STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

MARK ABELE ET AL,

Plaintiff,

v.

CITY OF ALBANY, NEW YORK
AND KATHY SHEEHAN, AS MAYOR OF
THE CITY OF ALBANY, NEW YORK,

Defendants.

DECISION, ORDER And JUDGMENT
Index No.: 907657-20
RJI No. 01-21-138060
(Hon. Lynch, J.)

INTRODUCTION

This is declaratory judgment/breach of contract action. Plaintiffs, retired Firefighters and their families, seek a declaration (1) that the City of Albany breached the Collective Bargaining Agreement (CBA) with the Union representing them when they were employed and active members, by unilaterally changing their existing health insurance plan to a new plan imposing liability for deductible charges upon them, (2) a declaration that the City of Albany be directed to comply with the CBA terms, requiring that the City not impose deductible charges under health insurance plans upon Plaintiffs, and (3) an award of money damages to reimburse Plaintiffs for all deductible expenses paid by them.

FACTS

Plaintiffs consist of retired members of the City of Albany Fire Department and the Albany Permanent Professional Firefighters' Association ("APPEA") (hereinafter the "Union")

(who retired prior to October 20, 2015), as well as the spouses of deceased members as third-party beneficiaries.[1]

On or before January 1, 2016, the City of Albany and the Union were parties to several collective bargaining agreements ("CBA"), as well as one (1) Interest Arbitration Award ("IA"), and two (2) Memorandum of Agreements ("MOA") (collectively the "Agreement").[2] The Agreement required the City of Albany to negotiate with the Union prior to implementing changes to the existing health insurance coverage for the Plaintiffs.[3] The Agreement was in full force and effect at the time Plaintiffs were active Union Members and at the time of their retirement.

Section 27.1 Health Insurance of the Agreement provides:

> "If the City wishes to **change the existing health insurance plan**, the City shall **present proposals to the Union for discussion and possible agreement on these proposals**. If no proposal is agreed upon, then **an expedited arbitration** will commence with an arbitrator to be chosen from the list of disciplinary arbitrators. The **issue of the arbitration will be whether the new City proposal grants substantially equivalent coverage to members of the bargaining unit**. The arbitrator's decision will **control** as to whether the City has the right to make any such change."[4] (hereinafter § 27.1).

Consistent with the Agreement, there was also a long-standing practice since on or before January 1, 1989, that the City of Albany would not charge the Union Members (or their beneficiaries) deductibles as part of the health insurance plan, covering active Union members and continuing upon retirement.[5]

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[1] NYSEF Doc. No. 1 – Complaint ¶ 82.
[2] NYSEF Doc. No. 1 – Complaint ¶ 80-81.
[3] NYSEF Doc. No. 1 – Complaint ¶ 83.
[4] NYSEF Doc. No. 26 – Labor Agreement 1/1/10 – 12/31/11, p. 35-36.
[5] NYSEF Doc. No. 1 – Complaint ¶ 84-85.

In an Opinion and Award for the period 1/1/12 to 12/31/13 issued pursuant to a Compulsory Interest Arbitration in 2015, the Panel identified a fundamental dispute relative to retiree health insurance coverage, to wit: the City proposed "status quo (Leave as a City Policy not in the CBA)" and the Union proposed "Memorialize the current City Policy in the CBA".[6] The Panel also noted,

> "In its proposal, the **Association seeks to codify current practices** by the City which provide health insurance to its retirees at no cost to the retiree with the inclusion of the following language in the CBA: Members who retire after 12/31/11 will receive health insurance during retirement at no cost and with coverage and benefits equal to or better than those employed on their last day of employment. **Currently, there is no language in either CBA that addresses health insurance at Retirement.**"[7] (emphasis added)

The Panel made the following award, to wit:

> "...we agree with the Association that **exploration** of other health insurance models by a joint Labor-Management Committee is a wise idea. Moreover, this joint Labor Management Committee should be tasked with the **discussion of health insurance models for both active members as well as retirees.**"[8] (emphasis added)

The Panel issued the following award:

> "HEALTH INSURANCE FOR RETIREES **The Association's proposal to include language in the CBA which codifies the City's practice of providing Health Insurance to any Firefighter who retires after December 31, 2011 is rejected.** However, with regard to those bargaining unit members who, as of December 31, 2013 were not contributing to their Health Insurance Coverage shall be deemed, under the City Policy/Practice in effect as of the execution of this Award, to be contributing 0% of their health insurance premium."[9] (emphasis added)

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[6] NYSEF Doc. No. 27, p.4.
[7] NYSEF Doc. No. 27, p. 18-19.
[8] NYSEF Doc. No. 27, p. 21.
[9] NYSEF Doc. No. 27, p. 25.

