STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

[FILED: August 4, 2014]

BRISTOL/WARREN REGIONAL SCHOOL EMPLOYEES, LOCAL 581, AFSCME, COUNCIL 94, AFL-CIO; BRISTOL CIVILIAN POLICE DEPARTMENT EMPLOYEES, LOCAL 1853, AFSCME, COUNCIL 94, AFL-CIO; BRISTOL SEWER EMPLOYEES, LOCAL 1853, AFSCME, COUNCIL 94, AFL-CIO; BURRILLVILLE TOWN EMPLOYEES UNION, LOCAL 186, AFSCME, COUNCIL 94, AFL-CIO; BURRILLVILLE SCHOOL DEPARTMENT EMPLOYEES, LOCAL 2231, AFSCME, COUNCIL 94, AFL-CIO; CENTRAL FALLS CITY & SCHOOL EMPLOYEES, LOCAL 1627, AFSCME, COUNCIL 94, AFL-CIO; CRANSTON SCHOOL SECRETARIAL EMPLOYEES, LOCAL 2044, AFSCME, COUNCIL 94, AFL-CIO; EAST PROVIDENCE SCHOOL EMPLOYEES, LOCAL 2969, AFSCME, COUNCIL 94, AFL-CIO; EAST PROVIDENCE MANAGERIAL & TECHNICAL EMPLOYEES, LOCAL 3223, AFSCME, COUNCIL 94, AFL-CIO; EXETER-WEST GREENWICH SCHOOL DEPARTMENT EMPLOYEES, LOCAL 2636, AFSCME, COUNCIL 94, AFL-CIO; HOPKINTON TOWN EMPLOYEES, LOCAL 3163, AFSCME, COUNCIL 94, AFL-CIO; JOHNSTON TOWNEMPLOYEES, LOCAL 1491, AFSCME, COUNCIL 94, AFL-CIO; MIDDLETOWN SCHOOL EMPLOYEES, LOCAL 1823, AFSCME, COUNCIL 94, AFL-CIO; NEWPORT CITY EMPLOYEES, LOCAL 911, AFSCME, COUNCIL 94, AFL-CIO; NEWPORT SCHOOL DEPARTMENT EMPLOYEES, LOCAL 841, AFSCME, COUNCIL 94, AFL-CIO; NEW SHOREHAM TOWN & SCHOOL EMPLOYEES, LOCAL 2855, AFSCME, COUNCIL 94, AFL-CIO; NORTH

PROVIDENCE PUBLIC WORKS :
DEPARTMENT EMPLOYEES, LOCAL :
1491-1, AFSCME, COUNCIL 94, AFL-CIO; :
NORTH SMITHFIELD TOWN EMPLOYEES, :
LOCAL 937, AFSCME, COUNCIL 94, :
AFL-CIO; PAWTUCKET CITY :
EMPLOYEES, LOCAL 1012, AFSCME, :
COUNCIL 94, AFL-CIO; PAWTUCKET :
SCHOOL EMPLOYEES, LOCAL 1352, :
AFSCME, COUNCIL 94, AFL-CIO; :
PAWTUCKET PROFESSIONAL & :
TECHNICAL EMPLOYEES, LOCAL 3960, :
AFSCME, COUNCIL 94, AFL-CIO; SOUTH :
KINGSTOWN TOWN EMPLOYEES, LOCAL :
1612, AFSCME, COUNCIL 94, AFL-CIO; :
SOUTH KINGSTOWN SCHOOL :
EMPLOYEES, LOCAL 3125, AFSCME, :
COUNCIL 94, AFL-CIO; TIVERTON :
SCHOOL EMPLOYEES, LOCAL 2670, :
AFSCME, COUNCIL 94, AFL-CIO; :
TIVERTON TOWN EMPLOYEES, LOCAL :
2670-1, AFSCME, COUNCIL 94, AFL-CIO; :
WEST WARWICK HOUSING AUTHORITY, :
LOCAL 2045-1, AFSCME, COUNCIL 94, :
AFL-CIO; WOONSOCKET CITY :
EMPLOYEES, LOCAL 670, AFSCME, :
COUNCIL 94, AFL-CIO; WOONSOCKET :
SCHOOL EMPLOYEES, LOCAL 1137, :
AFSCME, COUNCIL 94, AFL-CIO; :
WOONSOCKET PROFESSIONAL & :
TECHNICAL EMPLOYEES, LOCAL 3851, :
AFSCME, COUNCIL 94, AFL-CIO; :
BARRINGTON EDUCATIONAL SUPPORT :
STAFF TEAM, NEARI, LOCAL 868; :
INDEPENDENT CUMBERLAND SCHOOL :
EMPLOYEES, NEARI, LOCAL 863; EAST :
GREENWICH MUNICIPAL EMPLOYEES' :
ASSOCIATION, NEARI, LOCAL 851; EAST :
GREENWICH EDUCATIONAL SUPPORT :
PROFESSIONALS, NEARI, LOCAL 856; :
EAST GREENWICH CUSTODIAL AND :
MAINTENANCE EMPLOYEES, NEARI, :
LOCAL 811; EAST PROVIDENCE :
TEACHERS' ASSISTANTS, NEARI, LOCAL :
896; EAST PROVIDENCE SECRETARIES :
ASSOCIATION, NEARI, LOCAL 89; FOSTER :

