STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

KENT, SC. **SUPERIOR COURT**

(FILED: February 2, 2017)

MANUEL ANDREWS, JR., et al.,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	**C.A. No. KC-13-1128**
	:	
JAMES J. LOMBARDI, in his capacity as Treasurer of the City of Providence, Rhode Island,	:	
	:	
Defendant.	:	
	:	
MANUEL ANDREWS, JR., et al.,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	**C.A. No. KC-13-1129**
	:	
JAMES J. LOMBARDI, in his capacity as Treasurer of the City of Providence, Rhode Island,	:	
	:	
Defendant.	:	

DECISION

TAFT-CARTER, J. This matter is before the Court for decision following a non-jury trial on consolidated Complaints[1] filed by Plaintiffs, retired City of Providence police officers and

[1] In KC-13-1128 (the Medicare case), the Court is asked to decide whether a State statute—G.L. 1956 § 28-54-1 (Medicare Enrollment Statute)—and City ordinance—ch. 2011-32, No. 422 (Medicare Ordinance)—violated the Contract Clause of the Rhode Island and United States Constitutions (Contract Clause). See U.S. Const. art. I, § 10; R.I. Const. art. I, § 12. Plaintiffs also claim breach of contract and seek an injunction. See First Am. Compl. – Health Care Benefits at Counts One, Three, Five, and Seven; see also Pls.' Post-Trial Br. at 9 and Def.'s Post-Trial Mem. at 7 (indicating that only four Counts remain of Retirees' Compl. in the Medicare

firefighters (Plaintiffs or Retirees), against Defendant, James J. Lombardi, in his capacity as Treasurer of the City of Providence (Defendant or City). The Plaintiffs are sixty-seven retired members of the Providence Police Department and Providence Fire Department who retained their right to sue the City by excluding themselves from a class action settlement. The Court is tasked to decide whether a State statute and certain City ordinances violate the Contract Clause of the Rhode Island and United States Constitutions. See U.S. Const. art. I, § 10; R.I. Const. art. I, § 12. Specifically, Plaintiffs assert that they had vested contractual rights to lifetime healthcare benefits; therefore, requiring them to enroll for Medicare upon eligibility is a violation of the federal and state Contract Clause. In addition, Plaintiffs assert that the annual compounded cost of living adjustment (COLA) is a vested contractual right, the suspension of which amounts to a violation of the Contract Clause. Plaintiffs also allege breach of contract and seek declaratory and injunctive relief.

In each case, the City maintains that its actions do not violate the Contract Clause. It argues that Retirees have not satisfied their burden to show that the City's actions amounted to a substantial impairment of contractual rights. The City also contends that it has presented sufficient credible evidence that its actions were reasonable and necessary to achieve a significant and legitimate public purpose. In April of 2016, the matter proceeded to a non-jury trial. The Court exercises jurisdiction pursuant to G.L. 1956 §§ 8-2-13 and 9-30-1.

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case). In KC-13-1129 (the Pension case), the Court is called upon to determine whether another City ordinance—ch. 2012-20, No. 276 (Pension Ordinance)—violated the Contract Clause. Again, Plaintiffs assert breach of contract and ask for injunctive relief. See First Am. Compl. – COLA at Counts One, Three, and Five; see also Pls.' Post-Trial Br. at 9 and Def.'s Post-Trial Mem. at 8 (indicating that only three Counts remain of Retirees' Compl. in the Pension case).

I

Findings of Fact

The Court has reviewed the evidence presented at trial by both parties and makes the following findings of fact.

Angel Taveras (Mayor Taveras) was sworn into office as Mayor of the City of Providence on January 3, 2011. Trial Tr. 47:20–48:1, Apr. 19, 2016 (Afternoon Session) (Mayor Taveras). When he assumed office in 2011, unemployment in the State's capital city was above the State and national average; car taxes were the highest in the State; and the commercial tax rate was one of the highest in the country. Id. at 60:25–61:15. Upon taking office, Mayor Taveras knew that there was a budget deficit. The severity of the crisis facing the City, however, was unknown. Id. at 48:10–49:4.