Shortly after the issuance of the foregoing Opinion and Award, the landscape between the retirees and the City of Albany changed.

On October 20, 2015, the City of Albany sent a letter to retired members of the Fire Department, advising, inter alia, that the in-network deductible under the Empire Plan was changed to $250.00 for individuals, and $500.00 for families. [10] Effective January 1, 2016, the City of Albany unilaterally changed its health insurance coverage, without any negotiation with the Union, effectively imposing a $250 individual/$500 family plan deductible on plaintiffs and their spouses/dependents until such time as they turned age 65 and enrolled in the Medicaid Advantage Plan.[11] As a result of the insurance plan change, Plaintiffs are obligated to pay the stated deductibles, and many of the Plaintiffs have already expended monies to cover the charged deductibles.[12]

Upon a grievance-arbitration between the active Members of the Union and the City of Albany, the Arbitrator found in favor of the Union, i.e., that the unilateral change to the health insurance coverage violated the CBA.[13] On November 3, 2016, Arbitrator Dennis Campagna made the following determination:

> "I find and conclude that the City violated Section 27.1 of the Collective Bargaining Agreement when it imposed a deductible amount of $250/$500, and that such change had an **adverse effect on active bargaining unit members** who are now or will be anticipating retirement.
>
> As a result of this Conclusion, the City is hereby directed, upon demand by the Association, **to participate in expedited arbitration pursuant to Section 27.1 of the CBA** regarding the imposition of this Deductible. Such demand, if filed, shall not

[10] NYSEF Doc. No. 47.
[11] NYSEF Doc. No. 1 – Complaint ¶ 86-88, 92.

[12] NYSEF Doc. No. 1 – Complaint ¶ 95-170.
[13] NYSEF Doc. No. 1 – Complaint ¶ 93.

> preclude the City and the Association entering good faith discussions for the purpose of reaching a mutually agreeable consensus as a means of resolving the issue."[14] (emphasis added)

In his determination, the Arbitrator found that the plan deductible changes imposed on retirees (Petitioners herein) directly impacted active members, to wit:

> "In this regard, the imposition of deductibles such as those in the City's 2015 notice, represent a back-door method of passing a portion of the premium contribution for which the City is obligated to pay off to plan recipients, and therefore represents a change "in the existing health insurance plan", thereby triggering the requirements set forth in Section 27.1 of the CBA. As a result, those active employees as future retirees who anticipated contributing no premium sum or a defined percentage toward their health care coverage are now faced with an up-front/additional payment of $250/$500. **Condoning such a change by the City would ultimately permit the City to impose a high deductible plan on its retirees, a similar back-door method of passing a portion of the City's obligation to pay premium contributions off to plan recipients** by imposing significant up-front/additional payments as part of the plan. **This too represents a back-door method of passing off part of the premium payment to retiree recipients and so too would be subject to the requirements of Section 27.1**"[15] (emphasis added)

The Arbitration Award was confirmed on July 13, 2017.[16]

In the subsequent arbitration proceeding, PERB Arbitrator Cassidy framed the issue as follows:

> "Did the City violate the January 1, 2010 [,] to December 31, 2011 collective bargaining agreement as supplemented by the January 1, 2012 to December 31, 2013 interest award (**Arbitrator Dennis Campagna**) when **it imposed a$250/$500 deductible** on the Empire Blue Cross Blue Shield PPO Plan **to retirees** that was effective January 1, 2016? And if so, what shall be the remedy?"[17]

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[14] NYSEF Doc. No. 31 – Arbitration decision p. 17.
[15] NYSEF Doc. No. 31 – Arbitration decision p. 16.

[16] NYSEF Doc. No. 32 – Decision and Order of the Hon. Denise Hartman.
[17] NYSEF Doc. No. 33 – PERB Arbitration Decision p. 1.