EDUCATIONAL SUPPORT :
PROFESSIONALS, NEARI; GLOCESTER :
EDUCATIONAL SUPPORT :
PROFESSIONALS, NEARI, LOCAL 857; :
JAMESTOWN EDUCATIONAL SUPPORT :
PROFESSIONALS, NEARI, LOCAL 824; :
LITTLE COMPTON MUNICIPAL :
EMPLOYEES ASSOCIATION, NEARI, :
LOCAL 860; LITTLE COMPTON :
EDUCATIONAL SUPPORT :
PROFESSIONALS, NEARI, LOCAL 862; :
MIDDLETOWN AUXILIARY SCHOOL :
PERSONNEL, NEARI, LOCAL 853; :
MIDDLETOWN MUNICIPAL EMPLOYEES' :
ASSOCIATION, NEARI, LOCAL 869; :
NARRAGANSETT EDUCATIONAL :
SUPPORT PROFESSIONALS, NEARI, :
LOCAL 885; NEWPORT MUNICIPAL :
EMPLOYEES, NEARI, LOCAL 840; NORTH :
KINGSTOWN EDUCATIONAL SUPPORT :
PROFESSIONALS, NEARI, LOCAL 864; :
NORTH SMITHFIELD EDUCATIONAL :
SUPPORT PROFESSIONALS, NEARI, :
LOCAL 854; PONAGANSETT :
EDUCATIONAL SUPPORT :
PROFESSIONALS, NEARI, LOCAL 858; :
PORTSMOUTH MUNICIPAL EMPLOYEES' :
ASSOCIATION, NEARI, LOCAL 871; :
SCITUATE PARAPROFESSIONALS, NEARI, :
LOCAL 804; SMITHFIELD EDUCATIONAL :
SUPPORT PROFESSIONALS, NEARI, :
LOCAL 891; SOUTH KINGSTOWN :
EDUCATIONAL SUPPORT :
PROFESSIONALS, NEARI, LOCAL 890; :
SOUTH KINGSTOWN MUNICIPAL :
EMPLOYEES' ASSOCIATION, NEARI, :
LOCAL 826; WOONSOCKET TEACHER :
ASSISTANTS, RIFTHP, AFL-CIO; LOCAL :
951; CRANSTON TEACHER ASSISTANTS, :
RIFTHP, AFL-CIO, LOCAL 1704; NORTH :
PROVIDENCE EDUCATIONAL WORKERS, :
RIFTHP, AFL-CIO; LOCAL 2435; :
NORTHERN RHODE ISLAND :
COLLABORATIVE EMPLOYEES' UNION, :
LOCAL 4940; RHODE ISLAND LABORERS' :
DISTRICT COUNCIL, LOCAL UNION 808; :

RHODE ISLAND LABORERS' DISTRICT COUNCIL, LOCAL UNION 1033; RHODE ISLAND LABORERS' DISTRICT COUNCIL, LOCAL UNION 1217; RHODE ISLAND LABORERS' DISTRICT COUNCIL, LOCAL UNION 1322; NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES, LOCAL 153; NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES, LOCAL 68; NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES, LOCAL 69; NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES, LOCAL 97; INTERNATIONAL BROTHERHOOD OF POLICE OFFICERS, LOCAL 472; INTERNATIONAL BROTHERHOOD OF POLICE OFFICERS, LOCAL 555	:	
VS.	:	**C.A. No. PC 12-3167**
LINCOLN D. CHAFEE, in his capacity as GOVERNOR OF THE STATE OF RHODE ISLAND, GINA RAIMONDO, in her capacity as General Treasurer of the State of Rhode Island, and the EMPLOYEES' RETIREMENT SYSTEM OF RHODE ISLAND, by and through the RETIREMENT BOARD, by and through Gina Raimondo, in her capacity of Chairperson of the Retirement Board, and Frank J. Karpinski, in his capacity as Secretary of the Retirement Board	:	

CITY OF CRANSTON POLICE OFFICERS, INTERNATIONAL BROTHERHOOD OF POLICE OFFICERS LOCAL 301, AFL-CIO; TOWN OF BRISTOL POLICE OFFICERS, INTERNATIONAL BROTHERHOOD OF POLICE OFFICERS LOCAL 304, AFL-CIO; TOWN OF JOHNSTON POLICE OFFICERS, INTERNATIONAL BROTHERHOOD OF POLICE OFFICERS LOCAL 307, AFL-CIO; TOWN OF BARRINGTON POLICE OFFICERS, INTERNATIONAL BROTHERHOOD OF POLICE OFFICERS LOCAL 351, AFL-CIO; CITY OF	:	

