co.*, 66 NY2d 669, 671 [1985]; *see Brad H.*, 17 NY3d at 186). In cases of ambiguity, "extrinsic or parol evidence may be then permitted to determine the parties' intent as to the meaning of that

[3] To similar effect is the affidavit of Michael Decker, Jr., another Retiree (*see* NYSCEF Doc No. 22, Decker Aff., ¶¶ 6-8).

language" (*Non-Instruction Adm'rs & Supervisors Retirees Assn. v School Dist. of City of Niagara Falls*, 118 AD3d 1280, 1282 [4th Dept 2014] [internal quotation marks and citations omitted]; *see Kolbe v Tibbetts*, 22 NY3d 344, 355 [2013]).

Paragraph three does not refer to spouses or dependents. Rather, after defining the "employees" to whom its provisions apply – firefighters hired before July 1, 2004 – paragraph three states that "the City will pay 100% of *their* health insurance costs during *their* employment and retirement provided *they* have fulfilled the 30% health insurance contribution as described in the existing contract." As defendants correctly observe, the references in paragraph three to "their" and "they" easily can be understood as referring back to the subject employees, firefighters who were "hired" "prior to July 1, 2004" (MOL, p. 6). As so construed, paragraph three would provide health insurance to pre-July 1, 2004 firefighters "during their employment and retirement," but would not provide coverage for the spouses and dependents of these firefighters.

While defendants' construction of paragraph three is a reasonable one, it disregards the other provisions of the CBAs governing health insurance. In determining whether an agreement is ambiguous, "[t]he entire contract must be reviewed and '[p]articular words should be considered, not as if isolated from the context, but in the light of the obligation as a whole and the intention of the parties as manifested thereby" (*Riverside S. Planning Corp. v CRP/Extell Riverside, L.P.*, 13 NY3d 398, 404 [2009], quoting *Atwater & Co. v Panama R.R. Co.*, 246 NY 519, 524 [1927]).

In particular, paragraph three can be read together with paragraph one, which also applies to firefighters hired prior to July 1, 2004. Under paragraph one, the City agreed "to pay one hundred percent (100%) of the cost [of health insurance] for each member of the bargaining unit

[hired prior to January 1, 1995] and his [or her] *dependents*" (emphasis added). For firefighters hired after January 1, 1995, the City agreed to pay 100% of "their" health insurance costs, provided such members contributed a specified percentage of their salary during their first five years of service. Thus, under paragraph one, active firefighters and their dependents hired before July 1, 2004, including the Retirees, were entitled to payment of "their" health insurance costs, including coverage for spouses and dependents, subject to possible cost-sharing during the employees' first five years of service.

Then, under paragraph three, the City agreed to pay 100% of the health insurance costs of these firefighters – those hired before July 1, 2004 – "during *their* employment and retirement," so long as the cost-sharing arrangement prescribed in paragraph one was satisfied. But, unlike paragraph one, paragraph three does not refer to spouses and dependents and speaks only to the City's obligation to pay "100% of *their* health insurance costs during *their* employment and retirement."

If paragraph three were read in isolation and the pronoun "their" limited to firefighters, as argued by defendants, there would be a conflict between the more general provisions of paragraph one, which oblige the City to provide health insurance to active firefighters and their families, and the more specific language of paragraph three directed at firefighters hired prior to July 1, 2004, which would relieve the City of any obligation to provide coverage for "their" spouses and dependents. However, this conflict could be avoided and the two paragraphs harmonized if the health insurance provisions of the CBAs were read as a whole and the reference in paragraph three to "*their* health insurance costs" were understood to refer back to paragraph one, which is the source of the cost-sharing obligation referenced in paragraph three.[4]

[4] In other words, "their health insurance" would have the same meaning in both paragraphs one and three.

The Court therefore concludes that there is a reasonable alternative construction of the relevant CBAs that would support plaintiffs' claims. Thus, this is not a case where "the health care provision" of a CBA "unambiguously failed to grant [plaintiffs] the right to reimbursement for the cost of Medicare Part B premiums" (*Adamo v City of Albany*, 156 AD3d 1017, 1019 [3d Dept 2017], *appeal dismissed, lv denied* 31 NY3d 1041 [2018]).

Inasmuch as "the CBA provisions in question are susceptible to differing but reasonable interpretations, an ambiguity exists that requires consideration of extrinsic evidence relevant to the parties' intent," and "defendant's motion to dismiss the complaint should . . . be[] denied" (*Agor*, 115 AD3d at 1049; *see Kolbe*, 22 NY3d at 355; *Ames v County of Monroe*, 162 AD3d 1724, 1726-1727 [4th Dept 2018]; *cf. Matter of Aeneas McDonald Police Benevolent Assn. v City of Geneva*, 92 NY2d 326, 333 [1998]; *Non-Instruction Adm'rs*, 118 AD3d at 1282).

Finally, given the denial of defendants' motion, plaintiffs' cross motion, which seeks "the alternative" relief of amending the Complaint by adding the Retirees as additional party-plaintiffs (Jordan Aff., ¶ 14), is academic.[5]

CONCLUSION

Accordingly, it is

ORDERED that defendants' motion to dismiss is denied, except as to plaintiffs' Melissa Fruscio and Lauren E. Anthony, who are hereby dismissed from this action; and it is further

ORDERED that plaintiffs' cross motion to amend the complaint to add additional party-plaintiffs is denied as academic; and finally it is

[5] Although plaintiffs were not involved in the negotiation of the CBAs, the Court is satisfied that they have stated a claim as third-party beneficiaries, making their spouses' participation in this action unnecessary (*see Blue Cross of Northeastern N. Y. v Ayotte*, 35 AD2d 258, 260 [3d Dept 1970] ["it is well settled that an employee and his (or her) dependents are third party beneficiaries of a group insurance contract"]; *see generally State of Cal. Pub. Employees' Retirement Sys. v Shearman & Sterling*, 95 NY2d 427, 434-435 [2000]).

ORDERED that a remote preliminary conference shall be scheduled, and the parties shall confer prior to such conference regarding a schedule for any necessary disclosure and the filing of a note of issue.

This constitutes the Decision & Order of the Court, the original of which is being uploaded to NYSCEF for electronic entry by the Albany County Clerk. Upon such entry, counsel for plaintiffs shall promptly serve notice of entry on all parties entitled thereto.

Dated: Albany, New York
July 19, 2021

RICHARD M. PLATKIN
A.J.S.C.

Papers Considered:

NYSCEF Doc Nos. 6-16, 22, 24-30.