In order to accurately examine and fully appreciate the City's finances, Mayor Taveras executed an executive order creating the Municipal Finances Review Panel (panel).[2] Id. at 49:12–15; see Ex. 104 at 24. The panel met over the course of several weeks and issued a final report on February 28, 2011. See Ex. 104. The report concluded that the City faced a $69.6 million structural budgetary deficit for the fiscal year ending June 30, 2011 and a $109.9 million structural budgetary deficit for the fiscal year ending June 30, 2012. Id. at 2.

The report outlined the significant financial challenges confronting the City. These challenges included the underfunded City pension plan. Ex. 104 at 11. It was determined that

[2] The panel consisted of Michael D'Amico, Mayor Taveras's Director of Administration; Ernest Almonte, former Auditor General for the State of Rhode Island; Dennis Hoyle, acting Auditor General for the State of Rhode Island; Alex Prignano, former Finance Director for the City of Providence; and Kenneth Richardson, CPA. Trial Tr. 50:7–22, Apr. 19, 2016 (Afternoon Session); see Ex. 104 at 24.

the pension plan was 34% funded, with an unfunded accrued actuarial liability of $828,484,000.[3] Id. The annual required contribution (ARC) was expected to increase dramatically. Id. It was projected that the fiscal year ending June 30, 2039 would require an ARC in excess of $210 million. Id. The root causes of the poorly funded pension plan resulted from years of inadequate funding, generous benefits and COLAs provided to the retirees, liberal disability pensions, and early retirement. Id. Furthermore, 27% of the retirees received the benefit of a compounded COLA of 5% or 6%. Id. at 12. The rich COLA benefit resulted in the doubling of the retirees' annual pensions every sixteen or thirteen years, respectively. Id. Another observation negatively impacting the City's pension plan concerned the actuarial valuation of the plan's use of the investment return assumption of 8.5%. Id.

In addition to the issues involving the pension plan, medical costs for current employees and retirees represented more than 15% of the City's annual budget. Id. at 14. The unfunded accrued actuarial liability of the City's retiree health plan reached $1,497,451,000. Id. at 15. Furthermore, many employees received lifetime medical coverage, and copays for retirees were minimal. Id.

Mayor Taveras took immediate action to address the financial crisis. Trial Tr. 56:7–9, Apr. 19, 2016 (Afternoon Session) (Mayor Taveras). He first consulted with the Director of Administration, Michael D'Amico. Id. at 53:13–54:6, 55:23–24; Trial Tr. 11:21–12:7, Apr. 20, 2016 (Morning Session) (Mr. D'Amico). Both men were aware that the City filing for bankruptcy was a real possibility, particularly if there was no pension or healthcare reform. Trial Tr. 64:4–16, Apr. 19, 2016 (Afternoon Session) (Mayor Taveras); Trial Tr. 14:2–8, Apr. 20, 2016 (Morning Session) (Mr. D'Amico). Unwilling to concede bankruptcy, Mayor Taveras was

[3] Comparatively, "[p]lans are generally considered adequately funded when funding levels reach 80% or above." Id.

determined to approach and solve the crisis in a collaborative manner, which he termed as "shared sacrifice." Trial Tr. 58:3, Apr. 19, 2016 (Afternoon Session) (Mayor Taveras). Mayor Taveras sought to have all stakeholders in the City—its employees, retirees, taxpayers, universities, and hospitals—carry the burden of sacrifice and become part of the fiscal solution. Id. at 58:5–17. To lead by example, Mayor Taveras immediately reduced his compensation by 10% and renounced his elected official pension. Id. at 56:12–16. Mayor Taveras took the additional steps of laying off approximately 10% of nonunion employees, terminating teachers, closing five schools, alerting the Governor of the extent of the problem, and seeking assistance from the General Assembly. Id. at 56:17–57:2, 58:25–59:1. To increase revenue, the City sought and obtained additional reimbursement for payment in lieu of taxes, generated fees with fire hydrants and alarm boxes, increased parking enforcement, cut funding to libraries and across departments, including a 13% reduction in the budget for the Mayor's office, and negotiated with tax-exempt universities and hospitals. Id. at 58:25–59:11. Despite all of these efforts, Mayor Taveras was forced to increase taxes above the tax levy. Id. at 59:12–15. This action required approval from the State Director of Revenue. Id. at 59:15–60:3.