Arbitrator Cassidy noted that the matter had been referred to him, since the expedited arbitration proceeding following the Campagna award, had been vacated by the Court.[18] By Decision dated April 23, 2020, PERB Arbitrator Cassidy found:

> "The City violate [d] the January 1, 2010 to December 31, 2011 collective bargaining agreement as supplemented by the January 1, 2012 to December 31, 2013 interest award when it imposed a $250/500 deductible on the Empire Blue Cross Blue Shield PPO plan to retirees that was effective January 1, 2016. The City shall **reimburse all retirees who were employed on or after October 20, 2015,** for the any portion of $250/$500 annual deductibles that they paid from January 1, 2016, **and shall rescind those deductibles for those retirees and any future retirees.**"[19] (emphasis added)

Since Plaintiffs had all retired prior to October 20, 2015, the award did not provide any direct relief to Plaintiffs. The Arbitration Award was confirmed on August 25, 2020.[20]

ANSWER

The City of Albany filed a generic Answer, comprised of general denials and or denials that Defendant lacked sufficient knowledge or information to form a belief as to the allegation.[21]

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[18] See NYSEF Doc. No. 33 – PERB Arbitration Decision p. 4, where Arbitrator Cassidy found: "The dispute then proceeded to expediated arbitration before Arbitrator Sumner Shapiro who on October 8, 2018, issued an award urging the parties, prior to a final award, to consider a proposal to resolve the retiree deductible dispute. Arbitrator Shapiro's suggestion was unsuccessful and on September 24, 2019, he issued his award on the issue of whether the City's $250/$500 deductibles violated the Section 27.1 requirement that plan changes must result in substantially equivalent coverage. **However, he held that he lacked jurisdiction to decide that issue as he was not empowered to make an award granting a benefit to retirees when they were not part of the bargaining unit.** On June 19, 2019, Albany County Supreme Court vacated Arbitrator Shapiro's Award as irrational as he failed to render an award on the issue presented to him, i.e., whether the City's proposal resulted in the health plan having substantially equivalent coverage, and because he issued a determination on a ruling previously made (Campagna's grievance award). The Court remitted the matter for determination by another arbitrator on the issue of "substantial equivalency." (Emphasis added) See also, NYSEF doc No. 48 – Shapiro decision.

[19] NYSEF Doc. No. 33 – PERB Arbitration Decision p. 9.

[20] NYSEF Doc. No. 34 – Decision and Order of the Hon. Christina L. Ryba.

[21] NYSEF Doc. No. 17 – Answer.

The better practice would have been to engage in a more specific response (New York Practice, 6th Ed. Siegel and Connors, § 221, p. 416).

Defendant also interposed a sheath of generic defenses in its Answer, to wit: claims barred by the statute of limitations (First Affirmative Defense); lack of subject matter jurisdiction (Second Affirmative Defense); claims barred by res judicata and collateral estoppel (Third Affirmative Defense); failure to state a cause of action (Fourth Affirmative Defense); claims barred due to compliance with the obligations of the bargaining unit applicable (Fifth Affirmative Defense); claims barred since Plaintiffs are not members of the bargaining unit (Sixth Affirmative Defense); relief requested beyond the jurisdiction of the court (Seventh Affirmative Defense);and relief exclusive to collective bargaining (Eighth Affirmative Defense). Since Defendants took the time to interpose these defenses, a short word on each is warranted.

FIRST AFFIRMATIVE DEFENSE

Defendant claims the action is time barred. Interestingly, Defendant failed to move to dismiss the claim as time barred under CPLR 3211 (a) (5) and failed to raise the timeliness claim in the pending cross-motion. Based on the record, it is manifest that the cause of action accrued on January 1, 2016, the effective date of the health plan change (CPLR § 203 (a)). The statute of limitations for both a declaratory judgment and a breach of contract cause of action is six (6) years (CPLR § 213 (1) (2)). The action was commenced December 8, 2020 (CPLR § 304 (a)). The action was timely commenced.

SECOND AND SEVENTH AFFIRMATIVE DEFENSES

Defendant asserts that this Court lacks subject matter jurisdiction to determine the claims raised and the relief sought. I disagree. This Court has jurisdiction over this matter as a court of

general and original jurisdiction pursuant to New York Judiciary Law §140-b, and the New York State Constitution, Article 6, § 7.

