STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

[FILED: April 25, 2014]

RHODE ISLAND COUNCIL 94, AFSCME, :
AFL-CIO LOCALS: BOYS & GIRLS :
TRAINING SCHOOL, LOCAL 314, AFSCME, :
COUNCIL 94, AFL-CIO; UNIVERSITY OF :
RI, LOCAL 528, AFSCME, COUNCIL 94, :
AFL-CIO; VETERANS HOME, LOCA.L 904, :
AFSCME, COUNCIL 94, AFL-CIO; :
NBC/BLACKSTONE VALLEY FACILITY, :
LOCAL 1010, AFSCME, COUNCIL 94, :
AFL-CIO; DEPARTMENT OF :
TRANSPORTATION, LOCAL 1245, AFSCME, :
COUNCIL 94, AFL-CIO; RI CLASS, LOCAL :
1293, AFSCME, COUNCIL 94, AFL-CIO; :
MEDICAL CENTER, LOCAL 1350, AFSCME, :
COUNCIL 94, AFL-CIO; RI FAMILY COURT, :
LOCAL 2203, AFSCME, COUNCIL 94, :
AFL-CIO; MED. CTR. PHYSICAL PLANT & :
MGMT. SERVICES, LOCAL 2392, AFSCME, :
COUNCIL 94, AFL-CIO; DEPUTY SHERIFFS, :
LOCAL 2409, AFSCME, COUNCIL 94, :
AFL-CIO; DEPARTMENT OF :
ADMINISTRATION, LOCAL 2448, AFSCME, :
COUNCIL 94, AFL-CIO; DEPARTMENT OF :
LABOR & TRAINING, LOCAL 2869, AFSCME,:
COUNCIL 94, AFL-CIO; DEPARTMENT OF ;
HEALTH, LOCAL 2870, AFSCME, COUNCIL :
94, AFL-CIO; DEPARTMENT OF :
EDUCATION, LOCAL 2872, AFSCME, :
COUNCIL 94, AFL-CIO; RHODE ISLAND :
AIRPORT CORPORATION, LOCAL 2873, :
AFSCME, COUNCIL 94, AFL-CIO; :
REGISTRY OF MOTOR VEHICLES, LOCAL :
2874, AFSCME, COUNCIL 94, AFL-CIO; :
DEPT. OF CHILDREN, YOUTH & :
FAMILIES, LOCAL 2876, AFSCME, :
COUNCIL 94, AFL-CIO; URI :
PROFESSIONAL/TECHNICAL :
ADMINISTRATIVE, LOCAL 2877, AFSCME, :
COUNCIL 94, AFL-CIO; RHODE ISLAND :
COLLEGE SECURITY & FACILITIES, :

LOCAL 2878, AFSCME, COUNCIL 94, :
AFL-CIO; RHODE ISLAND COLLEGE :
CLERICAL, LOCAL 2879, AFSCME, :
COUNCIL 94, AFL-CIO; DEPARTMENT OF :
ENVIRONMENTAL MANAGEMENT, :
LOCAL 2881, AFSCME, COUNCIL 94, :
AFL-CIO; MHRH (SUPERVISORY), LOCAL :
2883, AFSCME, COUNCIL 94, AFL-CIO; :
AMALGAMATED, LOCAL 2884, AFSCME, :
COUNCIL 94, AFL-CIO; EXECUTIVE/ :
MILITARY STAFF, LOCAL 2886, AFSCME, :
COUNCIL 94, AFL-CIO; NATIONAL :
EDUCATION ASSOCIATION RHODE :
ISLAND LOCALS: NEA BARRINGTON, :
LOCAL 801, NEARI; BRISTOL/WARREN, :
LOCAL 802, NEARI; BURRILLVILLE EA, :
LOCAL 803, NEARI; NEA CHARIHO, :
LOCAL 898, NEARI; CUMBERLAND :
TEACHERS, LOCAL 808, NEARI; DAVIES :
FACULTY, LOCAL 875, NEARI; EAST :
GREENWICH ED. ASSOC., LOCAL 809, :
NEARI; EAST PROVIDENCE ED. ASSOC., :
LOCAL 810, NEARI; EXETER/WEST :
GREENWICH TCH. ASSOC., LOCAL 897, :
NEARI; FOSTER TEACHERS ASSOC., :
LOCAL 812, NEARI; GLOCESTER TEACHER:
ASSOC., LOCAL 813, NEARI; JAMESTOWN :
TEACHERS ASSOC., LOCAL 815, NEARI; :
LITTLE COMPTON TEACHERS ASSOC., :
LOCAL 818, NEARI; NEA MIDDLETOWN, :
LOCAL 819, NEARI; NEA NARRAGANSETT, :
LOCAL 820, NEARI; TEACHERS ASSN. OF :
NEWPORT, LOCAL 821, NEARI; NEW :
SHOREHAM TEACHERS ASSOC., LOCAL :
822, NEARI; NEA NORTH KINGSTOWN, :
LOCAL 823, NEARI; NORTH SMITHFIELD :
TEACHER ASSOC., LOCAL 825, NEARI; :
NEA PONAGANSETT, LOCAL 899, NEARI; :
NEA PORTSMOUTH, LOCAL 827, NEARI; :
RI SCHOOL FOR THE DEAF TEACHER :
ASSOC., LOCAL 841, NEARI; SCITUATE :
TEACHERS ASSOC., LOCAL 830, NEARI; :
NEA SMITHFIELD, LOCAL 831, NEARI; :
NEA SOUTH KINGSTOWN, LOCAL 832, :
NEARI; NEA TIVERTON, LOCAL 833, :
NEARI; WESTERLY TEACHERS ASSOC., :

