

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: JUNE 12, 2012)

INTERNATIONAL ASSOCIATION OF, :  
FIREFIGHTERS, LOCAL 1950, :  
AFL-CIO, on its own behalf and on :  
behalf of its members, by and through its :  
President, KEITH CALCI, and its :  
Treasurer, DAVID PINGATORE; :  
HENRY ALBANESE; ANTHONY :  
CAPPELLI; KEVIN CESANA; :  
VINCENT CROSBY; PAUL :  
DELVECCHIO; ALFRED FELLELA; :  
ARTHUR PORTER; TODD SABITONI; :  
JOHN WOOLLEY; and CLAUDETTE :  
GRISSOM :

v. :

C.A. No. PC 2011-6020

TOWN of JOHNSTON, by and through :  
its Mayor, JOSEPH M. POLISENA; :  
JOHNSTON TOWN COUNCIL, by and :  
through its members; and JOHNSTON :  
RETIREMENT BOARD, by and through :  
its members; STATE OF RHODE :  
ISLAND; EMPLOYEES RETIREMENT :  
SYSTEM OF RHODE ISLAND; and :  
FRANK KARPINSKI, in his official :  
capacity :

DECISION

TAFT-CARTER, J. In this declaratory judgment action, Defendants Town of Johnston, Johnston Town Council, and Johnston Retirement Board (collectively “the Town”) move for Summary Judgment against Plaintiff International Association of Firefighters, Local

1950, AFL-CIO (“the Union”),<sup>1</sup> and Plaintiffs Henry Albanese, Anthony Capelli, Kevin Cesana, Vincent Crosby, Paul Delvecchio, Alfred Fellela, Arthur Porter, Todd Sabitoni, John Woolley, and Claudette Grissom (collectively “the Fire Retirees”). The Fire Retirees’ and the Union’s claims arise from a Town of Johnston ordinance which relates to the Fire Retirees’ work-related disability pensions.<sup>2</sup> The Town contends that the Fire Retirees and the Union lack standing to bring this action. The Fire Retirees and the Union object. Jurisdiction is pursuant to Super. R. Civ. P. 56. For the reasons stated herein, the Town’s Motion for Summary Judgment is granted as to the Union; the Motion is also granted in part and denied in part as to the Fire Retirees.

## I

### Facts and Travel

Since 1999, the Union and the Town have operated under five collective bargaining agreements (“CBAs”): the 1999-2001 CBA, the 2001-2004 CBA, the 2005-2006 CBA, the 2006-2009 CBA, and the 2009-2012 CBA. Each CBA contained a provision regarding work-related disability pensions for firefighters who became permanently disabled in the line of duty. The 1999-2001 CBA provided: “All employees on the Fire Department, and who are placed on job disability pension shall receive from the Town the difference between what his/her pension payments are and sixty-six and two-thirds (66-2/3%) percent of what his/her salary was at the time of being placed on

---

<sup>1</sup> The Union sues on its own behalf and on behalf of its members, by and through its president, Keith Calci, and its treasurer, David Pingatore. All references to “the Union” in this Decision apply equally to Calci and Pingatore.

<sup>2</sup> The Fire Retirees and the Union joined the State of Rhode Island, the Employees Retirement System of Rhode Island, and Frank Karpinski, the Executive Director of the Employees Retirement System, as interested parties.

disability retirement.” Compl., Ex. 6, CBA between the Town of Johnston and Local 1950 Int’l Ass’n of Fire Fighters, AFL-CIO, 1999-2001, Art. XXI, § 4.

On March 12, 2001, the Town and the Union entered a Pension Benefit Level Agreement (“PBL Agreement”), which clarified the availability of work-related disability pensions under the 1999-2001 CBA. The PBL Agreement stated:

“Employees who become disabled because of an on the job-related injury or illness and are unable to perform all of the duties of a Johnston Firefighter shall be placed on a disability pension subject to all of the requirements of R.I.G.L. §45-21.2-10. There shall be no age or years of service requirements to receive this pension benefit. The pension benefit shall be sixty six and two-thirds (66 2/3%) percent of the final average of the employee’s three (3) highest consecutive years of compensation based on weekly salary, longevity pay, holiday pay, the three (3) highest consecutive amounts of clothing allowance, the three (3) highest consecutive amounts of maintenance allowance, severance pay received by the employee which shall consist of unused vacation time, unused personal days, pro-rated holiday pay and unused sick leave as provided for in the collective bargaining agreement, and seventy-five (75%) percent of the three (3) highest consecutive years of overtime pay. Employees with less than three (3) years of service, [sic] their pension will be based on the above-mentioned items, divided by three (3).” Compl., Ex. 5, Pension Benefit Level for Johnston, Rhode Island Fire Fighters, March 12, 2001.<sup>3</sup>

The 2001-2004 CBA, the 2005-2006 CBA, and the 2006-2009 CBA incorporated the PBL Agreement’s disposition of work-related disability pensions by reference. The

---

<sup>3</sup> G.L. 1956 § 45-21.2-10 (2009) provides: “The amount of retirement allowance for accidental disability is that as prescribed in § 45-21-22.” Section 45-21-22 states: “Upon retirement for accidental disability, a member receives a retirement allowance equal to sixty-six and two-thirds percent (66 2/3 %) of the rate of the member’s compensation at the date of the member’s retirement subject to the provisions of § 45-21-31.” Section 45-21-31 provides that work-related disability benefits “are offset against and payable in lieu of any benefits payable out of funds provided by the municipality under the provisions of [Title 45, Chapter 21] on account of death or disability of the member.”

2009-2012 CBA provided substantially the same terms for work-related disability pensions as the PBL Agreement, absent provisos for clothing and maintenance. None of the CBAs, however, defined a procedure for the determination of eligibility for work-related disability pensions.

On February 17, 2011, the Town adopted Johnston, R.I., Code of Ordinances 2011-1, § 47-50 (2011), amending Code of Ordinances, Art. VII, Ch. 47 (“the Ordinance”). Chapter 47 relates to the Town’s Fire Fighter and Police Officer Pension Fund. Section 47-50 of the Ordinance affects the administration of disability pensions. Section 47-50 provides in pertinent part:

“(c) A member of the fire department or police department on disability, whether service connected or non-service connected, shall be required to submit to an examination at least one (1) time per year by a physician appointed by the [Johnston Retirement Board] to establish that the member is incapacitated for service as a fire fighter or police officer and is entitled to continue to receive a disability pension. The board may cancel a disability pension upon evidence that the member is no longer disabled for such service. If such cancellation occurs and the member does not reenter service, he shall be entitled to a refund of the excess, if any, of the contributions made by the member, including interest, over the amounts received by the member on the disability pension. Should a retiree refuse to submit to such medical examination, his/her pension may be discontinued until his/her withdrawal of such refusal, and, should his/her refusal continue for one (1) year, all rights in and to his/her pension may be revoked by the board.

“(d) If a medical examination or an investigation made by the board discloses that a member is engaged or is able to engage in any gainful occupation, payment of the disability pension shall be discontinued or reduced to an amount which, when added to the member’s income from such gainful occupation, shall not exceed 50% of the rate of his/her salary in effect at the date of disability. The term “salary” is defined as a member’s base pay as of the date of his/her disability.

“(e) Any member receiving a disability pension shall be required to submit to the board at least once each year a sworn written report of his/her earned income for the preceding twelve (12) months on a form supplied by the board, together with supporting data as may reasonably be required. Any adjustment in disability pension payments as aforesaid shall be based upon such statements of income. A disability pension shall be suspended if such statement discloses income from a gainful occupation equal to or in excess of the aforesaid amount, but shall be resumed when such condition has changed.