THIRD AFFIRMATIVE DEFENSE

Defendant claims this action is barred by res judicata and/or collateral estoppel. I disagree. As more fully appears below, Defendant is barred from relitigating the issue of whether the health plan change violated § 27.1 due to collateral estoppel arising out of the underlying arbitration award against Defendants.

FOURTH AFFIRMATIVE DEFENSE

Defendant asserts that Plaintiff failed to allege sufficient facts to set forth a cause of action. I disagree.

The CPLR 3211 review standard requires that a Court "must give the pleadings a liberal construction, accept the allegations as true and accord the plaintiffs every possible favorable inference." (See Chanko v. Am. Broad Companies, Inc., 27 N.Y. 3d 46, 52 [2016]; Conklin v Laxen, 180 A.D.3d 1358, 1362 [4th Dept. 2020]; Piller v Tribeca Dev. Group LLC, 156 A.D.3d 1257, 1261 [3d Dept. 2017]; see also, Wedgewood Care Ctr. v. Kravitz, 2021 N.Y. App. Div. LEXIS 4836, p. 9 [2d Dept. 2021], where the court held,

> "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."
>
> However, "allegations consisting **of bare legal conclusions** as well as factual claims flatly contradicted by documentary evidence are not entitled to any such consideration, nor to that arguendo advantage".) (Emphasis added; internal quotations and citations omitted)

As more fully appears below, the facts alleged establish all the elements of a breach of contract cause of action, and Plaintiff's entitlement to summary judgment thereunder.

FIFTH AFFIRMATIVE DEFENSE

Defendant asserts the claim is barred due to its compliance with its bargaining unit compliance. This is not supported by the record. As more fully set forth below, in the underlying arbitration proceedings, it was determined that Defendants breached § 27.1, and Defendant is collaterally estopped from relitigating that issue.

SIXTH AFFIRMATIVE DEFENSE

Defendant asserts that the claims are barred on the grounds that Plaintiffs are not members of the bargaining unit. For the reasons more fully set forth below, and the precedent established in Holloway v. City of Albany, 169 A.D. 3d 1133 [3d Dept. 2019], this defense lacks merit.

EIGHTH AFFIRMATIVE DEFENSE

Defendant asserts that Plaintiffs claim is barred on the grounds that relief may only be sought through collective bargaining. That's rich. First, Defendants assert Plaintiffs claims are barred on the grounds that they are not members of a bargaining unit, and now assert that relief is exclusive to collective bargaining. As more fully appears below, while Plaintiff retirees are no longer members of the bargaining unit, their rights vested and are enforceable under the Agreement.

MOTION FOR SUMMARY JUDGMENT

Plaintiff moved for summary judgment for the relief requested in the Complaint.[22] Defendant's cross-moved for summary judgment to dismiss the complaint.[23] Oral argument took place on the record on March 25, 2022.

STATEMENT OF LAW

In Zuckerman v. New York, 49 N.Y.2d 557, 562 [1980], where the Court held,

> "To obtain summary judgment it is necessary that the movant establish his cause of action or defense 'sufficiently to warrant the court as a matter of law in directing judgment' in his favor (CPLR 3212, subd [b]), and he must do so by tender of evidentiary proof in admissible form. On the other hand, to defeat a motion for summary judgment the opposing party must 'show facts sufficient to require a trial of any issue of fact' (CPLR 3212, subd [b]). Normally if the opponent is to succeed in defeating a summary judgment motion, he, too, must make his showing by producing evidentiary proof in admissible form. The rule with respect to defeating a motion for summary judgment, however, is more flexible, for the opposing party, as contrasted with the movant, may be permitted to demonstrate acceptable excuse for his failure to meet the strict requirement of tender in admissible form." (internal quotations and citations omitted)."

Recognizing that summary judgment is a **"drastic remedy"** the "facts **must be viewed in the light most favorable to the non-moving party (see** Vega v Restani Constr. Corp., 18 N.Y.3d 499, 503 [2012]) (emphasis added). The Court's function is "**not to determine credibility**, but whether there exists a factual issue, or if arguably there is a genuine issue of fact" (see S. J. Capelin Associates, Inc. v. Globe Mfg. Corp., 34 N.Y.2d 338, 341 [1974]); see also Sillman v. Twentieth Century-Fox Film Corp., 3 N.Y.2d 395, 404 [1957] where the Court held, "**issue-finding, rather than issue-determination, is the key to the procedure**" (emphasis added). The

[22] NYSEF Doc Nos. 14-35.
[23] NYSEF Doc Nos. 36-48.

evidence must be viewed in the light most favorable to the Plaintiff (see Watts v. Gines, 199 A.D.3d 1274 [3d Dept. 2021]).