LOCAL 836, NEARI; CCRI/NEARI ESPA, :
LOCAL 852, NEARI; CCRI FACULTY ASSN., :
LOCAL 872, NEARI; CCRI/PSA, LOCAL 893, :
NEARI; RI DEPT OF HEALTH PSA, LOCAL :
859, NEARI; URI/ACT, LOCAL 879, NEARI; :
URI PHYSICIANS, LOCAL 877, NEARI; :
URI/PSA, LOCAL 888, NEARI; RI SCHOOL :
FOR THE DEAF TEACHER ASST., LOCAL :
884, NEARI; DAVIES TEACHER ASST., :
LOCAL 867, NEARI; RHODE ISLAND :
FEDERATION OF TEACHERS AND :
HEALTH PROFESSIONALS LOCALS: :
WARWICK TEACHERS UNION, LOCAL :
915, RIFTHP; NORTH PROVIDENCE :
FEDERATION OF TEACHERS, LOCAL 920, :
RIFTHP; PAWTUCKET TEACHERS :
ALLIANCE, LOCAL 930, RIFTHP; :
WOONSOCKET TEACHERS GUILD, :
LOCAL 951, RIFTHP; PROVIDENCE :
TEACHERS UNION, LOCAL 958, RIFTHP; :
WEST WARWICK TEACHERS ALLIANCE, :
LOCAL 1017, RIFTHP; COVENTRY :
TEACHERS ALLIANCE, LOCAL 1075, :
RIFTHP; LINCOLN TEACHERS :
ASSOCIATION, LOCAL 1461, RIFTHP; :
CENTRAL FALLS TEACHERS UNION, :
LOCAL 1567; RIFTHP; JOHNSTON :
FEDERATION OF TEACHERS, LOCAL :
1702, RIFTHP; CRANSTON TEACHERS :
ALLIANCE, LOCAL 1704, RIFTHP; :
NORTHERN RHODE ISLAND :
COLLABORATIVE EDUCATIONAL UNION, :
LOCAL 4940, RIFTHP; HOWARD UNION :
OF TEACHERS, LOCAL 1171, RIFTHP; :
RI COURT REPORTERS ALLIANCE, :
LOCAL 4829, RIFTHP; RI DEPT OF :
EDUCATION, LOCAL 2012, RIFTHP; :
RHODE ISLAND BROTHERHOOD OF :
CORRECTIONAL OFFICERS; :
INTERNATIONAL FEDERATION OF :
PROFESSIONAL AND TECHNICAL :
ENGINEERS LOCAL 400; NATIONAL :
ASSOCIATION OF GOVERNMENT :
EMPLOYEES/INTERNATIONAL :
BROTHERHOOD OF POLICE OFFICERS :
LOCAL 79; RHODE ISLAND EMPLOYMENT :

SECURITY ALLIANCE, LOCAL 401; and :
RHODE ISLAND ALLIANCE OF SOCIAL :
SERVICE EMPLOYEES, LOCAL 580, :
Plaintiffs, :
VS. : **C.A. No. PC 12-3168**
:
LINCOLN 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 THE STATE OF RHODE ISLAND, BY :
AND THROUGH THE RHODE ISLAND :
RETIREMENT BOARD, BY AND THROUGH :
GINA RAIMONDO, IN HER CAPACITY AS :
CHAIRMAN OF THE RETIREMENT BOARD, :
and FRANK J. KARPINSKI, IN HIS :
CAPACITY AS SECRETARY OF THE :
RETIREMENT BOARD, :
Defendants. :