“Earned income is defined as amounts received as compensation for services rendered. The member’s pension amount for the following twelve (12) months after the filing of the report of earned income shall be reduced dollar for dollar by any amount the actual earned income exceeded the salary paid to a permanent member with the same rank and seniority on active duty at the time such reports are filed. However, in no event shall any member on a disability pension receive an annual sum less than 50 % of his/her salary in effect at the date of disability.

“(f) Should a retired employee receiving a disability pension again become an active employee for the Town, his/her disability retirement pension shall cease and he/she shall immediately become a member of the retirement system as of the date of his/her reemployment. His/her creditable service at the time of his/her disability retirement shall be restored in full force and effect. Reentry into service shall be at the discretion of the [retirement] board.” Johnston, R.I., Code of Ordinances 2011-1, § 47-50 (emphasis added).

The Fire Retirees are former members of the Johnston Fire Department who retired with work-related disability pensions before the enactment of the Ordinance.<sup>4</sup> On July 21, 2011, the Town mailed a letter to each Fire Retiree, informing them that the Town would “review every pension received by a retired Town of Johnston Public Safety employee” in “an effort to validate that every retiree is receiving exactly what they are

---

<sup>4</sup> The Town states: “[I]t is undisputed that these individuals [the Fire Retirees] all retired and receive disability pensions . . . .” Defs.’ Mem. in Supp. of Mot. for Summ. J. at 7-8.

entitled.” Compl., Ex. 15, Letter of Joseph J. Rodio, Jr. to Paul Delvecchio, July 21, 2011 (“Rodio Letter”). The Town further instructed each Fire Retiree to forward “any and all documentation related to your pension that you feel would assist in this review.” Rodio Letter. Such documents, the Town suggested, might include, “retirement applications, calculation sheets, doctors’ letters, and anything else that you believe would be helpful.” Rodio Letter.

On September 23, 2011, the Johnston Town Solicitor mailed a hearing notice to Fire Retirees Delvecchio, Albanese, Grissom and Capelli. The letter stated in pertinent part:

“Please be advised that the Johnston Retirement Board will conduct a hearing regarding your disability retirement from the Town of Johnston Fire Department . . . . The purpose of this hearing is to ensure that you are receiving the pension benefit to which you are entitled pursuant to the collective bargaining agreement under which you retired, and to ensure that you complied with the statutory requirements set forth in RIGL §45-21-8(d).” Compl., Ex. 16, Letter of Town Solicitor to Paul Delvecchio, September 23, 2011 (“Solicitor Letter”).<sup>5</sup>

The letter also advised: “you will have the opportunity to present your case to the Johnston Retirement Board. If you wish to have legal representation present you are entitled to do so.” Solicitor Letter.

In response to the Ordinance, the Union filed a grievance with the Town on March 10, 2011. The Union alleged that the Town’s enactment of the Ordinance violated the 2009-2012 CBA and asked the Town to “immediately rescind” the Ordinance and

---

<sup>5</sup> Section 45-21-8(d) provides that the State Retirement Board determines eligibility for ordinary disability pensions of Johnston firefighters employed by the Johnston Fire Department. Sec. 45-21-8(d). This provision became effective at the time of its enactment.

“make whole any and all members affected by the” violation. Defs.’ Mem. in Supp. of Mot. for Summ. J., Ex. 1, Grievance. The Union subsequently served the Town with a demand for arbitration in accordance with the 2009-2012 CBA. Defs.’ Mem. in Supp. of Mot. for Summ. J., Ex. 2, Arbitration Demand.

On October 19, 2011, the Union and the Fire Retirees filed suit against the Town. The Union and the Fire Retirees allege that hearings conducted pursuant to the Ordinance would deprive the Fire Retirees of their vested rights to work-related disability pensions in violation of the Due Process and Contract Clauses of the Rhode Island and United States Constitutions. The Union and the Fire Retirees also seek declarations that (1) the Fire Retirees have vested rights to work-related disability pensions not subject to reconsideration, reduction, or revocation by the Johnston Retirement Board pursuant to the Ordinance and (2) the State Retirement Board does not have authority to determine eligibility for work-related disability retirement of Johnston firefighters hired prior to July 1, 1999. Further, the Union and the Fire Retirees ask this Court to bar the Town from enforcing the Ordinance on the basis of equitable estoppel. Finally, the Union and the Fire Retirees ask this Court to temporarily, preliminarily, and permanently enjoin the Town from conducting the hearings. At a hearing on October 21, 2011, this Court denied the Union’s and the Fire Retirees’ request for a temporary restraining order.

On March 28, 2012, the Town filed a Motion for Summary Judgment against the Union and the Fire Retirees. The Town contends that the Union and the Fire Retirees do not have standing to raise their claims. The Union and the Fire Retirees object.

## II

### Standard of Review

When a hearing justice is ruling on a motion for summary judgment, the preliminary question before the court is whether there is a genuine issue as to any material fact which must be resolved. Haffenreffer v. Haffenreffer, 994 A.2d 1226, 1231 (R.I. 2010). The party seeking summary judgment has the initial burden to show the absence of a material fact. Santiago ex rel. Martinez v. First Student, Inc., 839 A.2d 550, 552 (R.I. 2004). If an examination of the pleadings, affidavits, admissions, answers to interrogatories, and other similar materials, viewed in the light most favorable to the opposing party, reveals no such issue, then the suit is ripe for summary judgment. Capital Props., Inc. v. State, 749 A.2d 1069, 1080 (R.I. 1999).

In the face of a motion for summary judgment, the opposing party “carries the burden of proving by competent evidence the existence of a disputed material issue of fact and cannot rest on allegations or denials in the pleadings or on conclusions or legal opinions.” Accent Store Design, Inc. v. Marathon House, Inc., 674 A.2d 1223, 1225 (R.I. 1996); see McAdam v. Grzelczyk, 911 A.2d 255, 259 (R.I. 2006). It is not sufficient “simply [to] show that there is some metaphysical doubt as to the material facts.” Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). Rather, Rule 56 “requires the nonmoving party to go beyond the pleadings” and present some type of evidentiary material in support of its position. Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986). Although inferences may be drawn from underlying facts contained in material before the trial court, neither vague allegations and conclusory statements nor



assertions of inferences not based on underlying facts will suffice. First Nat'l Bank of Boston v. Slade, 399 N.E.2d 1047, 1050 (Mass. 1979).

### III

#### Analysis

Standing is an access barrier that calls for the assessment of the plaintiffs' credentials to bring suit. Blackstone Valley Chamber of Commerce v. Pub. Utils. Comm'n, 452 A.2d 931, 932 (R.I. 1982). It involves a threshold inquiry into the plaintiffs' status before reaching the merits of their claims. Id. at 933. The essence of the question of standing is whether the plaintiffs have "alleged such a personal stake in the outcome of the controversy as to ensure concrete adverseness that sharpens the presentation of the issues upon which the court depends for an illumination of the questions presented." Id. at 933 (citing Baker v. Carr, 369 U.S. 186, 204 (1962)).