Here, the underlying essential facts are not in dispute. The case turns on a question of law, rendering summary judgment appropriate, all as more fully discussed below.

BREACH OF CONTRACT

Plaintiff claims the January 1, 2016, change to the health insurance plan constituted a breach of contract, enforceable by Plaintiffs, i.e., that the plan change violated § 27.1 of the Agreement. In Lapenna Contr., Ltd. v Mullen, 187 A.D.3d 1451, 1453 [3d Dept. 2020], the Court held,

> "To recover for a breach of contract, a party must establish the **existence of a contract**, the **party's own performance** under the contract, the **other party's breach of its contractual obligations**, and **damages** resulting from the breach"

The threshold issue is whether Plaintiffs, as retirees, have an enforceable contract right in the first instance. They do. The next pivotal issue is whether the Defendants are collaterally estopped from litigating the § 27.1 violation issue. They are.

Contract interpretation and construction must be made in accord with the intent of the parties, manifested by the entire agreement (see e.g., Greenfield v. Philles Records, 98 N.Y.2d 562, 569-570 [2002], where the Court held,

> "...long-settled common-law contract rules still govern the interpretation of agreements between artists and their record producers. **The fundamental, neutral precept of contract interpretation is that agreements are construed in accord with the parties' intent.** The best evidence of what parties to a written agreement intend is what they say in their writing. Thus, a written agreement that is complete, clear and unambiguous on its face must be enforced according to the plain meaning of its terms.

> **Extrinsic evidence** of the parties' intent may be considered only if the agreement is ambiguous, which is an issue of law for the courts to decide. A contract 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. Thus, if the agreement on its face is reasonably susceptible of only one meaning, a court is not free to alter the contract to reflect its personal notions of fairness and equity." (Internal citations and quotations omitted; emphasis added)

; see also, G.M. Crisalli & Assoc., Inc. v. Prestige Contr., Inc., 2021 N.Y. App. Div. LEXIS 6321 [4th Dept. 2021]). It is equally clear that a fair and reasonable interpretation of the plain and ordinary meaning of the words in the contract must be considered to establish the intent and reasonable expectations of the parties (see e.g., Ragins v. Hospitals Ins. Co., Inc., 22 N.Y.3d 1019, 1022 [2013]).

In Aeneas McDonald Police Benevolent Ass'n v. City of Geneva, 92 N.Y.2d 326 [1998], the Court found that the collective bargaining agreement between the Union and the City did not address health insurance coverage for retirees. The retirees based their claim on past practices only, corresponding to a resolution adopted by the city. The Court addressed the significance of past practices as follows:

> "Courts also may look to the **past practice of the parties to give definition and meaning to language in an agreement,** including a collective bargaining agreement, which is ambiguous. However, **past practice**, like any other form of parol evidence, is merely an interpretive tool and **cannot be used to create a contractual right independent of some express source in the underlying agreement.**" (i.d. at 333) (emphasis added)

Rejecting the retirees claim that the City breached the agreement by changing the coverage terms, the Court held,

> "At issue is whether **retired municipal employees, who are no longer members of any collective bargaining unit**, may enforce

> a past practice in civil litigation with their former municipal employer. Where, as here, the past practice concededly is **unrelated to any entitlement expressly conferred upon the retirees** in a collective bargaining agreement, we hold that there is no legal impediment to the municipality's unilateral alteration of the past practice." (i.d., at 330-331) (emphasis added)

(See Matter of Albany Police Benevolent Assn. v. New York Pub. Empl. Relations Bd., 2022 N.Y. App. Div. LEXIS 1191, p. 5-6 [3d Dept. February 24, 2022], where the Court recognized,