DECISION

TAFT-CARTER, J. Plaintiffs consist of a number of local affiliates of Rhode Island Council 94, AFSCME, AFL-CIO, representing Rhode Island state employees, local affiliates of the National Education Association Rhode Island, representing Rhode Island public school teachers and/or employees, local affiliates of Rhode Island Federation of Teachers and Health Professionals, the Rhode Island Brotherhood of Correctional Officers, and a number of other local associations representing state and municipal employees (collectively, Plaintiffs). Plaintiffs filed the underlying action against the Governor and General Treasurer of the State of Rhode Island, the Employees' Retirement System of the State of Rhode Island, 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.

Before this Court is Defendants' Motion for More Definite Statement pursuant to Super. R. Civ. P 12(e) or, in the alternative, a Motion to Dismiss pursuant to Super. R. Civ. P 12(b)(6). Plaintiffs have objected to these motions.

I

Facts and Travel

The Employees' Retirement System of Rhode Island (ERSRI), established by legislation in 1936, is a retirement system for state employees, school teachers, and other employees of cities and towns that chose to participate. See G.L. 1956 §§ 36-8-1 et seq. The ERSRI is administered by the Retirement Board (Board), which is chaired by the State Treasurer. Sec. 36-8-4. Among the retirement plans administered by the Retirement Board are the Employees' Retirement System (ERS) and the Municipal Employees' Retirement System (MERS). Sec. 36-10-1 and G.L. 1956 §§ 45-21-1 et seq.

The ERSRI provides a mandatory, contributory defined benefit plan under which participants contribute a statutorily set percentage of their annual salary in exchange for a fixed retirement allowance based on a formula for years of service and salary level achieved. Employees become "vested" upon making ten years of payments into the ERSRI. See § 36-10-1, G.L. 1956 16-16-22, and § 45-21-41. The retirement allowance becomes payable to participants in equal monthly installments after retirement. In addition to the retirement allowance, the pension benefits have been compounded by a Cost of Living Adjustment (COLA), intended to maintain the real value of a person's pension in light of changes to the cost of living occurring over the life of retirement.

In November 2011, the General Assembly enacted the RIRSA, which altered the standards for retirement for vested employees in the retirement system.[1] The RIRSA changed the structure of the retirement program from a traditional defined benefit plan to a "hybrid plan" with a smaller defined benefit plan and a supplemental defined contribution plan. In creating this new supplemental defined contribution plan, the RIRSA diverted the majority of the contributions of the participants in the ERS into the separate defined contribution plan. The RIRSA also requires employees who were eligible to retire but had not yet retired as of June 30, 2012 to elect either to receive no further accrual towards retirement in their defined benefit plan, notwithstanding continued mandatory contributions, or to receive a reduced value for further services. The RIRSA further requires employees who were not eligible to retire as of June 30, 2012 to either work longer to receive the monthly pension benefit or to accept a reduced pension benefit, thus requiring more years of service to reach the previous benefit level. The RIRSA also permanently reduced all COLAs to apply only to the first $25,000 of a person's retirement allowance, as well as suspend all COLAs, except every five years until the ERS is funded to eighty percent, which is estimated to take at least sixteen years.

[1] As a consequence of the underfunding of Rhode Island's public pension system, the General Assembly has enacted, over the past several years, a number of changes to the statute governing the ERSRI (pension statute). In 2010, the General Assembly decreased the COLA benefits to employees who were not yet eligible to retire as of June 12, 2010. See P.L. 2010, ch. 23, art. 16 (2010 Act). The 2010 Act also eliminated the COLA for retirement benefits in excess of $35,000. A group of union members who participated in the ERSRI filed suit in this Court on May 12, 2010, challenging the 2009 and 2010 changes as being unconstitutional under the Contract Clause and the Takings Clause of the Rhode Island Constitution. This Court denied Defendants' motion for summary judgment on September 13, 2011, holding that Plaintiffs had a unilateral implied-in-fact contractual right arising from their partial performance by working at least ten years. See R.I. Council 94, AFSCME, AFL-CIO et al. v. Donald Carcieri, in his capacity as Governor of the State of Rhode Island et al., No. 10-2859, 2011 WL 4198506 (Sept. 13, 2011) (Pension I).