More simply, standing requires the plaintiffs to show injury in fact, economic or otherwise, resulting from the challenged action. Pontbriand v. Sundlun, 699 A.2d 856, 862 (R.I. 1997). That is, the plaintiffs must demonstrate an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not hypothetical or conjectural. Id. The standing threshold is not difficult to cross. As our Supreme Court has observed: "The line is not between a substantial injury and an insubstantial injury. The line is between injury and no injury." Matunuck Beach Hotel, Inc. v. Sheldon, 121 R.I. 386, 396, 399 A.2d 489, 494 (1979) (citation omitted). Accordingly, plaintiffs have standing where they have sustained, or are in immediate danger of sustaining, some direct injury, as a result of which there arises an honest and active antagonistic assertion of rights. See Blackstone Valley, 452 A.2d at 933-34; see

also Valentine Props. Assocs., LP, v. U.S. Dep't of Hous. & Urban Dev., No. 05 Civ. 2033 (SCR), 2007 WL 3146698, at \*8 (S.D.N.Y. Oct. 12, 2007)). The plaintiffs must demonstrate standing for each claim and form of relief sought. See Blackstone Valley, 452 A.2d at 932-33; see also Baur v. Veneman, 352 F.3d 625, 642 n.15 (2d Cir. 2003).

The Town challenges the Fire Retirees' and the Union's standing. Thus, the question here is whether the Fire Retirees, the Union, or both have shown a personalized injury in fact resulting from the Town's enactment and enforcement of the Ordinance. If so, then they have standing. Pontbriand, 699 A.2d at 862. This Court will first address the standing of the Fire Retirees and the Union to raise their constitutional claims. Then this Court will turn to their standing to seek the declarations and equitable estoppel.

## A

### The Constitutional Claims

The Fire Retirees and the Union allege that the Ordinance threatens the Fire Retirees' vested rights to work-related disability pensions in violation of the Due Process and Contract Clauses of the Rhode Island and United States Constitutions. The Town challenges the standing of both the Fire Retirees and the Union to make these claims.

## 1

### Due Process Claims

The Due Process Clauses of the Rhode Island and United States Constitutions provide that no person shall be deprived of life, liberty, or property, without due process of law.<sup>6</sup> The fundamental requisite of procedural due process is meaningful notice and

---

<sup>6</sup> The Due Process Clause of the Rhode Island Constitution states: "No person shall be deprived of life, liberty, or property without due process of law . . . ." R.I. Const. art. I, § 2. Correspondingly, the Due Process Clause of the Fourteenth Amendment to the

meaningful opportunity to be heard.<sup>7</sup> Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 313 (1950). Persons “alleging a deprivation of due process rights must demonstrate that either a property or liberty interest clearly protected by the due process clause was divested . . . without [adequate] procedural safeguards.” Bradford Assocs. v. R.I. Div. of Purchases, 772 A.2d 485, 490 (R.I. 2001) (brackets and ellipsis in original) (quoting Salisbury v. Stone, 518 A.2d 1355, 1360 (R.I. 1986)). A vested right to a disability pension is a property interest that may not be divested absent due process. See In the Matter of Almeida, 611 A.2d 1375, 1385 (R.I. 1992) (“Property rights are in the nature of vested rights in deferred compensation from the employer.”); see also Bell v. Ret. Bd. of the Fireman’s Annuity & Benefit Fund of Chi., 924 N.E.2d 1164, 1169 (Ill. App. Ct. 2010) (“[T]he receipt of a disability pension is a property right which cannot be diminished without procedural due process.”).

**a**

**The Fire Retirees’ Due Process Claims**

The Fire Retirees contend that the Ordinance impairs their vested rights to work-related disability pensions in violation of the Due Process Clauses of the state and federal

---

United States Constitution provides: “No state shall . . . deprive any person of life, liberty, or property, without due process of law . . . .” U.S. Const. amend. XIV, § 1. Because the Due Process Clauses are virtually identical, the analysis under both clauses is the same. See R.I. Depositors Econ. Prot. Corp. v. Brown, 659 A.2d 95, 102 (R.I. 1995).

<sup>7</sup> There are two forms of due process: substantive due process and procedural due process. The Fire Retirees and the Union do not specify the form of due process that the Town allegedly violated in their Complaint or in their briefs. Procedural due process addresses meaningful notice and opportunity to be heard. Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 313 (1950). Substantive due process focuses on the protection of fundamental rights. Riley v. R.I. Dep’t of Env’tl. Mgmt., 941 A.2d 198, 205-06 (R.I. 2008). The due process counts in the Complaint focus on hearings or notice and an opportunity to be heard and do not claim deprivations of fundamental rights. As such, this Court interprets the Complaint as alleging violations of procedural due process.

constitutions. After review of the pleadings, affidavits, and exhibits in the light most favorable to the Fire Retirees, this Court concludes that no genuine issue of material fact remains and that it may presently determine whether the Fire Retirees have standing to raise their due process claims.

It is undisputed that the Fire Retirees retired with work-related disability pensions. The Ordinance provides that the Town may (1) “cancel a disability pension upon evidence that the [recipient] is no longer disabled”; (2) revoke a disability pension if the recipient fails to submit to a medical evaluation; and (3) discontinue, suspend, or reduce a disability pension if the Town determines that the recipient is engaged in gainful employment or capable of doing so. Johnston, R.I., Code of Ordinances 2011-1, § 47-50. Thus, the Ordinance contemplates changes to work-related disability pensions upon the presence of certain conditions.

The Fire Retirees contend that the Town has failed to provide them with “adequate notice of the nature or purpose of” the hearings. Compl. ¶ 41. The Town sent two letters about the hearings to the Fire Retirees. The first letter, sent to all of the Fire Retirees, stated that the Town would review every pension received by a retired Town of Johnston Public Safety employee and asked the recipients to forward any documentation related to their pensions to the Town. The second letter was a hearing notice sent to four Fire Retirees. The notice stated that the Town would conduct a hearing regarding the recipient’s disability retirement. It also stated that the purpose of the hearing was to ensure that the Fire Retiree is receiving the pension benefit he is entitled pursuant to the CBA he retired under and to ensure that the Fire Retiree complied with the requirements set forth in G.L. 1956 § 45-21-8(d) (2009).

The Fire Retirees contend that these notices are inadequate under the Due Process Clause. They point out that the letters do not identify the relevant CBAs and CBA provisions under which the Town is acting. Compl. ¶ 41. They also state that the notices fail to explain the applicability of § 45-21-8(d) which, they assert, imposes no obligation on firefighters or retirees. Compl. ¶ 41. The Fire Retirees argue that such flaws render the notices inadequate and therefore deprive them of a meaningful opportunity to defend their vested rights to work-related disability pensions at the hearing. Compl. ¶ 46.

A vested right to a disability pension is a property interest that may not be divested absent due process. See In the Matter of Almeida, 611 A.2d at 1385. The Ordinance contemplates change to the Fire Retirees' disability pensions and the Town has taken steps to enforce the Ordinance. Accordingly, the Fire Retirees have demonstrated an imminent injury caused by a challenged action which is the enactment and enforcement of the Ordinance. Therefore, the Fire Retirees have standing to raise procedural due process claims. Pontbriand, 699 A.2d at 862.

The Town argues that the Fire Retirees have not specifically alleged an injury to each individual Fire Retiree and therefore do not have standing to raise a due process claim. The Complaint, however, identifies each individual Fire Retiree, avers that he/she receives a work-related disability pension, and alleges that the Town seeks to review the pensions and possibly revoke them. The Fire Retirees assert, collectively, that such an act would violate their rights to due process. The Fire Retirees do not need to again list the name of every individual retiree in connection to their due process allegation. Rather, the Fire Retirees' receipt of work-related disability pensions, along with the Town's attempt to enforce the Ordinance, is sufficient to establish that the Fire Retirees have a

personal stake in the outcome of the controversy. Blackstone Valley, 452 A.2d at 932-33.