> "While Civil Service Law § 201 (4) prohibits negotiation of certain retirement benefits, the continuation of health insurance payments to current employees after their retirement is not a retirement benefit within the meaning of that provision. Rather, such health insurance benefits, although paid after retirement, constitute a form of compensation earned by the employee while employed. Therefore, **a past practice concerning health benefits for current employees, even where unrelated to any specific contractual provision, cannot be unilaterally modified by the public employer**, which has a duty to negotiate with the bargaining representative of current employees regarding any change in a past practice affecting their own retirement health benefits. **This does not apply, however, to retirees, who are not active members of the bargaining unit** (*see* Civil Service Law §§ 201 [4], [7] [a]; 204 [2]..."). (Internal quotations and case citations omitted; emphasis added)

; see also Matter of Uniformed Fire Officers Assn. of the City of Yonkers v. New York State Pub. Empl. Relations Bd., 197 A.D.3d 1470 [3d Dept. 2021], where the Court held,

> A public employer is required to negotiate in good faith with the bargaining representative of its current employees regarding the terms and conditions of employment (*see* Civil Service Law §§ 201 [4]; 204 [2]; 209-a [1]), and the employer may not unilaterally alter a past practice relating to a mandatory subject of negotiation involving those employees (*see* Civil Service Law § 209-a [1] [d]). The City is therefore obliged to **negotiate** with petitioners regarding any change in **a past practice affecting [current employees'] own retirement**" benefits under General Municipal Law § 207-a (2), **but has no similar obligation with regard to those who had already retired, as they are no longer members of the bargaining unit and "a public employer's statutory duty**

> **to bargain does not extend to" them.").** (Internal quotations and case citations omitted) (emphasis added)

Is this case distinguished from ***Aeneas,*** and its progeny? Resolution necessitates a determination of whether the CBA has express language addressing retirees, or whether the past practice of not charging deductibles is inextricably related as a form of compensation to the "existing health insurance plan" provisions of § 27.1.

In Kolbe v. Tibbets, 22 N.Y. 3d 344, 348-349 [2013], the Court found that plaintiff retirees, as former employees of the school district, had a vested right to the same health insurance coverage that existed as of their retirement date pursuant to and as members of the Union which had entered into a collective bargaining agreement with the School District. The Court cited the specific provision of the CBA:

> "Section 6.4.6, entitled "**Health Insurance for Retired Employees,**" provided that "[r]etired employees shall be eligible to continue group health insurance upon payment of premium to the District five (5) days prior to the first of the month in which the premium is due" [and] **"the coverage provided shall be the coverage which is in effect for the unit at such time as the employee retires.**" (id at 350) (emphasis added)

The Court held,

> **As a general rule, contractual rights and obligations do not survive beyond the termination of a collective bargaining agreement. However, "[r]ights which accrued or vested under the agreement will, as a general rule, survive termination of the agreement"**, and we must look to well established principles of contract interpretation to determine whether the parties intended that the contract give rise to a vested right. "[A] written agreement that is complete, clear and unambiguous on its face must be enforced according to the plain meaning of its terms". The language upon which plaintiffs base their claim reads as follows: **"[t]he coverage provided shall be the coverage which is in effect for the unit at such time as the employee retires"**... the plain meaning of this provision unambiguously establishes that

> plaintiffs have a **vested right to the "coverage which [was] in effect for the unit at such time as [they] retire[d],"** until they reach age 70. It is well established that when reviewing a contract, "[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 manifested thereby" (id at 353) (emphasis added)

While the Court remitted the matter for a determination of the coverage scope, the vested right was based on the express language of the CBA (See Evans v Deposit Cent. Sch. Dist., 183 A.D.3d 1081 [3d Dept. 2020], where the Court upheld the retiree's rights under the express terms of the agreement, finding, that when Plaintiff's retired,

> "a CBA that was effective... provided, among other things, **100% health insurance coverage for retired employees and their dependents.**" [24]

; see also, Della Rocco v. City of Schenectady, 252 A.D. 2d 82, 84 [3d Dept. 1998], where the Court upheld the retiree's rights under the express terms of the agreement, finding,

> "The issue we must resolve is whether, when defendant changed the health insurance coverage provided to current employees, it was contractually permitted to pass on such negotiated change to retirees. The key portion of the contract states that defendant would provide insurance coverage "equivalent to the plan presently in effect for each member of the Department and his family, **and for retired members and their families**". (Emphasis added)

Here, as distinguished from ***Kolbe, Evans*** and ***Della Rocca,*** the record evidences that the City's past practices were not expressly codified as a term of the Agreement. That does not, however, end the inquiry.