WOONSOCKET POLICE OFFICERS, INTERNATIONAL BROTHERHOOD OF POLICE OFFICERS LOCAL 404, AFL-CIO; TOWN OF NORTH SMITHFIELD POLICE OFFICERS, INTERNATIONAL BROTHERHOOD OF POLICE OFFICERS LOCAL 410, AFL-CIO; TOWN OF RICHMOND POLICE OFFICERS, INTERNATIONAL BROTHERHOOD OF POLICE OFFICERS LOCAL 425, AFL-CIO; TOWN OF WARREN POLICE OFFICERS, INTERNATIONAL BROTHERHOOD OF POLICE OFFICERS LOCAL 470, AFL-CIO; TOWN OF NORTH KINGSTOWN POLICE OFFICERS, INTERNATIONAL BROTHERHOOD OF POLICE OFFICERS LOCAL 473, AFL-CIO; TOWN OF SOUTH KINGSTOWN POLICE OFFICERS, INTERNATIONAL BROTHERHOOD OF POLICE OFFICERS LOCAL 489, AFL-CIO; TOWN OF MIDDLETOWN POLICE OFFICERS, INTERNATIONAL BROTHERHOOD OF POLICE OFFICERS LOCAL 534, AFL-CIO; TOWN OF HOPKINTON POLICE OFFICERS, INTERNATIONAL BROTHERHOOD OF POLICE OFFICERS LOCAL 498, AFL-CIO; TOWN OF EAST GREENWICH POLICE OFFICERS, INTERNATIONAL BROTHERHOOD OF POLICE OFFICERS LOCAL 472, AFL-CIO; TOWN OF WEST GREENWICH POLICE OFFICERS, INTERNATIONAL BROTHERHOOD OF POLICE OFFICERS LOCAL 517, AFL-CIO; TOWN OF GLOCESTER POLICE OFFICERS, INTERNATIONAL BROTHERHOOD OF POLICE OFFICERS LOCAL 638, AFL-CIO; TOWN OF FOSTER POLICE OFFICERS, INTERNATIONAL BROTHERHOOD OF POLICE OFFICERS LOCAL 637, AFL-CIO; TOWN OF NEW SHOREHAM POLICE OFFICERS, INTERNATIONAL BROTHERHOOD OF POLICE OFFICERS LOCAL 720, AFL-CIO	:	
VS.	:	**C.A. No. PC 12-3169**

:
LINCOLN D. CHAFEE, in his capacity as :
GOVERNOR OF THE STATE OF RHODE :
ISLAND; GINA RAIMONDO, in her capacity as:
General Treasurer of the State of Rhode Island; :
and the EMPLOYEES' RETIREMENT :
SYSTEM OF RHODE ISLAND, by and through :
the RETIREMENT BOARD, by and through :
Gina Raimondo, in her capacity of Chairperson :
of the Retirement Board, and Frank J. :
Karpinski, in his capacity as Secretary of the :
Retirement Board

WOONSOCKET FIRE FIGHTERS, IAFF :
LOCAL 732, AFL-CIO; CRANSTON FIRE :
FIGHTERS, IAFF LOCAL 1363, AFL-CIO; :
NORTH KINGSTOWN FIRE FIGHTERS, :
IAFF LOCAL 1651, AFL-CIO; TIVERTON :
FIRE FIGHTERS, IAFF LOCAL 1703, :
AFL-CIO; BARRINGTON FIRE FIGHTERS, :
IAFF LOCAL 1774, AFL-CIO; :
MIDDLETOWN FIRE FIGHTERS, IAFF :
LOCAL 1933, AFL-CIO; JOHNSTON FIRE :
FIGHTERS, IAFF LOCAL 1950, AFL-CIO; :
SMITHFIELD FIRE FIGHTERS, IAFF :
LOCAL 2050, AFL-CIO; NORTH :
PROVIDENCE FIRE FIGHTERS, IAFF :
LOCAL 2334, AFL-CIO; NORTH :
CUMBERLAND FIRE FIGHTERS, IAFF :
LOCAL 2722, AFL-CIO; CUMBERLAND :
RESCUE SERVICE, IAFF LOCAL 2725, :
AFL-CIO; VALLEY FALLS FIRE FIGHTERS, :
IAFF LOCAL 2729, AFL-CIO; :
CUMBERLAND HILL FIRE FIGHTERS, IAFF:
LOCAL 2762, AFL-CIO; LINCOLN RESCUE :
AND FIRE FIGHTERS, IAFF LOCAL 3023, :
AFL-CIO; COVENTRY FIRE FIGHTERS, :
IAFF 3240, AFL-CIO; EAST GREENWICH :
FIRE FIGHTERS, IAFF LOCAL 3328, :
AFL-CIO; SOUTH KINGSTOWN :
EMERGENCY MEDICAL SERVICES, IAFF :
LOCAL 3365, AFL-CIO; COVENTRY FIRE :
FIGHTERS, IAFF LOCAL 3372, AFL-CIO; :
FOSTER EMERGENCY SERVICES, IAFF :
LOCAL 3422, AFL-CIO; NORTH :

SMITHFIELD FIRE FIGHTERS, IAFF LOCAL 3984, AFL-CIO; CUMBERLAND FIRE FIGHTERS, IAFF LOCAL 4114, AFL-CIO; WEST GREENWICH FIRE AND RESCUE, IAFF LOCAL 4771, AFL-CIO	:	
VS.	:	**C.A. No. PC 12-3579**
LINCOLN D. CHAFEE, in his capacity as GOVERNOR OF THE STATE OF RHODE ISLAND, GINA RAIMONDO, in her capacity as the General Treasurer of the State of Rhode Island, and the EMPLOYEES' RETIREMENT SYSTEM OF RHODE ISLAND, by and through the RETIREMENT BOARD, by and through Gina Raimondo, in her capacity of Chairperson of the Retirement Board, and Frank J. Karpinski, in his capacity as Secretary of the Retirement Board	:	

DECISION

TAFT-CARTER, J. Before this Court is the Defendants' Motion to Join Municipal Entities as Indispensable Parties and/or Parties Whose Rights May be Affected by the Declarations Sought in the above-entitled actions. Plaintiffs[1] filed the underlying declaratory judgment actions in 2012 against the Governor and General Treasurer of the State of Rhode Island, the Employees' Retirement System of Rhode Island (ERSRI), by and through the Retirement Board, and the Chairman and Secretary of the Retirement Board (collectively, Defendants), challenging the constitutionality of the Rhode Island Retirement Security Act (RIRSA) of 2011.