Nor must the Fire Retirees wait for the Town to actually reconsider, reduce, or revoke their pensions before seeking relief. Cf. Baer-Stefanov v. White, 773 F. Supp. 2d 755, 759 (N.D. Ill. 2011) (“Where only a threatened injury is at issue, a plaintiff in search of prospective equitable relief must show a significant likelihood and immediacy of sustaining some direct injury.” (internal quotation marks and citation omitted)). The Town has taken affirmative action to enforce the Ordinance by way of the hearing notices. Further, the Town indicates in its first letter to the Fire Retirees that it will subject all of them to the review process. As such, this Court concludes that the injury to the Fire Retirees is sufficiently imminent to satisfy standing requirements. This Court may hear the Fire Retirees’ due process claims.<sup>8</sup> Accordingly, the Town’s Motion for Summary Judgment as to the Fire Retirees’ due process claims is denied.

**b**

**The Union’s Due Process Claims**

The Union contends that it has standing to raise claims alleging that the Ordinance impairs the Fire Retirees’ vested rights to work-related disability pensions without due process. As noted above, to have standing, a party must demonstrate an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not hypothetical or conjectural. Pontbriand, 699 A.2d at 862. An

---

<sup>8</sup> This Court is not deciding whether notice is adequate, whether the Fire Retirees have a vested property right in their work-related disability pensions, or whether the Fire Retirees’ right to due process has been violated and nothing in this Decision should be construed as doing so. This Court is simply measuring whether the Fire Retirees have satisfied the standing requirement as to their due process claims and concludes that they have done so.

organization, like the Union, may also have standing when the organization's "members would otherwise have standing to sue in their own right, the interests at stake are germane to the organization's purpose, and neither the claim asserted nor the relief requested require the participation of individual members in the lawsuit." In re Review of Proposed Town of New Shoreham Project, 19 A.3d 1226, 1227 (R.I. 2011) (citation omitted). Mere interest in a problem, however, cannot render an organization sufficiently aggrieved to cross the standing threshold. Blackstone Valley, 452 A.2d at 933. This is true "no matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem . . . ." Id. (quoting Sierra Club v. Morton, 405 U.S. 727, 739 (1972)). After review of the pleadings, affidavits, and exhibits submitted in the light most favorable to the Union, this Court concludes that no genuine issue of material fact remains and that it may resolve questions regarding the Union's standing to raise due process claims at this time.

The Union does not have standing to raise due process claims because it does not have a personalized injury relative to due process. Parties "alleging a deprivation of due process rights must demonstrate that either a property or liberty interest clearly protected by the due process clause was divested without [adequate] procedural safeguards." Bradford Assocs., 772 A.2d at 490 (brackets and ellipsis in original) (citation omitted). The Union does not claim that it receives a work-related disability pension or that it has a vested right to such a pension. The Town cannot deprive the Union of a property interest in a work-related disability pension if the Union does not have such an interest. Id. Accordingly, there is no due process claim available to the Union for actions that the Town might take against the Fire Retirees' work-related disability pensions.

The Union also does not have standing to raise due process claims through its members. The Union fails to show that any of its members have a vested right to a work-related disability pension. Nor does it claim that any of its members received a notice indicating that they would be the subject of work-related disability pension review hearings. The mere fact that some of the Union's members might retire with work-related disability pensions in the future is insufficient to give the Union standing. Whatever injury the Ordinance might cause to the membership's interest in future receipt of a work-related disability pension is simply too speculative. See Pontbriand, 699 A.2d at 862 (holding that plaintiffs must demonstrate an invasion of a legally protected interest which is actual or imminent, not hypothetical or conjectural). Thus, the Ordinance does not affect the Union's membership and therefore no member has standing to challenge it. Accordingly, the Union cannot assert standing through its membership. See Blackstone Valley, 452 A.2d at 934 (holding that an organization did not have standing to challenge a public utility commission's order in Superior Court where the order did not adversely affect the organization or its membership).

Finally, the Union does not have standing to raise due process claims through the Fire Retirees. See Arena v. City of Providence, 919 A.2d 379, 389 (R.I. 2007). The Union is the collective bargaining agent for all firefighter employees of the Town of Johnston, excluding the Chief of the Johnston Fire Department. Our Supreme Court held in Arena, however, that retirees "cannot be treated as employees." See id. (citing Allied Chem. & Alkali Workers of Am., Local Union No. 1 v. Pittsburgh Plate Glass Co., 404 U.S. 157 (1971)). The Court reasoned that the ordinary meaning of the word "employee" does not include retired workers because retirees have "ceased to work for another for



hire.” Id. (quoting Allied Chem., 404 U.S. at 168). Moreover, the Court observed that employees and retirees do not share a “community of interests,” thereby creating a danger that active employees will bargain for better conditions at the expense of retiree benefits. Id. Under Arena therefore, the Fire Retirees are not employees of the Town of Johnston Fire Department and are not a part of the Union. Id. Accordingly, the Union has no standing to sue based on whatever due process injuries the Fire Retirees might suffer. This Court grants the Town’s Motion for Summary Judgment as to the Union’s due process claims.

2

**Contract Clause Claims**

The Contract Clauses of the Rhode Island and United States Constitutions “limit the power of the government to enact laws that either modify its own contracts or impair the obligations of a private party to a contract.”<sup>9</sup> R.I. Insurers’ Insolvency Fund v. Leviton Mfg. Co., Inc., 716 A.2d 730, 736 (R.I. 1998). The Contract Clause does not, however, represent an absolute bar to the impairment of contracts. Indeed, the United States Supreme Court and the Rhode Island Supreme Court have recognized a three part analysis for harmonizing the command of the Contract Clause with the necessarily reserved sovereign power of the states to provide for the welfare of their citizens. Energy Reserves Group, Inc. v. Kansas Power & Light Co., 459 U.S. 400, 411-12 (1983) (presenting the three part analysis); In re Advisory Opinion to the Governor (DEPCO),

---

<sup>9</sup> The Contracts Clauses of both the Rhode Island Constitution and the United States Constitution use essentially the same language. Compare R.I. Const. art. I, § 12 (“No ex post facto law, or law impairing the obligation of contracts, shall be passed.”) with U.S. Const. art. I, § 10 (“No State shall . . . pass any . . . Law impairing the Obligation of Contracts . . . .”); see R.I. Bhd. of Corr. Officers v. Rhode Island, 264 F. Supp. 2d 87, 92 (D.R.I. 2003).

593 A.2d 943, 949 (R.I. 1991) (accepting the Energy Reserves standard).

In deciding whether a state enactment violates the Contract Clause, the court must first determine whether the challenged government action substantially impairs a contractual relationship. In re Advisory Opinion to the Governor, 593 A.2d at 948-49. An important factor in the substantial impairment inquiry is the parties' expectations at the time they entered the agreement. Energy Reserves, 459 U.S. at 411-16. Upon finding substantial impairment, the court moves to the second and third prongs of the Contract Clause analysis and asks whether there is a legitimate public purpose behind the government action and whether that purpose is sufficient to justify the impairment of contractual rights. In re Advisory Opinion to the Governor, 593 A.2d at 948-49. As neither of the final two prongs pertain to the alleged injuries the claimant suffered, they are irrelevant to the standing inquiry. Accordingly, this Court need only consider whether the Fire Retirees and/or the Union demonstrate a possible impairment of a contractual relationship under the Contract Clause.