Meanwhile, Mayor Taveras continued to explore the option of a bankruptcy. This option was considered despite the realization that it would be devastating to the City. Id. at 66:4–5. A bankruptcy would affect the ability of the City to attract business. Id. at 66:7–14. The Taveras administration determined that prior to filing bankruptcy, it was incumbent upon the City to take all steps to prevent a filing. These steps included negotiating contracts, making budgetary cuts, and generally doing everything possible to solve the problem in the first instance. Id. at 66:15–19. The City considered closing libraries and recreational centers to cure the financial crisis. Id. at 66:20–25. The overall impact of those options, however, would have been disastrous for the

City's youth as well as public safety. Id. at 66:25–67:1. Mayor Taveras felt a legal and moral responsibility to solve the problem without a bankruptcy filing. Id. at 67:2–6. In reaching this conclusion, Mayor Taveras took into account the interests of the City's retirees. He noted the Central Falls bankruptcy reduced retirees' pensions approximately 55%. Id. at 67:7–18.

Thus, Mayor Taveras turned to the City's other stakeholders to further increase revenues. He engaged in negotiations with the tax-exempt universities and hospitals in an attempt to persuade them to increase their contributions to the City in lieu of taxes. Id. at 67:19–69:6. This endeavor was successful. The contributions from the tax-exempts totaled approximately $1.9 million in 2011. The amount increased to $8 million per year after the negotiations. Id. at 69:7–18. The City also considered selling several of its properties and repurposing some of its schools, but it was unsuccessful. Id. at 69:19–71:1, 71:24–72:13, 72:25–73:8.

At the same time, Mayor Taveras directed Mr. D'Amico to reduce the overall cost of union contracts by approximately 10%. Id. at 74:3–25; Trial Tr. 33:22–35:5, Apr. 20, 2016 (Morning Session) (Mr. D'Amico). Through negotiations, Mr. D'Amico succeeded, saving approximately $4 million per year on the Local 1033 Laborers Union contract, $6 million annually on the firefighters and police union contracts, and $18 million yearly on the Providence Teachers Union contract. Trial Tr. 75:4–16, Apr. 19, 2016 (Afternoon Session) (Mayor Taveras); Trial Tr. 33:22–36:5, 36:20–40:23, Apr. 20, 2016 (Morning Session) (Mr. D'Amico).

The City also turned to its retirees for concessions. In order to address the unfunded accrued healthcare liability, Mayor Taveras sought enabling legislation from the State allowing the City to require the retirees to enroll in Medicare. Trial Tr. 77:15–18, Apr. 19, 2016 (Afternoon Session) (Mayor Taveras). The General Assembly passed P.L. 2011, ch. 151, art. 12, § 2, codified as G.L. 1956 § 28-54-1 (Medicare Enrollment Statute), which states:

> "Every municipality, participating or nonparticipating in the municipal employees' retirement system, may require its retirees, as a condition of receiving or continuing to receive retirement payments and health benefits, to enroll in Medicare as soon as he or she is eligible, notwithstanding the provisions of any other statute, ordinance, interest arbitration award, or collective bargaining agreement to the contrary. Municipalities that require said enrollment shall have the right to negotiate any Medicare supplement or gap coverage for Medicare-eligible retirees, but shall not be required to provide any other healthcare benefits to any Medicare-eligible retiree or his or her spouse who has reached sixty-five (65) years of age, notwithstanding the provisions of any other statute, ordinance, interest arbitration award, or collective bargaining agreement to the contrary. Municipality provided benefits that are provided to Medicare-eligible individuals shall be secondary to Medicare benefits. Nothing contained herein shall impair collectively bargained Medicare Supplement Insurance." Sec. 28-54-1 (emphasis added).

Thereafter, the City implemented its plan to reduce the mounting medical costs by requiring eligible retirees to enroll in Medicare. Trial Tr. 77:25–78:5, Apr. 19, 2016 (Afternoon Session) (Mayor Taveras).