[1] Plaintiffs in C.A. No. 2012-3167 consist of a number of local affiliates of the AFSCME, Council 94, representing general municipal employees. Plaintiffs in C.A. No. 2012-3169 consist of a number of local affiliates of the International Brotherhood of Police Officers, representing municipal police officers. Plaintiffs in C.A. No. 2012-3579 consist of a number of local affiliates of the International Association of Fire Fighters (IAFF), representing municipal fire fighters (collectively, Plaintiffs).

This Motion raises common issues of fact and law. For the purposes of judicial economy, this Court issues one Decision applying to each of these three separate actions. Jurisdiction is pursuant to Super. R. Civ. P. 19 (Rule 19) and G.L. 1956 § 9-30-11.

I

Facts and Travel

A detailed recitation of the facts and travel of these cases has been provided by this Court in its April 25, 2014 Decision. See Rhode Island Council 94 v. Chafee, 2014 WL 1743149 (R.I. Super. Apr. 25, 2014). Consequently, this Court will provide only the facts it deems necessary for ruling on the instant Motion.

The Plaintiffs in these cases—associations and unions representing general municipal employees, municipal fire fighters, and municipal police officers—are all participants of ERSRI through membership in the Municipal Employees' Retirement System (MERS). The Plaintiff Unions entered into collective bargaining agreements (CBAs) with their respective employers that provide for retirement benefits. In 2011, the General Assembly enacted RIRSA as a consequence of the underfunding of Rhode Island's public pension system. RIRSA altered the standards for retirement for employees in the retirement system, reduced retiree benefits, and permanently reduced cost of living adjustments (COLAs).

In 2012, Plaintiffs brought the instant declaratory judgment actions, asserting that RIRSA is unconstitutional under the Contract Clause, Takings Clause, and Due Process Clause of the Rhode Island Constitution. Plaintiffs also seek equitable relief, including a temporary restraining order and/or permanent injunction prohibiting the State from relying on or applying RIRSA to Plaintiffs, and ask this Court to restore and make whole all retirement benefits diminished by application thereof.

On May 29, 2014, Defendants filed the instant Motion, seeking to join all municipal entities in Rhode Island on the grounds that they are indispensable parties to these actions. Plaintiffs in C.A. No. 12-3167, C.A. No. 12-3169, and C.A. No. 12-3579, with the exception of Cranston Police Officers and Fire Fighters, filed a consolidated objection to the Motion. The Woonsocket Fire Fighters, IAFF Local 732, et al., Plaintiffs in C.A. No. 12-3579, joined in the consolidated objection and filed an additional objection with separate arguments. Cranston Police Officers, IBPO Local 301, Plaintiffs in C.A. No. 12-3169, filed a separate objection to Defendants' Motion.[2] The Rhode Island Association of School Committees filed an amicus curiae brief opposing Defendants' Motion. This Court heard oral arguments on July 1, 2014, and now issues its Decision.

II

Standard of Review

A

Rule 19

Joinder of parties is governed by Rule 19, which "advocates joining a party if in his or her absence complete relief cannot be accorded to those already made parties or if disposition of the matter would impair or impede the party's ability to protect his or her interest in the subject matter of the suit." Abbatematteo v. State, 694 A.2d 738, 740 (R.I. 1997). Rule 19(a), "Persons to be Joined if Feasible," provides:

> "A person who is subject to service of process shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence

[2] In their objection, Cranston Police Officers offer to join some, but not all, of the parties Defendants argue are indispensable to these actions.

> may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the person's claimed interest."

"Rule 19 [thus] recognizes the difference between persons whose joinder in an action is absolutely essential if the action is to proceed at all and those who ought to be joined but in whose absence the action can, nevertheless, continue." Doreck v. Roderiques, 120 R.I. 175, 179, 385 A.2d 1062, 1064 (1978). "The first class of such persons is referred to as 'indispensable' and the latter group as 'necessary.'" Id. An action may not proceed in the absence of an indispensable party. See Robert B. Kent, et al., Rhode Island Civil and Appellate Procedure § 19:2 (2006). Moreover, "[t]he burden is on the party raising the defense to show that the person who was not joined is needed for a just adjudication." 7 C. Wright et al., Federal Practice and Procedure § 1609 at 142 (3d ed. 2001).

B

Uniform Declaratory Judgment Act

The Uniform Declaratory Judgment Act (UDJA) vests this Court with the "power to declare rights, status, and other legal relations whether or not further relief is or could be claimed." Sec. 9-30-1. Section 9-30-11 of the UDJA provides in pertinent part that "all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding."[3] "This

[3] Although our Supreme Court has referred to parties required to be joined under Rule 19 and § 9-30-11 interchangeably as "indispensable parties," this Court notes that the wording in each statute differs slightly. In Rule 19, "indispensable parties" are defined by determining whether, "in the person's absence[,] complete relief cannot be accorded among those already parties." See Retirement Bd. of Employees' Retirement Sys. of State of R.I. v. DiPrete, 845 A.2d 270, 285 (R.I. 2004) (labeling such parties as indispensable). However, the Rhode Island Supreme Court has also given the "indispensable" label to required parties under § 9-30-11, who are defined as

requirement furthers the purpose of the [UDJA] . . . which is 'to facilitate the termination of controversies.'" Burns, 86 A.3d at 358 (quoting Abbatematteo, 694 A.2d at 740).