**a**

### **The Fire Retirees' Contract Clause Claims**

The Fire Retirees contend that they have standing to raise Contract Clause claims because the Ordinance affects the Fire Retirees' vested rights to work-related disability pensions. After review of the pleadings, affidavits, and exhibits in the light most favorable to the Fire Retirees, this Court concludes that no genuine issue of material fact remains and that it may presently determine whether the Fire Retirees have standing to raise their Contract Clause claims.

The Fire Retirees allege that “[t]he Hearings, if conducted, will substantially impair the contractual relationship between the Union and the Town by depriving [the Fire] Retirees of their vested pension benefits” in violation of the Rhode Island Constitution. Compl. ¶ 61 (emphasis added). A key component of a Contract Clause violation is a government action that substantially impairs a contractual relationship. In re Advisory Opinion to the Governor, 593 A.2d at 948-49. The Fire Retirees, however, do not allege that the Town’s enactment or enforcement of the Ordinance substantially impairs the Fire Retirees’ contractual relationship with the Town. Moreover, the Fire Retirees fail to allege their expectations or those of the Town at the time that they entered the agreement. Energy Reserves, 459 U.S. at 416.

In deciding a Motion for Summary Judgment, this Court may look beyond the scope of the pleadings. The Fire Retirees’ CBAs provide for work-related disability pensions, but do not indicate if such pensions are subject to reconsideration, reduction, or revocation by way of a review hearing. It is undisputed that the Fire Retirees each retired with work-related disability pensions. The Fire Retirees collectively assert a vested right to continued, unchanged receipt of these pensions. The Contract Clause limits the government’s ability to unilaterally act against vested contractual rights. See Nonnenmacher v. City of Warwick, 722 A.2d 1199, 1202 (R.I. 1999). The Ordinance portends changes to the Fire Retirees’ alleged vested rights to work-related disability pensions. The Fire Retirees have thus demonstrated an injury resulting from the Town’s action. The injury being the alleged impairment of a vested contractual right. They therefore have standing to raise a claim under the Contract Clause to the Rhode Island Constitution. See Pontbriand, 699 A.2d at 862.

The Fire Retirees have pled a federal Contract Clause claim. Their federal Contract Clause count simply states that “Plaintiffs hereby incorporate by reference Paragraphs 1 through 84 of the Verified Complaint,” quotes the federal Contract Clause, and then closes with “Wherefore, Plaintiffs pray as hereinafter set forth.” Compl. ¶¶ 67-68. The Fire Retirees never specifically allege an actual injury to their federal Contract Clause rights in the form of a substantial impairment of their contractual relationship with the Town. In re Advisory Opinion to the Governor, 593 A.2d at 948-49. Despite such pleading deficiencies, however, this Court concludes that the Fire Retirees have standing to raise a federal Contract Clause claim for the same reasons they have standing to raise a state Contract Clause claim. Supra at 19.

In sum, the Fire Retirees have standing to raise Contract Clause claims under the Rhode Island and United States Constitutions. The Town’s Motion for Summary Judgment as to the Fire Retirees’ Contract Clause claims is therefore denied.<sup>10</sup>

**b**

**The Union’s Contract Clause Claims**

The Union also contends that it has standing to raise Contract Clause claims under the state and federal constitutions. The Union alleges that the Ordinance “substantially impair[s] the contractual relationship between the Union and the Town by depriving [the Fire] Retirees of their vested pension benefits” in violation of the Rhode Island Constitution. Standing requires the party seeking review to show “injury in fact,

---

<sup>10</sup> This Court is not deciding whether the Fire Retirees have a vested contractual right in their work-related disability pensions or whether the Fire Retirees’ Contract Clause rights have been violated and nothing in this Decision should be construed as doing so. This Court is simply measuring whether the Fire Retirees have satisfied the standing requirement as to their Contract Clause claims and concludes that they have done so.

economic or otherwise,” resulting from the challenged action. Pontbriand, 699 A.2d at 862. In a Contract Clause claim, substantial impairment of a contractual relationship is the injury. In re Advisory Opinion to the Governor, 593 A.2d at 948-49. The Union, however, does not claim that it has a vested contractual right to a work-related disability pension or that its members presently do. It does not describe how the Ordinance substantially impairs the Union’s contractual relationship with the Town, nor does it specify the injury that the Town’s actions have caused the Union. See In re Advisory Opinion to the Governor, 593 A.2d at 948-49. Moreover, the Union does not speak to its expectations or those of the Town at the time they entered the agreement and fails to address the substantial impairment inquiry. The Union, then, fails to demonstrate a personalized injury. Pontbriand, 699 A.2d at 862.

Rather, the Union seemingly rests its Rhode Island Contract Clause claim on something the Town has allegedly done to the Fire Retirees. The Fire Retirees are not members of the Union; therefore the Union may not assert an interest through them. See Arena, 919 A.2d at 389. As our Supreme Court stated in Blackstone Valley:

“The requirement that a party seeking review must allege facts that he is himself aggrieved does not insulate [the defendant] from judicial review, nor does it prevent the public interest from being protected through the judicial process. It merely puts the decision regarding whether review will be sought into the hands of those who have a direct stake in the outcome. There are no better or worse plaintiffs, only those with or without a claim.” 452 A.2d at 934 (internal quotation marks and citations omitted).

The Union fails to demonstrate an injury to it or its membership. The Union has no standing to raise a claim under the Contract Clause of the Rhode Island Constitution and the same logic applies to the Union’s claim under the federal Contract Clause.

Accordingly, the Town's Motion for Summary Judgment is granted as to the Union's Contract Clause claims.

In ruling so, this Court does not suggest that a union never has standing to bring a suit on behalf of retirees. See Int'l Union, United Auto., Aerospace, & Agric. Implement Workers of Am. v. Yard-Man, Inc., 716 F.2d 1476, 1486-1487 (6th Cir. 1983); cf. Arena, 919 A.2d at 390 n.11 ("Nothing we hold today precludes retirees from engaging in permissive bargaining with or through their former union and employer."). As a signatory to the CBAs, the Union could bring an action for the third party beneficiary retirees. See Yard-Man, 716 F.2d at 1486-1487. Indeed, the Union has acted to protect the rights of the retirees and its own interests in ensuring compliance with the CBA by filing a demand for arbitration with the Town.

Acknowledging the Union's arbitration demand, the Town contends that even if the Union has standing to pursue its constitutional claims, the Union would be precluded from doing so under the doctrine of election of remedies. This Court agrees. It has long been the "general tendency" of our Supreme Court "to require parties to stay on the dispute-resolution path for which they originally opted until they reach the end of that path." Cruz v. Wausau Ins., 866 A.2d 1237, 1240 (R.I. 2005). Thus "parties who elect to submit to arbitration for purposes of resolving disputed issues are barred by the election-of-remedies doctrine from seeking redress in the Superior Court." Kraczkowski v. Quincy Mut. Fire Ins. Co., 898 A.2d 720, 722 (R.I. 2006); see Cranston Teachers' Ass'n v. Cranston Sch. Comm., 423 A.2d 69, 71 (R.I. 1980) (applying election of remedies principles and holding that when a party had sought to invoke the grievance procedures of a collective bargaining agreement, it was "foreclosed from seeking redress in the

Superior Court” in the form of a declaratory judgment). Here, the Union demanded arbitration to address an alleged violation of the CBA arising from the Town’s enactment of the Ordinance. The Union has thus elected its remedy and may not sue in this Court until the Union completes arbitration. Kraczkowski, 898 A.2d at 722.