On June 22, 2012, Plaintiff Unions filed suit on behalf of state employees and public school teachers who had served for at least ten years as of the enactment of RIRSA and were eligible to retire as of June 30, 2012 but had not yet retired, as well as those who were not yet eligible to retire as of June 30, 2012. Plaintiffs assert that RIRSA is unconstitutional under the Contract Clause, the Due Process Clause, and the Takings Clause of the Rhode Island Constitution. Defendants filed the instant Motion for More Definite Statement (Rule 12(e)) or, in the alternative, a Motion to Dismiss for failure to state a claim (Rule 12(b)(6)).

II

Standard of Review

A

Rule 12(e)

It is well settled in Rhode Island that the role of a Rule 12(e) motion is limited. See 1 Robert B. Kent et al., Rhode Island Civil and Appellate Procedure § 12:15 (West 2006). However, in those instances when a court determines that a pleading is too vague and ambiguous, the court may, in its discretion, grant a motion for more definite statement under Rule 12(e).[2] Id.; see also Mitchell v. E-Z Way Towers, Inc., 269 F.2d 126, 130 (5th Cir. 1959) (explaining that unlike a motion to dismiss for failure to state a claim, a motion for more definite statement involves the exercise of the trial justice's sound and considered discretion). When determining a motion for more definite statement, a court must review the pleading to ensure it is drafted in a manner that allows

[2] Rhode Island's Rule 12(e) is substantially similar to Rule 12(e) of the Federal Rules of Civil Procedure and so, Rhode Island courts may look to the interpretation of the federal rule for guidance in interpreting the state rule. See Smith v. Johns-Manville Corp., 489 A.2d 336, 339 (R.I. 1985).

a defendant to "understand the nature and extent of the charges against him [or her] and to enable him to prepare generally for trial." Buck v. Keenan, 1 F.R.D. 558, 559 (D.R.I. 1941). A court should grant a motion for more definite statement when the complaint, as framed, denies the defendant the ability to properly respond. Oresman v. G.D. Searle & Co., 321 F. Supp. 449, 458 (D.R.I. 1971) (citing Schadler v. Reading Eagle Publ'ns, Inc., 370 F.2d 795 (3d Cir. 1967)). A complaint satisfying the requirements of Super. R. Civ. P. 8 (Rule 8), as pertains to providing fair and adequate notice of the types of claims being asserted, is not subject to a more definite statement. See 1 Kent at § 12:15; see also Haley v. Town of Lincoln, 611 A.2d 845, 848 (R.I. 1992); Rule 8.

B

Rule 12(b)(6)

"A motion under Rule 12(b)(6) challenges the sufficiency of the complaint about whether it fails to state a claim upon which relief can be granted." Boyer v. Bedrosian, 57 A.3d 259, 270 (R.I. 2012). "'The standard for granting a motion to dismiss is a difficult one for the movant to meet.'" Id. (quoting Pellegrino v. R.I. Ethics Comm'n, 788 A.2d 1119, 1123 (R.I. 2002)). "Rule 12(b)(6) does not deal with the likelihood of success on the merits, but rather with the viability of a plaintiff's bare-bones allegations and claims as they are set forth in the complaint." Hyatt v. Vill. House Convalescent Home, Inc., 880 A.2d 821, 823 (R.I. 2005). When ruling on a Rule 12(b)(6) motion, a court's review is confined to the four corners of the pleadings. See Palazzo v. Alves, 944 A.2d 144, 149 (R.I. 2008). A court must "'assume that the allegations contained in the complaint are true, and examine the facts in the light most favorable to the nonmoving party.'" Boyer, 57 A.3d at 270 (quoting Pellegrino, 788 A.2d at 1123); see also Palazzo,

944 A.2d at 149; Multi-State Restoration, Inc. v. DWS Properties, LLC, 61 A.3d 414, 417 (R.I. 2013). Thus, "[i]f it 'appears beyond a reasonable doubt that a plaintiff would not be entitled to relief under any conceivable set of facts,' the motion may be granted." Boyer, 57 A.3d at 270 (quoting Estate of Sherman v. Almeida, 747 A.2d 470, 473 (R.I. 2000)).

II

Analysis

A

Motion for More Definite Statement

At the core of the Rules of Civil Procedure is the view of simplified pleading. See Kent at § 8:1. Rule 8 introduces this concept. Professor Kent articulates the axiom of Rule 8 as follows:

> "Perhaps the best starting point for a discussion of the general rules of pleading is Rule 8(f) which states: 'All pleadings shall be so construed as to do substantial justice.' Pleading is not a game of tricks wherein good cases are lost and bad ones won through the niceties of the pleader's skill. The function of pleading is to give fair notice of the claims and defenses of the parties. . . . The notice-giving function is sufficiently performed by a rather generalized statement."