"[W]hen a [declaratory] judgment is not binding on all persons who have a direct interest in the dispute, the Superior Court should not assert jurisdiction." Abbatematteo, 694 A.2d at 740. The Rhode Island Supreme Court has "held that the above-cited provision in § 9-30-11 is mandatory." Burns, 86 A.3d at 358 (citing Thompson v. Town Council of Westerly, 487 A.2d 498, 499 (R.I. 1985)); see also In re City of Warwick, 97 R.I. 294, 296, 197 A.2d 287, 288 (1964). Thus, "failure to join all persons who have an interest that would be affected by the declaration is fatal." Burns, 86 A.3d at 358 (citation omitted).

When deciding whether a party should be joined in a case under § 9-30-11, our Supreme Court has consistently looked to the purpose of the UDJA—"to facilitate the termination of controversies"—for guidance. See id. Thus, this Court must consider whether the binding effect of the declaration sought would truly "facilitate the termination of the controversy." See § 9-30-11; In re City of Warwick, 97 R.I. at 296, 197 A.2d at 288; Thompson, 487 A.2d at 500; Sullivan v. Chafee, 703 A.2d 748, 750 (R.I. 1997); Abbatematteo, 694 A.2d at 740; City of Newport v. Local 1080 Intern. Ass'n of Firefighters, AFL-CIO, 54 A.3d 976, 979 (R.I. 2012); Burns, 86 A.3d at 359. Our Supreme Court has also acknowledged that other jurisdictions have recognized "a compromise which a court may in its judicial discretion adopt as between the desire for conclusiveness as to all interested parties and convenience in joining them," which the Court assumed, without deciding, that it would adopt in "appropriate circumstances." See In re City of Warwick, 97 R.I. at 297, 197 A.2d at 289; Thompson, 487 A.2d at 500.

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anyone "who [has] or claim[s] any interest which would be affected by the declaration." See Burns v. Moorland Farm Condo. Ass'n, 86 A.3d 354, 357-60 (R.I. 2014).

III

Analysis

A

Municipal Entities with CBAs with Plaintiffs

The Defendants argue that joinder of all municipal entities in the State is required to fully adjudicate this action. The first issue to be addressed is whether those municipal entities that have entered into CBAs with the Plaintiffs' Unions must be joined as indispensable parties to these actions.

The general law relating to the joinder of indispensable parties in Rhode Island is well-established both under Rule 19 and the UDJA. The participation of all indispensable parties under Rule 19 is essential, and no action may proceed without all such parties. See DiPrete, 845 A.2d at 285; Kent et al., supra. To this end, the Court is instructed to adopt a "pragmatic approach" in determining whether a party is indispensable. Doreck, 120 R.I. at 179, 385 A.2d at 1064. The Court is required to examine the individual facts of the case and the effect of the requested judgment on the absent parties. See id. at 179-80, 385 A.2d at 1064-65. The critical factor in determining indispensability is "whether a judgment entered in the case may have 'separable affirmative consequences' with respect to parties before the court." Id. A court must therefore review the relief sought in the Complaint and determine whether complete relief can be afforded without joining the parties or whether any of the current litigants will face multiple or inconsistent results for claims that should be resolved together. Desjarlais v. USAA Ins. Co., 824 A.2d 1272, 1274 (R.I. 2003).

A similar, yet somewhat stricter standard of review in determining whether a party is indispensable is applied under § 9-30-11 of the UDJA. Compare Anderson v. Anderson, 109

R.I. 204, 211, 283 A.2d 265, 269 (1971) (noting that even a finding of indispensability under Rule 19 "does not deprive the court of its power to act with respect to those before it") (quotation omitted) with Rosano v. Mortg. Elec. Registration Sys., Inc., 91 A.3d 336, 339 (R.I. 2014) (construing § 9-30-11 as "mandatory," and holding that failure to join necessary parties under the statute is "fatal" to a claim) (quotation omitted). The UDJA § 9-30-11 "provides that '[w]hen declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding.'" Thompson, 487 A.2d at 499 (citing § 9-30-11). This provision has been held to be mandatory, and "failure to join all persons who have an interest that would be affected by the declaration ordinarily is fatal to an action." Id. For example, in Burns, the Rhode Island Supreme Court found that members of a condominium association who would be liable for additional payments in the event that the plaintiffs in that case obtained a successful declaration were "indispensable" parties. Burns, 86 A.3d at 357-60. Moreover, in In re City of Warwick, the Court determined that a declaration of whether Warwick's municipal charter governed the elections to three local boards directly affected absent board members, who each had "an actual and essential interest." In re City of Warwick, 97 R.I. at 296, 197 A.2d at 288.

In these cases, Plaintiffs are municipal employee unions and active Police and Fire Unions representing employees with CBAs with their employer-municipal entities. These Plaintiffs seek a declaration that the RIRSA is unconstitutional. Plaintiffs also ask for injunctive relief preventing the State from relying on RIRSA, and further request an order restoring their previous retirement benefits. The determination of whether the municipal entities are indispensable parties under Rule 19 rests on whether their interests could be "excluded from the

terms or consequences" of such a declaration, or whether "relief really is sought against the absent party alone." DiPrete, 845 A.2d at 285. Similarly, under § 9-30-11, an indispensable party is one who has "any claim or interest which would be affected by the declaration." Thompson, 487 A.2d at 499.