The Union contends that the remedies it seeks in arbitration are different from those it seeks from this Court and argues that the election of remedies doctrine is inapplicable. However, the doctrine’s “availability is not as strictly constrained as” the Union suggests. State Dep’t of Envtl. Mgmt. v. State Labor Relations Bd., 799 A.2d 274, 278 (R.I. 2002). Differences in the remedies sought will not necessarily foreclose application of the election of remedies doctrine, provided the remedies “are sufficiently similar.” Martone v. Johnston Sch. Comm., 824 A.2d 426, 430-31 (R.I. 2003); see Cipolla v. R.I. Coll., Bd. of Governors for Higher Educ., 742 A.2d 277, 281 (R.I. 1999) (applying election of remedies doctrine where a grievance under a CBA “sought essentially the same remedy as the complaint later filed in Superior Court” (emphasis in original)).

The Union alleges a violation of the CBA in its arbitration demand and asks the arbitrator to order the Town to “immediately rescind” the Ordinance and “make whole any and all members affected by the” violation. The Union asks this Court for a declaration that the Fire Retirees have a vested right to their pensions not subject to reconsideration, reduction, or revocation and an injunction against the enforcement of the Ordinance. Despite some differences between the remedies sought from this Court and those sought from the arbitrator, the two “are sufficiently similar to trigger the equitable doctrine of election of remedies.” Martone, 824 A.2d at 430-31. The arbitration and the

instant matter each involve the same underlying factual allegations: the enactment and enforcement of the Ordinance. Further, before this Court may grant the Union the relief it seeks, this Court would need to determine, as a preliminary matter, whether the Ordinance contradicts the terms of the CBA and if it should be rescinded because it is unconstitutional. This is essentially the same task that the Union demands of the arbitrator. See id.<sup>11</sup>

“The doctrine of election of remedies is one that is grounded in equity and is designed to mitigate unfairness to both parties by preventing double redress for a single wrong.” State Dep’t of Env’tl. Mgmt., 799 A.2d at 277. By demanding arbitration and joining the Fire Retirees in this action, the Union is effectively seeking two bites at the apple. The election of remedies doctrine precludes such behavior. Id. Thus, to the extent that the Union has standing to raise Contract Clause claims, it is barred from doing so because it elected its remedy when it demanded arbitration. The Town’s Motion for Summary Judgment against the Union on the Union’s Contract Clause claims is therefore granted on election of remedies grounds as well.<sup>12</sup>

---

<sup>11</sup> The Union contends that it has standing to seek declarations regarding violations of the CBAs pursuant to G.L. 1956 § 28-8-1 (2003). Section 28-8-1 permits unions to file suit against an employer for the benefit of the unions’ membership. The Fire Retirees, however, are not a part of the Union and so the Union may not sue on their behalf via § 28-8-1. See Arena, 919 A.2d at 389. Moreover, even assuming that the Union has standing, the election of remedies doctrine precludes the Union from filing suit in this Court prior to the completion of arbitration. See Cranston Teachers’ Ass’n v. Cranston Sch. Comm., 423 A.2d at 71.

<sup>12</sup> This Court observes that the doctrine of election of remedies would also preclude the Union’s due process claims—assuming the Union had standing to raise them—for the same reasons that the doctrine forecloses the Union’s Contract Clause claims. Supra at 22-24.



## B

### The Declarations

The Uniform Declaratory Judgments Act (“UDJA”) vests this Court with the “power to declare rights, status, and other legal relations . . . .” G.L. 1956 § 9-30-1 (2011). The UDJA provides:

“Any person interested under a deed, will, written contract, or other writings constituting a contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder.” Sec. 9-30-2.

A court’s power under the UDJA is broadly construed to allow the trial justice to “facilitate the termination of controversies.” Bradford Assocs., 772 A.2d at 489 (citation omitted).

The UDJA, however, does not provide an independent cause of action or confer subject matter jurisdiction where it does not already exist. See Berberian v. Travisono, 114 R.I. 269, 274, 332 A.2d 121, 124 (1975). A necessary predicate to this Court’s exercise of its jurisdiction under the UDJA is an actual justiciable controversy. Meyer v. City of Newport, 844 A.2d 148, 151 (R.I. 2004). By definition, “a justiciable controversy must contain a plaintiff who has standing to pursue the action; that is to say, a plaintiff who has suffered ‘injury in fact.’” Id. Moreover, no case is justiciable unless its facts “yield some legal hypothesis which will entitle the plaintiff to real and articulable relief.” Id. The UDJA does not convert this Court into “a forum for the determination of abstract questions [of law] or the rendering of advisory opinions.” Lamb v. Perry, 101 R.I. 538, 542, 225 A.2d 521, 523 (1967). The case must have taken on fixed and final shape so

that a court can see what legal issues it is deciding, what effect its decision will have on the adversaries, and some useful purpose to be achieved in deciding them.<sup>13</sup> See Berberian, 114 R.I. at 274, 332 A.2d at 124. Accordingly, a plaintiff must demonstrate standing for each claim and form of relief sought. See id., 332 A.2d at 124; see also Baur, 352 F.3d at 642 n.15.

The Fire Retirees and the Union each seek declarations that (1) the Fire Retirees have a vested right to a work-related disability pension not subject to reconsideration, reduction, or revocation by the Johnston Retirement Board pursuant to Ordinance 2011-1 and (2) the State Retirement Board does not have authority to determine eligibility for work-related disability retirement of Johnston firefighters hired prior to July 1, 1999. This Court shall address whether the Fire Retirees and/or the Union have standing to seek either declaration.

## 1

### **The Vested Rights Declaration**

Upon review of the pleadings, affidavits, and exhibits, this Court concludes that no genuine issue of material fact exists to preclude this Court from presently determining whether the Fire Retirees and/or the Union have standing to seek a declaration that the Fire Retirees have vested rights to disability pensions not subject to reconsideration, reduction, or revocation by the Ordinance.

---

<sup>13</sup> As the United States Court of Appeals for the First Circuit has stated: “Courts should always be hesitant to answer hypothetical questions. That hesitancy does not evaporate merely because a suit is couched as a plea for declaratory relief.” Ernst & Young v. Depositors Econ. Prot. Corp., 45 F.3d 530, 538 (1st Cir. 1995) (citations omitted).

**a**

### **The Fire Retirees' Standing**

The Fire Retirees retired with work-related disability pensions under their respective CBAs. The Ordinance contemplates changes to the Fire Retirees' disability pensions via a review process that the Fire Retirees allege is constitutionally deficient. The Town has moved to enforce the Ordinance and thus injury to the Fire Retirees is imminent. See Pontbriand, 699 A.2d at 862; Blackstone Valley, 452 A.2d at 933; see also supra at 14. This Court has authority under the UDJA to examine the Fire Retirees' vested rights under the CBA and determine whether the Town's acts against those rights (assuming they exist) are constitutional. Sec. 9-30-1. Thus, the Fire Retirees have standing to seek a declaration that they have vested rights to work-related disability pensions not subject to reconsideration, reduction, or revocation by the Ordinance. Meyer, 844 A.2d at 151. This Court denies the Town's Motion for Summary Judgment as to the Fire Retirees' request for a declaration regarding their vested rights.