Kent at § 8:1. The rules require that a complaint give the opposing party "fair and adequate notice of the type of claim being asserted." Haley, 611 A.2d at 848. Thus, Rule 8(a) states that a claim for relief need only contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief the pleader seeks. Consequently, a complaint need not state all the possible facts to be proven at trial, nor is it required that a complaint contain a high degree of factual

specificity. See Haley, 611 A.2d at 848; Hyatt, 880 A.2d at 824. Rhode Island's liberal pleading standards will be satisfied as long as a complaint provides the opposing party with adequate notice of the type of claim being asserted. See Haley, 611 A.2d at 848.

In the instant matter, Plaintiffs have alleged violations of the Contract Clause, the Takings Clause, and the Due Process Clause of the Rhode Island Constitution and request declaratory and injunctive relief. Plaintiffs have set forth their legal theories. It is alleged, among other things, that RIRSA substantially impairs contractual rights of vested employees, denies and deprives vested employees of property rights and interests without due process of law, and constitutes a taking without due process.

Defendants contend that Plaintiffs have not sufficiently detailed the existence of a contractual relationship. They request that Plaintiffs designate the clauses contained in certain collective bargaining agreements (CBAs) that they allege are relevant. Relying on Defined Space Inc. v. Lakeshore East, LLC, 797 F. Supp. 2d 896 (N.D. Ill. 2011), Defendants ask this Court to require Plaintiffs to match the alleged breach with contractual provisions. This reliance, however, is misplaced. In Defined Space, the District Court held that the defendants therein "should be able to match up the pictures [the plaintiff] has attached with the contracts for those pictures" in order to respond properly to a claim that certain copyrights have been infringed. Id. at 904. Similarly, as the CBAs are public records available to Defendants, and the Complaint describes the various unions bringing claims on behalf of their membership, Plaintiffs have satisfied Rhode Island's liberal pleading standard. See Haley, 611 A.2d at 848.

While Plaintiffs' claims are based on an impairment of contract rights, specific details concerning the contract(s) which may have been impaired are matters that are best

left for discovery. Here, the facts pled in the Complaint concerning Plaintiffs' employment and the pension statute provide sufficient information for the Defendants to frame a responsive pleading. See Oresman, 321 F. Supp. at 458. Moreover, constitutional violations do not fall within the narrow subset of claims in which additional particularity in a complaint is required. See Super. R. Civ. P. 9(b) (requiring, for example, the circumstances surrounding claims of fraud or mistake to be pled with particularity).

Finally, to the extent that Defendants base their arguments on the heightened pleading standard adopted by the U.S. Supreme Court in Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007), this Court notes that the heightened pleading standard does not yet apply in Rhode Island. See William Chhun et al. v. Mortg. Elec. Registration Sys., Inc., et al., No. 12-298, slip op. at 3-4 (R.I. Feb. 3, 2014) (leaving "the Twombly and Iqbal conundrum for another day"). Thus, this Court adheres to the notice pleading standard. See Barrette v. Yakavonis, 966 A.2d 1231 (R.I. 2009) (stating that "a pleading need not include 'the ultimate facts that must be proven in order to succeed on the complaint . . . or . . . set out the precise legal theory upon which [the plaintiff's] claim is based'") (quoting Gardner v. Baird, 871 A.2d 949, 953 (R.I. 2005)). This Court is required to, and will follow, the precedent established by our courts.

Accordingly, this Court is satisfied that Plaintiffs have met the liberal pleading standard, as their Complaint provides fair and adequate notice of the types of claims being asserted. Defendants' Motion for More Definite Statement is denied.

B

Motion to Dismiss

In the alternative, Defendants contend that Plaintiffs are not entitled to relief as a matter of law because Plaintiffs do not have any contractual right to receipt of their pension benefits. The gravamen of Defendants' argument is that at the time the RIRSA was enacted, no contractual relationship existed between Plaintiffs and the State. Defendants maintain that the pension legislation does not create a contractual relationship and therefore, Plaintiffs' claims must fail as a matter of law.

It is well settled in Rhode Island that alleged violations of the Contract Clause entail a three-prong analysis. See R.I. Depositors Econ. Prot. Corp. v. Brown, 659 A.2d 95, 106 (R.I. 1995). Under that analysis, a court must determine:

> "[f]irst, has the state law in fact substantially impaired a contractual relationship? Second, if the law constitutes a substantial impairment, can the state show a legitimate public purpose behind the regulation, 'such as the remedying of a broad and general social or economic problem'? Third, is the legitimate public purpose sufficient to justify the impairment of the contractual rights?" Id. (citing Energy Reserves Group, Inc. v. Kansas Power & Light Co., 459 U.S. 400, 411-12 (1983)) (citations omitted).