[24] While the CBA had expired prior to Plaintiff's retirement, The court determined it remained in full force and effect while a new CBA was negotiated in accord with Civil Service Law § 209-a (1).

Does the combination of the express terms of the Agreement, i.e., that "the existing health insurance plan" not be changed, coupled with the past practices of not charging deductibles, lead to an inference that the retirees' have vested rights? No. In Donohue v. Cuomo, 2022 N.Y. LEXIS 71 [February 10, 2022], the Court of Appeals rejected the claimed inference to vest retiree health insurance rights, noting the vested rights in ***Kolbe*** were based on the express and unequivocal language of the CBA. (Id at 15) Here, however, Plaintiff's claim is not predicated on an inference, but, rather, on the meaning of the express terms of § 27.1 in context of past practices.

In Adamo v. City of Albany, 156 A.D. 3d 1017 [3d Dept. 2017], app dismissed 31 N.Y. 3d 1041, the Court rejected retiree's claim based on the limiting express language of the CBA. The CBA provided,

> **"[a]ll employees in the bargaining unit** shall be eligible for hospitalization and medical insurance for themselves and all of their eligible dependents pursuant to [certain] plan options . . . which provide[ ] benefits at the same or higher level as were provided under [NYSHIP]." (i.d. at 1018-1019)

Citing the language limiting the CBA, the Court held,

> "...we find that it unambiguously failed to grant retirees the right to reimbursement for the cost of Medicare Part B premiums. In this regard, **the health care provision explicitly limits the eligibility for health care benefits to "employees in the bargaining unit" and no reference is made to retirees or to health care benefits to be paid in retirement**." (Id at 1019)

As distinguished, § 27.1 does not expressly limit eligibility to active members of the bargaining unit, and no such limitation may be inferred.

In Holloway v. City of Albany, 169 A.D. 3d 1133 [3d Dept. 2019], retired Firefighters asserted a claim under § 27.1 akin to the subject claim. In ***Holloway***, the City of Albany

"announced that it was ending its longstanding practice of reimbursing retired firefighters for their Medicare Part B premiums with regard to those who enrolled in the program on or after January 1, 2010." (i.d. at 1133) The Court referenced the underlying arbitration proceedings as follows:

> "In the 2010 arbitration award, the arbitrator observed that defendant had reimbursed retired firefighters for their Medicare Part B premiums since the 1960s and did so for decades after it was no longer required, leading her to conclude that the reimbursement constituted part of the "existing health insurance plan" that could not be discontinued absent compliance with section 27.1. **The arbitrator also rejected defendant's contention that section 27.1 had no applicability because retired firefighters were not "members of the bargaining unit" protected by that provision.** A further articulation for that point was provided in the 2012 arbitration award, where the arbitrator explained that the reimbursement was a **form of deferred compensation and was one of the health insurance benefits** afforded to current employees. In other words, **while "retirees are no longer part of the bargaining unit upon their retirement", the arbitrator determined that section 27.1 applied because the reimbursement entitlement was earned by the retirees while they were working.**
>
> The 2010 and 2012 arbitration awards were never vacated—indeed, the 2012 **award was confirmed—and are binding.** Inasmuch as plaintiffs retired during the period that the reimbursement was provided to retirees under CBAs containing section 27.1, the finding in those awards "that [defendant] is obligated to reimburse retired firefighters for these payments under the CBA is dispositive of the claims raised here."(i.d. at 1135)

On its face, ***Holloway*** supports Plaintiff's claim. Relief from any obligation to pay health insurance deductibles, is a form of deferred compensation that was earned by Plaintiffs while working and constitutes a vested right which may now be asserted by Plaintiffs in their capacity as retirees.