As a general proposition, constitutional challenges to a state statute resulting in a declaration can be said to affect every municipal entity within that state. See Norton v. Shelby County, 118 U.S. 425, 442, 6 S. Ct. 1121, 1125 (1886) ("An unconstitutional act is not a law; it confers no rights; it imposes no duties . . . it is, in legal contemplation, as inoperative as though it had never been passed."); Yekhtikian v. Blessing, 90 R.I. 287, 290, 157 A.2d 669, 670 (1960) (noting that "an unconstitutional act is a nullity," and usually considered void from its inception). A declaration by this Court that RIRSA is unconstitutional renders the statute "inoperative" for parties and non-parties alike. Norton, 118 U.S. at 442, 6 S. Ct. at 1125.

Notwithstanding, this Court notes that Plaintiffs' retirement benefits stem from CBAs negotiated with their employer-municipal entities. These municipal entities have a defined economic interest in this action because of their contracts with the Plaintiffs. This interest is significantly different from those municipal entities without CBAs. Joinder of these municipal entities, like the condominium owners in Burns, is necessary for final adjudication of the issues in this case. The Plaintiffs' claim, particularly as it relates to the reinstatement of benefits, potentially involves core components of the CBAs. Thus, municipal entities have a direct interest in the litigation as in In re City of Warwick. In addition, the joinder of this recognized

number of municipal entities with whom the Plaintiffs have CBAs is certainly feasible. See Rule 19; Doreck, 120 R.I. at 179, 385 A.2d at 1064.[4]

Municipal entities that have entered into CBAs with Plaintiffs arguably may have "separable affirmative consequences" relating to a constitutional declaration. DiPrete, 845 A.2d at 285 (noting that such separable affirmative consequences are "[t]he most important factor in determining whether a party is indispensable"); Abbatematteo, 694 A.2d at 740 (requiring joinder of retirees whose benefits were directly threatened by the action). This is true because the negotiation of those CBAs is based in the state statute, and the retirement benefits therein are reflective of that statute. Moreover, the interests of the Plaintiffs—Associations representing the interests of individual participants in the retirement system—necessarily differ from the interests of those municipal entities with whom those individuals have entered into CBAs. DiPrete, 845 A.2d at 285 (holding that indispensable parties are those whose interests are unable to be protected by the existing parties). Thus, this Court grants Defendants' Motion as it applies to those municipal entities with CBAs with Plaintiffs in each of the above-captioned cases.

B

All Other Municipal Entities

The Defendants also ask this Court to join all other municipal entities in the State, even those that have not entered into CBAs with Plaintiffs relating to MERS. In support of their argument, the Defendants argue that the implied contractual rights found by this Court in denying Defendants' Motion to Dismiss created a direct interest that cannot be excluded in the declaratory judgment sought. See Rhode Island Council 94, 2014 WL 1743149, at *4-6 (finding

[4] For example, Plaintiffs in C.A. 12-3579, with the exception of Cranston Fire Fighters, IAFF Local 1363, offered to join those parties with whom they have CBAs to their case as interested parties in their response to Defendants' Motion.

an implied contract from the circumstances surrounding the relationship between the State and Plaintiffs). Therefore, the Defendants contend that all municipal entities in the State have an interest that is inextricably tied to these cases. This Court does not agree.

Municipal entities without CBAs with Plaintiffs have no direct interest in these actions. See In re City of Warwick, 97 R.I. at 296, 197 A.2d at 288. This Court found that an implied contract formed due to the relationship between the State as employer, and the Plaintiffs; the interest of municipal entities, if any, is indirect. It is not as concrete as the relationship between municipal entities that are parties to CBAs with Plaintiffs. Furthermore, the absence of municipal entities without CBAs will not hinder the ability of this Court to afford relief in this case. Here, Plaintiffs seek a declaration that a statute is unconstitutional. See Rule 19(a)(1) (providing one definition of indispensable parties as those without whom "complete relief cannot be accorded" among existing parties); accord Anderson, 109 R.I. at 211, 283 A.2d at 269. In this regard, the broad remedies sought can be fully afforded without joinder of municipal entities without CBAs with Plaintiffs because the "terms or consequences" of the judgment sought will bind such entities regardless of their participation in this suit, and thus they will not suffer any "separable affirmative consequences." See DiPrete, 845 A.2d at 285.

A similar conclusion can be found under § 9-30-11 of the UDJA. While it is true that the Superior Court would lack subject matter jurisdiction in the case of a failure to join indispensable parties to a declaratory judgment action, Thompson, 487 A.2d at 499, as applied to the facts of this case, the analysis requires a further examination of the limitations, if any, to that mandate. This Court is mindful that the precedent requires that a party must be joined if a party's claim is so conjoined that a decree cannot enter without "crippling" that party's rights. Whether the

application of § 9-30-11 is subject to limiting principles in the context of constitutional challenges is a question of first impression in this jurisdiction.[5]

Non-binding guidance can be found in other jurisdictions. Specifically, in City of Philadelphia v. Commonwealth, 838 A.2d 566 (Pa. 2003), the Supreme Court of Pennsylvania considered the question of indispensability in the context of a challenge to the validity of a statute, applying a substantially identical provision to § 9-30-11. Defendants contended that "anyone whose interests may be affected by any aspect of the challenged legislation must be formally joined for jurisdiction to lie." Id. at 566-67. The Court acknowledged that the "joinder provision is mandatory," yet noted "it is subject to limiting principles." Id. at 582. In particular, the court construed the UDJA as

> "subject to reasonable limitations: if that provision were applied in an overly literal manner in the context of constitutional challenges to legislative enactments containing a wide range of topics that potentially affect many classes of citizens, institutions, organizations, and corporations, such lawsuits could sweep in hundreds of parties and render the litigation unmanageable. It is true that all such parties would be affected, at least incidentally, by a declaration that the statute in question is unconstitutional. . . .