**b**

### **The Union's Standing**

Standing rules permit the Union to seek a declaration on behalf of its members as to whether the Contract Clause protects rights provided under a CBA. R.I. Bhd. of Corr. Officers v. Rhode Island, 357 F.3d 42, 48 (1st Cir. 2004); see Blackstone Valley, 452 A.2d at 934. However, the Union does not claim that it or its membership has a right to work-related disability pensions, but instead relies on the claims of the Fire Retirees. As noted previously, the Union may not claim through the Fire Retirees because the Fire Retirees are not a part of the Union. Arena, 919 A.2d at 389; see supra at 16-17, 21. The

Union does not have an interest in the Fire Retirees' work-related disability pensions and therefore does not have standing to seek a declaration that the Fire Retirees have a vested right to work-related disability pensions not subject to reconsideration, reduction, or revocation by the Ordinance.<sup>14</sup> Pontbriand, 699 A.2d at 862. Accordingly, this Court grants the Town's Motion for Summary Judgment as to the Union's request for a declaration regarding the Fire Retirees' vested rights.<sup>15</sup>

2

**The State Retirement Board Declaration**

Upon review of the pleadings, affidavits, and exhibits, this Court concludes that no genuine issue of material fact exists to preclude this Court from presently determining whether the Fire Retirees and/or the Union have standing to seek a declaration that the State Retirement Board did not have authority to determine eligibility for work-related disability retirement of Johnston firefighters hired prior to July 1, 1999.

---

<sup>14</sup> Even assuming that the Union had standing to seek a declaration as to the Fire Retirees' vested rights, the election of remedies doctrine would preclude the Union's declaratory judgment request for the same reasons that the doctrine forecloses the Union's Contract Clause claims. See supra at 22-24.

<sup>15</sup> The Union contends that any declaration that the Ordinance is valid and trumps the CBA would affect the Union and its members, who are future retirees. Therefore, the Union argues, it must be a party to this case under § 9-30-11. Section 9-30-11 provides: "When 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 rights of persons not parties to the proceeding." Sec. 9-30-11.

The Union cites no case law or other authority in addition to § 9-30-11 which would indicate that the Union is an indispensable party to matters involving work-related disability pensions of retired employees. As such, this Court concludes that the Union is not an indispensable party to this proceeding because neither the Union, nor its members claim a vested right to a work-related disability pension. See supra at 14-17, 20-21.

a

### **The Fire Retirees' Standing**

The Fire Retirees have not demonstrated standing to seek a declaration regarding the State Retirement Board's authority. A plaintiff must demonstrate standing for each claim and form of relief sought. See Berberian, 114 R.I. at 274, 332 A.2d at 124. The Fire Retirees do not allege that they suffered an injury at the hands of the State Retirement Board or at the hands of the Town by way of the State Retirement Board. See Meyer, 844 A.2d at 151. Further, it is not clear from the Complaint or the Fire Retirees' arguments how a declaration regarding the State Retirement Board's authority redresses any injury the Fire Retirees have suffered from the Ordinance. See id. Moreover, the Fire Retirees do not identify the law or laws that this Court is to construe in their request for a declaration pertaining to the State Retirement Board's authority. No case is justiciable unless its facts "yield some legal hypothesis which will entitle the plaintiff to real and articulable relief." Id.

The Fire Retirees cite to § 45-21-8(d) and § 45-21-19 in their Complaint as part of a long recitation of "facts."<sup>16</sup> Nowhere, however, do they allege that the Town believes these statutory provisions render the pensions void or relies on these provisions in some other way that injures the Fire Retirees. Nor do the Fire Retirees directly connect § 45-21-8(d) and § 45-21-19 to their request for declaratory relief relative to the State

---

<sup>16</sup> Section 45-21-8(d) provides that the State Retirement Board determines eligibility for ordinary disability pensions of Johnston firefighters employed by the Johnston Fire Department from the time of its enactment. Section 45-21-19 defines the procedures a firefighter and its employer must follow to establish eligibility for such pensions. The Fire Retirees allege that the State Retirement Board advised the Town that it would not process applications for work-related disability pensions filed under § 45-21-8(d). Compl. ¶ 32.

Retirement Board's authority or explain how a favorable interpretation of these statutes would redress their problems with the Town and the Ordinance. Meyer, 844 A.2d at 151. The Fire Retirees have the burden to show that their case is justiciable, yet they fail to demonstrate how the State Retirement Board relates to their injuries. See id.; Berberian, 114 R.I. at 274, 332 A.2d at 124. Assertions without elaboration are insufficient. See Meyer, 844 A.2d at 151.

The Fire Retirees apparently presume that the Town will try to defend its actions by claiming that state law renders their pensions invalid. The Complaint avers that the Town acts against the Fire Retirees' work-related disability pensions because the Town believes state law voids the pensions.<sup>17</sup> Compl. ¶ 44. Yet neither the Complaint, nor the Fire Retirees' briefs link these assertions to the statutory provisions upon which the Town allegedly rests its argument. Additionally, this Court's review of the affidavits and exhibits submitted by the parties has not uncovered any argument on the part of the Town that provisions of state law render the Fire Retirees' work-related disability pensions void. The Ordinance, moreover, provides that the Johnston Retirement Board will review the Fire Retirees' work-related disability pensions and the hearing notice confirms this fact. The State Retirement Board is not involved in the review process. As such, the State Retirement Board's authority to determine eligibility for work-related disability retirement seems wholly detached from whatever injuries the Town may have caused the Fire Retirees.

---

<sup>17</sup> In their brief, the Fire Retirees state: "Defendants contend that State law vests the State Retirement Board, not the Town of Johnston, with the sole authority to determine eligibility for accidental disability pensions for Johnston firefighters hired prior to July 1, 1999. Consequently, Defendants argue, any accidental disability pension previously granted by the Town is void." Pls.' Mem. in Opp'n to Defs.' Mot. for Summ. J. at 2.

The Fire Retirees cannot fabricate a controversy over the interpretation of state law where none exists. The UDJA does not provide an avenue for parties to obtain answers to abstract questions of law. Lamb, 101 R.I. at 542, 225 A.2d at 523. A controversy is justiciable only where a plaintiff has sustained, or is in immediate danger of sustaining, some direct injury, as a result of which there arises an honest and active antagonistic assertion of rights. Blackstone Valley, 452 A.2d at 933-34; see also Valentine Props., 2007 WL 3146698, at \*8. The Fire Retirees fail to connect the alleged injury to their vested rights at the hands of the Town to the declaration about the State Retirement Board's authority. Therefore, they lack standing to seek a declaration regarding the State Retirement Board's authority and simply pose an abstract question of law. This Court must leave such queries unanswered.<sup>18</sup> Lamb, 101 R.I. at 542, 225 A.2d

---

<sup>18</sup> This Court will not address whether the Town or the Fire Retirees properly complied with the provisions of § 45-21-8(d) or § 45-21-19 at the time work-related disability pensions were awarded. Nor will it speak further to the Town's alleged belief that the work-related disability pensions are "illegal" because the Town, instead of the State Retirement Board, determined the Fire Retirees' eligibility for such pensions. The Town's alleged interpretation of the law is only relevant to the extent that it relates to the Town's alleged actions. If the Town believed that a failure to have the State Retirement Board determine the Fire Retirees' eligibility for work-related disability pensions rendered those pensions—and the Town's obligations to pay them—void, the Town could seek a declaration to that end. It has not done so.