It is manifest that Plaintiffs have long asserted vested rights, upon retirement, to the health insurance plan without deductibles, based on the express terms of § 27.1. For example, in his affidavit, Former Fire Fighter, Union Member and President, Sam Fresina alleged, inter alia:

> "6. The CBA in effect at the time of my retirement was the one that had effective dates 1/1/10 - 12/31/11. (See Exhibit 3 (h) to Plaintiffs' Exhibits To MSJ)
>
> 7. The above-identified agreement contained language in **Article 27, Section 1**, that prohibited the City from making changes to the existing health insurance plan without prior negotiations with the APPFA; in addition, if after negotiations the parties could not agree, the City could only change the plan if the new plan was substantially equivalent to the existing plan.
>
> 8. On January 1, 2010, the City started offering the **Empire BC PPO and since there was no deductible, most of our retired members opted into that plan**. Our Union Executive Board had an expert analyze the plan at that time and determined it was substantially equivalent to the new health insurance plan being **offered to the retirees**. He and we decided it was substantially equivalent at that time. **This was personally important to me as I was contemplating retirement and this is the plan that my wife and I would be enrolled in.** There was no deductible for the plan and this practice of charging no deductible continued, uninterrupted for the next six (6) years. In fact, to my knowledge, our retired members did not have to pay deductibles going back for the past twenty (20) years I was a firefighter and an active member of the Union."[25] (emphasis added)

In fine, Plaintiff's claim rests under the express provisions of § 27.1.

The arbitration proceedings below established that Defendants unilateral determination to change the health insurance plan, imposing deductibles, violated § 27.1. Defendant correctly asserts that the arbitration proceedings were prosecuted on behalf of active Union members and the relief was directly applicable to any firefighter who retired after the City issued the October 20, 2015 letter. Plaintiffs had all retired prior to October 20, 2015, and thus did not directly

[25] Part of NYSEF Doc. No. 18 – Exhibit 2 (j).

benefit from the relief granted by the Arbitrator. In ***Holloway***, however, the Court held, "Arbitration awards are entitled to collateral estoppel effect and will bar a party from relitigating a material issue or claim resolved in the arbitration proceeding after a full and fair opportunity to litigate." (i.d. at 1134) This begs the question of whether the Arbitration award is binding by way of collateral estoppel on the contract breach issue, distinct from the grant of relief, even though Plaintiffs were not parties thereto? It is!

In Simmons v. Trans Express, 37 N.Y.3d 107, 111-112 [2021], the Court identified the distinct differences between principles of res judicata and collateral estoppel as follows:

> "**Under res judicata, or claim preclusion**, a valid final judgment bars future actions **between the same parties on the same cause of action.** One linchpin of res judicata is **an identity of parties actually litigating** successive actions against each other: the doctrine applies **only when a claim *between* the parties has been previously brought to a final conclusion**. Importantly, the claim preclusion rule extends beyond attempts to relitigate identical claims. We have consistently applied a transactional analysis approach in determining whether an earlier judgment has claim preclusive effect, such that once a claim is brought to a final conclusion, *all other claims arising out of the same transaction or series of transactions* are barred, even if based upon different theories or if seeking a different remedy. This rule is grounded in public policy concerns, including fairness to the parties, and is intended to ensure finality, prevent vexatious litigation and promote judicial economy"...
>
> **Collateral estoppel, or issue preclusion**, is related to, but distinct from, the doctrine of res judicata. **Collateral estoppel prevents "'a party from relitigating in a subsequent action or proceeding an *issue* clearly raised in a prior action or proceeding and decided against that party . . . whether or not the . . . causes of action are the same.**" (Internal quotations and citations omitted; emphasis added)

Defendants clearly had a full and fair opportunity to litigate the issue of whether the subject health insurance plan change violated § 27.1 and the Arbitrators found that it did. Defendants

may not now relitigate same issue herein, even though Plaintiff retirees were not parties to the arbitration. Based on collateral estoppel, the record supports a finding that Defendant breached § 27.1 as a matter of law.

The record supports Plaintiff's claim that they had a vested contract right under § 27.1, which the City of Albany breached when it changed its health insurance plans to one that charged deductibles to Plaintiff retirees, causing damages, all without fault of the Plaintiffs.

CONCLUSION

For the reasons more fully stated above, Plaintiff's motion for summary judgment is Granted, and defendant's cross-motion for summary judgment to dismiss the Complaint is denied, and it is further

Ordered, Adjudged and Decreed, that an in-person hearing, on damages, will take place on May 25, 2022 @ 10:00 a.m.

This memorandum constitutes the decision, order, and judgment of the Court.[26]

Dated: Albany, New York
March 28, 2022

Peter A. Lynch
PETER A. LYNCH, J.S.C.

PAPERS CONSIDERED:
All e-filed pleadings and exhibits.

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[26] Compliance with CPLR R 2220 is required.