[5] Although the Rhode Island Supreme Court has addressed the issue of joinder in the context of a challenge to pension benefits, the facts in that case were distinguishable from those of the instant cases. In Abbatematteo, 694 A.2d 738, participants in ERSRI filed an action seeking declaratory and injunctive relief against the alleged unconstitutional implementation and operation of the retirement system. Plaintiffs argued that defendants, the State of Rhode Island and the ERSRI, paid certain participants "retirement benefits 'significantly more generous, in relation to the actuarial value of their contributions,' than the benefits that plaintiffs and other members of the retirement system receive or expect to receive." Id. at 739. The Court found that plaintiff's complaint was "fatally flawed for noncompliance with" § 9-30-11 because they did not join those retirees receiving the allegedly more generous benefits. Id. at 740. The Court noted that because "[d]isposition of the action in plaintiffs' favor . . . would reduce or eliminate pension benefits for these 'favored' members of the retirement system[,] . . . these members were indispensable parties that should have been joined in the action." Id. In the instant case, the Plaintiffs have challenged amendments to pension laws in Rhode Island that affect all municipal entities equally, and do not allege disparate treatment among easily identifiable pension recipients or municipal entities. Any resolution of the instant case will have the same uniform effect on all municipal entities in Rhode Island.

> However, requiring the joinder of all such parties would undermine the litigation process." Id. at 582-83.

The court concluded that "requiring the participation of all parties having any interests which could potentially be affected by the invalidation of a statute would be impractical." Id. at 583. Further, "such an interpretation would result in an unwieldy judicial resolution process [and thus] . . . run contrary to the Legislature's direction . . . to settle, and afford relief from, uncertainty relative to rights, status, and other legal relations." Id. at 583. In conclusion, the Court found that "while it is true that the Act purports to alter the rights and obligations of numerous persons, due to the nature of the constitutional issues raised in the Complaint, achieving justice is not dependent upon the participation of all of those persons." Id.

The Wisconsin Supreme Court has also imposed "reasonable limitations" on joinder in constitutional challenges to statutes. In Town of Blooming Grove v. City of Madison, 275 Wis. 328, 81 N.W.2d 713 (1957), the Court noted that it did not literally interpret its joinder statute—also identical to § 9-30-11—as "requiring that where a declaratory judgment as to the validity of a statute or ordinance is sought, every person whose interests are affected by the statute or ordinance must be made a party to the action." Id. at 334, 81 N.W.2d at 717. "If it were so construed, the valuable remedy of declaratory judgment would be rendered impractical and indeed often worthless for determining the validity of legislative enactments, either state or local, since such enactments commonly affect the interests of large numbers of people." Id. The Court held that the UDJA "should not be nullified by an inconsistent and unduly literal interpretation of" the joinder of parties. Id. Moreover, in White House Milk Co. v. Thomson, 275 Wis. 243, 81 N.W.2d 725 (1957), the Wisconsin Supreme Court further noted that the UDJA did not require joinder "of any persons other than the public officers charged with the enforcement of the challenged statute or ordinance." Id. at 249, 81 N.W.2d at 729. "Such defendant public officers

act in a representative capacity in behalf of all persons having an interest in upholding the validity of the statute or ordinance under attack." Id.

The application of "reasonable limitations" to the joinder provisions of § 9-30-11 is warranted with respect to those municipal entities without CBAs. As in City of Philadelphia, the potential parties who may have an interest are numerous. In addition, Plaintiffs have no express contractual nexus with these municipal entities relating to the pension system. Sec. 9-30-11. Defendants claim that such municipal entities have an attenuated connection to the instant cases because a declaration that RIRSA is unconstitutional may impact all municipal entities in Rhode Island, and such impact may be so significant that those municipal entities might file for bankruptcy. This potential "effect" relies on speculation and conjecture. Furthermore, it is unrelated to the declaration of unconstitutionality as sought by Plaintiffs. See Abbatematteo, 694 A.2d at 740 (requiring joinder of retirees whose benefits were directly threatened by the action); Thompson, 487 A.2d at 499-500 (requiring joinder of a property owner, because the declaration sought by plaintiff would not be binding on said property owner without his involvement in the suit).

The extremely broad scope of Defendants' Motion and request would also have a potentially immobilizing effect on the administration of this action, as well as constitute an overreaching application of § 9-30-11. See Generation Realty, LLC v. Catanzaro, 21 A.3d 253, 258 (R.I. 2011) (noting that "under no circumstances will this Court construe a statute to reach an absurd result") (quotation omitted); accord City of Philadelphia, 838 A.2d at 568-69; Town of Blooming Grove, 275 Wis. at 334, 81 N.W.2d at 717. In addition, to apply the joinder standard as set forth in § 9-30-11 in an inflexible way, would contravene the intent of the UDJA and render it "worthless for determining the validity of legislative enactments." Town of Blooming

Grove, 275 Wis. at 334, 81 N.W.2d at 717. Joinder of municipal entities, the financial conditions of which may be impacted by a declaration, would impose an unreasonable burden on the parties, and the Court. See Burns, 86 A.3d at 358; Abbatematteo, 694 A.2d at 740. To construe § 9-30-11 of the UDJA in this way would "reach an absurd result" of hindering the purpose of the statute as a whole. Generation Realty, LLC, 21 A.3d at 259.