Rather, the Town enacted the Ordinance and sent out notices that the Johnston Retirement Board would review the Fire Retirees' continued eligibility for disability pensions. The Fire Retirees do not contend that only the State Retirement Board can perform this review. The Town's actions therefore do not put the State Retirement Board's authority—now or when the pensions were initially granted—at issue. Accordingly, a declaration as to the State Retirement Board's authority would fail to remedy the Fire Retirees' alleged injuries and instead answer an abstract question of law. See Meyer, 844 A.2d at 151 (holding declaratory judgment action is not justiciable "unless the facts of the case yield some legal hypothesis which will entitle the plaintiff to real and articulable relief"); Berberian, 114 R.I. at 274, 332 A.2d at 124 (holding that plaintiff must demonstrate "a real and substantial controversy admitting of specific relief through a conclusive decree or judgment" to have standing to seek a declaration). The

at 523. Accordingly, this Court grants the Town’s Motion for Summary Judgment as to the Fire Retirees’ request for a declaration pertaining to the State Retirement Board’s authority to determine eligibility for work-related disability retirement for Johnston firefighters hired before July 1, 1999.<sup>19</sup>

**b**

**The Union’s Standing**

The Union does not have standing to seek a declaration regarding the State Retirement Board’s authority for the same reasons that the Fire Retirees do not. See supra at 29-32 and accompanying footnotes. A plaintiff must demonstrate standing for each claim and form of relief sought. See Berberian, 114 R.I. at 274, 332 A.2d at 124. The Union does not show how the State Retirement Board relates to its alleged injuries or those of its members, nor does it explain how a declaration relative to the State Retirement Board’s authority would redress the Union’s alleged injuries. Accordingly, the Union has no standing to seek a declaration regarding the State Retirement Board’s authority. Meyer, 844 A.2d at 151. This Court grants the Town’s Motion for Summary Judgment as to the Union’s request for the State Retirement Board declaration.<sup>20</sup>

---

UDJA does not convey standing to seek such declarations. Lamb, 101 R.I. at 542, 225 A.2d at 523.

<sup>19</sup> This Court does not disavow its authority to interpret whatever statutes it might need to in resolving this dispute and nothing in this Decision should be construed as doing so. This Court simply finds that the Fire Retirees do not have standing to seek a declaration regarding the State Retirement Board’s authority.

<sup>20</sup> In its brief, the Union alleges: “Defendants contend that State law vests the State Retirement Board, not the Town of Johnston, with the sole authority to determine eligibility for accidental disability pensions for Johnston firefighters hired prior to July 1, 1999. Consequently, Defendants argue, any accidental disability pension previously granted by the Town is void.” The Union argues that the Town’s alleged interpretation of state law conflicts with the CBAs in effect at the time of each Fire Retirees’ retirement



## C

### Equitable Estoppel

The Fire Retirees and the Union include a count of equitable estoppel in their Complaint. In general, equitable estoppel consists of two elements. First, the person against whom the estoppel is claimed must have made an “affirmative representation or equivalent conduct” to another person with “the purpose of inducing the other to act or fail to act in reliance thereon . . . .” Providence Teachers Union v. Providence Sch. Bd., 689 A.2d 388, 391 (R.I. 1997). Second, the representation must, in fact, “induce the other to act or fail to act” to the other’s injury. Id. at 392. The “key element of an estoppel is intentionally induced prejudicial reliance.” El Marocco Club, Inc. v. Richardson, 746 A.2d 1228, 1234 (R.I. 2000). Although equitable estoppel is generally not applied against a governmental agency, Rhode Island courts have “long recognized that the doctrine of estoppel may in appropriate circumstances be invoked against a public body.” Ferrelli v. Dep’t of Emp’t Sec., 106 R.I. 588, 593, 261 A.2d 906, 910 (1970); see Lerner v. Gill, 463 A.2d 1352, 1363 (R.I. 1983) (“In determining whether estoppel is an appropriate device to use against the government, we must not only consider the problems encountered by the petitioner, but we must also be mindful of the public interest involved.”).

---

and under the current CBA. The Union thus asserts an interest in obtaining a declaration as to whether portions of its collective bargaining agreements are valid under state law.

Whether the Union has an interest in obtaining a declaration that parts of its CBAs are valid under state law is irrelevant, however, because the Union has not asked for a declaration that parts of its CBAs are valid under state law. The Union asked this Court for a declaration that “the State Retirement Board did not have authority to determine eligibility for work related disability retirement of Johnston firefighters hired prior to July 1, 1999.” This Court has already explained in detail why the Fire Retirees and the Union have no standing to obtain this declaration and will not repeat it here. See supra 29-32 and accompanying footnotes.

### The Fire Retirees' Standing

The Town has not argued in any of its briefs that the Fire Retirees lack standing to raise an estoppel claim. Although this Court has authority to raise and resolve the issue sua sponte, it declines to do so. Instead, it assumes *arguendo* that the Fire Retirees have standing to raise the estoppel claim. See Robinson v. Mayo, 849 A.2d 351, 353 n.2 (acknowledging the court's authority to raise the standing issue sua sponte, but declining to do so because "no party in this case has briefed this issue").<sup>21</sup>

### The Union's Standing

The Town does challenge the Union's standing to raise an estoppel claim and argues that the Union lacks standing because the Union's estoppel claim rests on alleged injuries to the Fire Retirees' vested rights to work-related disability pensions. This Court agrees. As noted several times above, the Union does not claim that it has a vested right to a work-related disability pension or that any of its members presently do. Thus, although the Union and its members may have relied on the Town's alleged promises, their reliance could not lead to an injury to their rights to work-related disability pensions because they claim no such rights. Providence Teachers Union, 689 A.2d at 392. Further, the Union may not seek to raise an estoppel claim through the Fire Retirees. See Arena, 919 A.2d at 389. The Union therefore lacks standing to claim estoppel.

---

<sup>21</sup> The Complaint does allege that "[d]uring the course of their employment and thereafter, Plaintiffs were advised that firefighters who sustained a permanent on the job injury would be eligible for a work related disability pension . . . . Plaintiffs relied on these assurances." Compl. ¶ 37.

Accordingly, this Court grants the Town's Motion for Summary Judgment as to the Union's estoppel claim.

#### **IV**

#### **Conclusion**

After due consideration of the pleadings, affidavits, and exhibits submitted by the parties in the light most favorable to the Plaintiffs, the Fire Retirees and the Union, this Court concludes that no genuine issue of material fact remains as to whether the Fire Retirees and the Union have standing and that it may resolve the standing question at present. Accordingly, this Court grants Defendants Town of Johnston's, Johnston Town Council's, and Johnston Retirement Board's Motion for Summary Judgment in part as to the Fire Retirees and in full as to the Union.

The Fire Retirees have standing to raise Due Process Clause and Contract Clause claims under the state and federal constitutions and to raise an equitable estoppel claim. They also have standing to seek a declaration that they have vested rights to work-related disability pensions not subject to reconsideration, reduction, or revocation through the Town's enforcement of the Ordinance. The Town's Motion for Summary Judgment as to these claims is denied. The Fire Retirees fail to demonstrate standing to seek a declaration that the State Retirement Board lacks authority to determine eligibility for work-related disability retirement of Johnston firefighters hired prior to July 1, 1999. The Town's Motion for Summary Judgment as to this claim is granted.

The Union does not have standing to raise Due Process Clause or Contract Clause claims under either the state or federal constitutions or to raise an equitable estoppel claim. Further, the Union does not have standing to seek a declaration regarding the Fire

Retirees' vested rights to work-related disability pensions or a declaration about the State Retirement Board's authority. The Town's Motion for Summary Judgment as to the Union is granted in full. Counsel shall submit an appropriate Order for entry.