A necessary prerequisite to finding a violation of the Contract Clause is therefore the existence of a contractual relationship. If there is no contractual relationship, then ipso facto, there cannot have been an unconstitutional impairment of a contract.

Defendants cite the federal doctrine of unmistakability in support of their argument that Plaintiffs lack enforceable contractual rights. Although not an absolute rule, under the doctrine of unmistakability, Plaintiffs bear a heavy burden to overcome the presumption that one legislature cannot bind another, and legislative enactments

declare policy "to be pursued until the legislature shall ordain otherwise." Brennan v. Kirby, 529 A.2d 633, 638 (R.I. 1987) (quoting Dodge v. Bd. of Educ. of Chicago, 302 U.S. 74, 79 (1937)). As a canon of construction and a corollary of the sovereign acts doctrine, the unmistakability doctrine states that in entering into contracts, governments do not waive their sovereign powers unless they expressly surrender that sovereign power in unmistakable terms. See Bowen v. Pub. Agencies Opposed to Soc. Sec. Entrapment, 477 U.S. 41, 51 (1986). In other words, "contractual arrangements, including those to which a sovereign itself is party, 'remain subject to subsequent legislation' by the sovereign." Id. The sovereign acts and unmistakability doctrines have been described as being "designed to balance 'the Government's need for freedom to legislate with its obligation to honor its contracts.'" Connor Bros. Construction Co., Inc. v. Pete Geren, 550 F.3d 1368, 1371-72 (Fed. Cir. 2008) (quoting U.S. v. Winstar, 518 U.S. 839, 896 (1996)). Still, the government may not use these doctrines simply "as a means to escape from contracts that it subsequently concluded were unwise." Connor Bros. Construction Co., 550 F.3d at 1374.

While the Rhode Island Supreme Court has not referred to the unmistakability doctrine by name, it has adopted its reasoning. See Brennan. 529 A.2d at 633. In Brennan, our Supreme Court stated, "absent a clear indication by the Legislature that it intended to bind itself contractually by passing an enactment, the presumption pervades that '[the] law is not intended to create private contractual or vested rights but merely declares a policy to be pursued until the legislature shall ordain otherwise.'" Id. at 638 (quoting Dodge, 302 U.S. at 75). Thus, "a statute is [only] treated as a contract when the language and circumstances evince a legislative intent to create private rights of a

contractual nature enforceable against the State." U.S. Trust Co. of New York v. New Jersey, 431 U.S. 1, 17 n.14 (1977); see also Retired Adjunct Professors of R.I. v. Almond, 690 A.2d 1342, 1346 (R.I. 1997). To discern whether a contract right exists, a court should look to the language of the statute and its surrounding circumstances to determine the relationship between the parties. See Retired Adjunct Professors, 690 A.2d at 1345; Brennan, 529 A.2d at 639. Accordingly, this Court begins with an analysis of the pension legislation's language and its surrounding context to determine whether it created an enforceable contract between Plaintiffs and Defendants.

Unlike that of some of its sister states, Rhode Island law does not expressly provide that pension benefits are contractual in nature. See Mass. Gen. Laws ch. 32, § 25(5). In analyzing the pension statute, the First Circuit held that the language of the pension statute did not "clearly and unequivocally" create a contract with participants in the ERS. Nat'l Educ. Ass'n-R.I. ex rel. Scigulinsky v. Ret. Bd. of R.I. Employees' Ret. Sys., 172 F.3d 22, 29 (1st Cir. 1999) (NEA II). The NEA II Court provided, "[n]owhere does the statute call the pension plan a 'contract' or contain an anti-retroactivity clause as to future changes." Id. The statute is not, as Defendants emphasize, ever explicitly referred to as being a "contract," nor does it otherwise include language that clearly indicates a legislative intention to bind itself contractually.