Without a clearly defined relationship to the instant proceedings, Defendants have not met their burden of proving that municipal entities without CBAs with Plaintiffs are indispensable parties in this case under Rule 19. DiPrete, 845 A.2d at 285; C. Wright et al., supra. In addition, Defendants urge an inflexible application of the joinder provisions of § 9-30-11 to this case. For the reasons outlined, this Court finds such joinder would not facilitate the termination of the instant controversy. Finally, the relief sought by Plaintiffs—invalidation of a statute—does not require the participation of all municipal entities. See Norton, 118 U.S. at 442, 6 S. Ct. at 1125; Yekhtikian, 90 R.I. at 290, 157 A.2d at 670. Therefore, this Court finds that only those municipal entities with CBAs with Plaintiffs are indispensable parties, and denies Defendants' Motion as it applies to any other municipal entity in the State.

C

Burden of Joinder

As the moving party, the Defendants bear the burden of establishing that the municipal entities are indispensable. See C. Wright et al., supra. Defendants have met their burden in showing that municipal entities with CBAs with Plaintiffs are indispensable parties in these actions. Having found the existence indispensable parties, the issue now becomes who bears the responsibility to join these municipal entities. The procedural posture of this case is peculiar in that Defendants seek joinder of such indispensable parties, rather than dismissal of this case for

failure to join pursuant to Super. R. Civ. P. 12(b)(7). The parties have provided little guidance to the Court on this issue.

In reviewing the Rhode Island Rules of Civil Procedure, the court finds Super. R. Civ. P. 21 (Rule 21) instructive. Rule 21 states that "[p]arties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just." In furtherance of the Rule's directive to order joinder on "just" terms, this Court orders Plaintiffs to effectuate joinder.

The burden to prove the existence of subject matter jurisdiction lies with the Plaintiffs. See Aversa v. United States, 99 F.3d 1200, 1209 (1st Cir. 1996). The Rhode Island Supreme Court considers the failure to join indispensable parties under § 9-30-11 as a bar to a court's subject matter jurisdiction over the action. See In re City of Warwick, 97 R.I. at 295, 197 A.2d at 288. In addition, the Rhode Island Supreme Court defines the joinder provision of the UDJA as "a mandatory procedure," which "impos[es] a burden on a party seeking declaratory relief" to join indispensable parties. Langton v. Demers, 423 A.2d 1149, 1150 (R.I. 1980). "Failure to comply with the requirements of this section is ordinarily fatal to the action." Id.

Although there is no state case law specifically addressing the issue herein presented, federal case law interpreting a substantially identical Federal R. Civ. P. 21 imposes the burden of joinder on Plaintiffs to join indispensable parties even if identified by Defendant. See, e.g., Thompson v. Jiffy Lube Int'l, Inc., 505 F. Supp. 2d 907, 914 (D. Kan. 2007) (referencing an earlier order of the District Court which ordered plaintiffs to join indispensable defendants in an Amended Complaint); Sarne v. Fiesta Motel, 79 F.R.D. 567, 570 (E.D. Pa. 1978) (noting that plaintiff must comply with Fed. R. Civ. P. 3 & 4, relating to summons and service, if the court orders joinder of additional defendants); J & J Sports Prods., Inc. v. KSD, Inc. 2014 WL

2807526, at *4 (N.D. Ohio, Jun. 20, 2014) (finding, on Defendant's motion, that Plaintiffs failed to join indispensable parties and ordering Plaintiffs to join such indispensable parties pursuant to Fed. R. Civ. P. 21); 7 C. Wright et al., Federal Practice and Procedure § 1688 at 142 (3d ed. 2001) (noting that "plaintiff must comply with the requirements of Rules 3 and 4 relating to the issuance of a summons and service on" an added defendant). Moreover, Plaintiffs, as parties to the CBAs with municipal entities, are best equipped to identify and provide notice to those indispensable entities. Therefore, this Court directs Plaintiffs to identify and join those municipal entities with which they have CBAs relating to the issues decided in these actions forthwith.[6]

IV

Conclusion

For the foregoing reasons, Defendants' Motion to Join Municipal Entities as Indispensable Parties and/or Parties Whose Rights May be Affected by the Declarations Sought is granted, in part, and denied, in part. Counsel shall submit the appropriate judgment for entry.

[6] For the sake of clarity, this Court notes that only those municipal entities with CBAs with Plaintiffs in C.A. No. 2012-3167 must be joined in that case; only those municipal entities with CBAs with Plaintiffs in C.A. No. 2012-3169 must be joined in that case; and only those municipal entities with CBAs with Plaintiffs in C.A. No. 3579 must be joined in that case.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	In re: Pension Cases
CASE NO:	C.A. Nos. PC 12-3167; PC 12-3169; PC 12-3579
COURT:	Providence County Superior Court
DATE DECISION FILED:	August 4, 2014
JUSTICE/MAGISTRATE:	Taft-Carter, J.
ATTORNEYS:	
For Plaintiff:	*See attached list
For Defendant:	*See attached list

In Re PENSION CASES
C.A. Nos.: PC 12-3167; PC 12-3169; PC 12-3579

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