Plaintiffs, however, highlight the statutory guaranty provision in § 36-10-7, which states that "it is the intention of the state to make payment of the annuities, benefits, and retirement allowances provided for under the provisions of this chapter. . . ." While the language provides some evidence that the State promised to provide some pension benefits, § 36-10-7 does not promise any particular amount of pension benefits, nor does

it indicate that benefit levels may not be changed or altered. In its analysis of § 36-10-7, the First Circuit concluded that its language "falls at least a step short of clearly expressing a contractual commitment not to change benefit levels or other plan variables by legislation." NEA II, 172 F.3d at 28. Furthermore, this Court notes that with respect to the retirement of municipal employees, the right to amend, alter, or repeal provisions of the MERS was expressly reserved. See § 45-21-47. This Court acknowledges that the General Assembly clearly could have—but did not—expressly reserve the right to amend or repeal the provisions of the State Employees' Retirement System. This Court cannot, however, construe the absence of such a provision as evidence of an unmistakable intent to be contractually bound. The statute remains ambiguous as to the existence of a contractual relationship between Plaintiffs and the State. This Court must therefore look to the surrounding circumstances and apply Supreme Court precedent to determine the existence of a contractual relationship.

The Rhode Island Supreme Court has expressly declined to categorize pensions as a mere gratuity that may be unilaterally altered or revoked according to the will of the state. See In re Almeida, 611 A.2d 1375, 1385 (R.I. 1992). Our Supreme Court instead adopted what it referred to as a "middle-ground approach" between the gratuity model and the pure contract model, holding that "a pension comprises elements of both the deferred compensation and the contract theories. The right to deferred compensation vests upon meeting the terms of employment . . . ." Id. at 1386. Significantly, "both the 'deferred compensation' [theory] and 'contract' theory are, in fact, theories of implied contract," with the only difference being the time at which employees may assert contractual rights to receive a pension. Nat'l Educ. Ass'n of Rhode Island v. Retirement

Bd. of R.I. Employees' Ret. Sys., 890 F. Supp. 1143, 1156 (D.R.I. 1995) (NEA I). Under either theory, however, it has been acknowledged that employees "[have] some contractual rights in receiving a pension." Id. This Court will accordingly utilize implied contract theories to determine whether Plaintiffs have a protected contractual right to their pension benefits.

In the instant case, this Court is satisfied that the circumstances surrounding the pension statute and the relationship between the State and Plaintiffs—that of an employer and its employees—weigh in favor of finding an implied contract. The only reason Plaintiffs' pension benefits have been affected is that they were all public employees, employed by either the State or a municipality, and accordingly participated in the ERSRI. See U.S. v. Reyes, 87 F.3d 676, 680 (5th Cir. 1996) (quoting Bush v. Lucas, 647 F.2d 573, 576 (5th Cir. 1981) ("There is ample support for constitutionally distinguishing government acting as employer from government acting as sovereign . . . . '[T]he role of the Government as an employer toward its employees is fundamentally different from its role as sovereign over private citizens generally.'")). In enacting the pension statute to create the ERSRI, the State was acting as an employer in setting up a system of providing pension benefits to its employees. See Pellegrino, 788 A.2d at 1125 (holding that when the state "[acted] as a private employer would in arranging to compensate its employees . . . '[the state] laid aside its attributes as a sovereign and bound itself substantially as one of its citizens does when he [or she] enters into a contract.'" (internal citations omitted)). Thus, in agreement with the First Circuit, this Court finds "[t]he existence of an employer-employee relationship [to] weigh in favor of finding an implied contract[.]" NEA II, 172 F.3d at 28.

The First Circuit has stated, as a matter of well-settled principle, that "a pension plan represents an implied-in-fact unilateral contract" in the context of both "state and municipal pension plans." McGrath v. R.I. Retirement Bd., 88 F.3d 12, 17 (1st Cir. 1996). Such implied-in-fact contracts must indicate the offer, acceptance, and consideration requirements of all contracts through the circumstances and the behavior of the parties. See generally 17A Am. Jur. 2d Contracts § 16. This Court, therefore, looks to general principles of contract law to determine if the circumstances and behavior of the parties evidence the offer, acceptance, and consideration that are at the heart of all contracts.

This Court must initially decide whether the State, through the pension statute, made an offer, i.e., exhibited a "willingness to enter into a bargain." See Restatement (Second) Contracts § 24. Courts have generally accepted that "the promise of a pension is part of the compensation package that employers dangle to attract and retain qualified employees." McGrath, 88 F.3d at 17. Our Supreme Court has recognized that "the major purposes underlying public pensions [are] to induce people to enter public employment and continue faithful and diligent employment." Almeida, 611 A.2d at 1387. With such purposes, the State offered pension benefits in exchange for "continued and faithful service" in creating the ERSRI. This "promise for performance" constitutes the quintessential unilateral contract. See 1 Corbin on Contracts § 3.16 (Rev. ed. 1993) ("The most common form of a unilateral contract is that in which the offeror makes a promise and asks some performance by the offeree in return . . . ."). Accordingly, accepting the purpose of public pensions to be an inducement to enter into and continue

in public employment, this Court finds the pension statute constitutes an offer to Plaintiffs to enter into a bargain.

With respect to unilateral contracts, an offeree may accept an offer by beginning to perform. See Williston on Contracts § 6:26. Plaintiffs accepted the State's offer of pension benefits by beginning their employment with the State and continuing their service for the required time so that their pension benefits had become "vested" according to the terms of the statute. See Almeida, 611 A.2d at 1387. Plaintiffs, as members of the ERSRI, also contributed money to the retirement system that, in addition to their continued service, was given in exchange for the State's promise to provide pension benefits. Accordingly, the circumstances surrounding Plaintiffs' membership in the ERSRI constitute the "bargained-for-exchange that is the hallmark of contracts." Retired Adjunct Professors, 690 A.2d at 1346 (internal quotations omitted). This Court therefore finds that there is an implied-in-fact contract between Plaintiffs and the State.

The question remains, however, as to when the implied contract becomes vested and enforceable. See McGrath, 88 F.3d at 17. ("[T]here is significant disagreement about when contractually enforceable rights accrue under such [pension] plans."). It is undisputed that Plaintiffs have not yet fully performed their service, as they have not yet retired. On the other hand, all Plaintiffs have put in at least ten years of contributory service and as a result, have met the terms for vesting under the pension statute. See § 36-10-9 (for state employees) and § 16-16-12 (for public school teachers).

Our Supreme Court's jurisprudence has not indicated that contractual rights become enforceable only upon retirement. Indeed, our Supreme Court appears to have accepted that pension rights become enforceable as contracts once an employee has

fulfilled the statutory requirements, if not before. The Almeida Court specifically acknowledged that "[c]ontract rights may attach upon entering public employment and service." 611 A.2d at 1385. Because the instant case involves Plaintiffs who have already vested, it is not necessary for the Court to decide what, if any, contractual rights may attach before vesting. For the purposes of this case, Plaintiffs are all vested employees who have fulfilled the statutory requirements. See id. at 1386 (stating "pension rights are to vest once the requirements of the pension statute are met" with the vesting being subject to divestment for misconduct).

More recently, our Supreme Court affirmed that "pension benefits vest once an employee honorably and faithfully meets the applicable pension statute's requirements." Arena v. City of Providence, 919 A.2d 379, 393 (R.I. 2007). It follows that, absent some misconduct, vested employees possess a contractual right to their pension benefits that is protected and enforceable. In accord with our Supreme Court's view that a pension consists of a form of "compensation for services previously rendered." Almeida, 611 A.2d at 1385 (internal quotations omitted); see also Pellegrino, 788 A.2d at 1126 (holding that a statute that "operated to confer on commission members a legitimate claim of entitlement to receipt of the compensation in question" became enforceable once the plaintiffs had performed their duties and accordingly "vested them with a protected property interest under the Rhode Island Constitution"). Finding an implied-in-fact contract between Plaintiffs and the State, this Court denies Defendants' Motion to Dismiss.

This Court emphasizes that its finding that Plaintiffs have enforceable contractual rights in their pension benefits is only a necessary first step towards a holding for the

Plaintiffs on the merits of their constitutional claims. This Court has not made a final ruling with respect to the State's ability to unilaterally alter the pension statute with respect to its employees who have not yet retired, which include the Plaintiffs in the instant matter. See Arena, 919 A.2d at 393 (acknowledging that "the city [of Providence] has broad discretion to prospectively change the pension benefit plan for fire fighters and police officers *who have not yet retired*") (emphasis in original).

Defendants additionally challenge Plaintiffs' Takings Clause and Due Process claims. These challenges maintain the absence of a contractual relationship between Plaintiffs and the State. However, as this Court has found such a contractual relationship to exist, these claims also survive the instant motion to dismiss.

IV

Conclusion

Having considered the arguments made by counsel, the Court holds that Plaintiffs have implied contractual rights that may sustain Plaintiffs' Contract Clause claim. Defendants' Motion for More Definite Statement and Motion to Dismiss are denied.

Counsel shall submit the appropriate order for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	Rhode Island Council 94, AFSCME, AFL-CIO Locals, et al. v. Lincoln Chafee, et al.
CASE NO:	C.A. No. PC 12-3168
COURT:	Providence County Superior Court
DATE DECISION FILED:	April 25, 2014
JUSTICE/MAGISTRATE:	Taft-Carter, J.

ATTORNEYS:

For Plaintiff:	*See attached list
For Defendant:	*See attached list