On July 19, 2011, pursuant to the authority granted by the Medicare Enrollment Statute, the City passed Providence, R.I., Code of Ordinances, ch. 2011-32, No. 422, amending Code of Ordinances, art. VI, ch.17 (Medicare Ordinance). The ordinance provides:

> "Notwithstanding any other ordinance, collective bargaining agreement, or interest arbitration award:
> "(1) As a condition of receiving or continuing to receive retirement payments and health benefits, all retired individuals and spouses of retired individuals shall enroll in Medicare immediately upon eligibility. Any health benefits provided by the city to Medicare-eligible individuals shall be secondary to the Medicare benefits.
> "(2) With the exception of Medicare supplement or gap coverage, the city shall not provide Medicare-eligible retirees or Medicare-eligible spouses of retirees with healthcare benefits. The cost of said Medicare supplement or gap coverage shall be paid by the city and/or retiree as otherwise provided by ordinance or contract.
> "(3) Nothing contained in this section shall be construed to confer healthcare benefits on a retiree or retiree's spouse which are not otherwise provided by ordinance or contract." Id.; see Ex. 84.

Subsequently, on October 12, 2011, the Providence Retired Police and Firefighter's Association (Retiree Association) and a number of individual retirees filed suit against the City challenging the constitutionality of the Medicare Ordinance. On January 30, 2012, this Court granted the plaintiffs' motion for a temporary restraining order, preliminarily enjoining the City from terminating their health benefits and forcing them to enroll in Medicare. Providence Retired Police v. City of Providence, No. PC-11-5853, 2012 WL 338226 (R.I. Super. Jan. 30, 2012).

This Court ordered the parties in C.A. No. PC-11-5853 to mediate the issues and further directed that representatives of Local 799, International Association of Firefighters, AFL-CIO (Fire Union) and Providence Lodge No. 3, Fraternal Order of Police (Police Union) attend the mediation. Joint Statement of Undisputed Facts at ¶ 33; see Ex. 106 at 2. As a result of the mediation sessions, the parties reached a tentative settlement agreement, and the City, the Retiree Association, the Fire Union, and the Police Union entered into memoranda of understanding. Joint Statement of Undisputed Facts at ¶ 33; see Ex. 106 at 2. The terms of the settlement required that eligible retirees enroll in Medicare. The City would pay for certain costs associated with Medicare coverage, including penalties associated with late enrollment, a Medicare supplement plan, and the premium for the prescription drug program with a $10/$20 copayment. Joint Statement of Undisputed Facts at ¶ 34. It was also agreed that the COLA would be suspended from January 1, 2013 until December 31, 2022. Id. at ¶ 33. The settlement was approved, and the Court entered a final and consent judgment on April 12, 2013. Id. at ¶ 37; see Ex. 106. All members of the purported class were afforded the opportunity to exclude themselves from the settlement agreement. Joint Statement of Undisputed Facts at ¶ 35.

During this same time period, the City Council established the Subcommittee on Pension Sustainability (subcommittee). On April 19, 2012, after months of hearings, the subcommittee

issued its report and recommendations. See Ex. 133. The subcommittee recommended a suspension of COLAs until such time as the pension system reaches a funding ratio of 70%. Id. at 34. Implementing this recommendation would save the City $15.6 million annually and reduce the unfunded liability by $236.1 million. Id. at 35. Thus, the City passed Providence, R.I., Code of Ordinances, ch. 2012-20, No. 276, amending Code of Ordinances, art. VI, ch.17 (Pension Ordinance). This ordinance section provides:

> "(3) Notwithstanding any other ordinance, collective bargaining agreement, or interest arbitration award, all retired employees and any beneficiary of such employee who receives any service or any ordinary disability retirement allowance or any accidental disability retirement allowance pursuant to the provisions of this article, except for retirement allowances provided for in Sections 17-189(7)(d) and 17-189(9), shall have their cost-of-living adjustment suspended as of December 31 following the plan year in which the actuary's annual valuation determines the retirement system to be in critical status. Suspension of the annual cost of living adjustment shall continue until such time as the actuary determines in the annual actuarial valuation study that the plan's funded percentage is greater than or equal to seventy percent (70%). Within thirty (30) days of the actuary reporting in the annual actuarial valuation study that the plan's funded percentage is greater than or equal to seventy percent (70%), written notice shall be provided to all members that the cost-of-living adjustment shall be restored on the following January 1." Id. at § 17-194(3); see Ex. 85 at 21.

Other recommendations of the subcommittee were implemented. Employees would be required to contribute to the pension system as long as they were accruing pension credit, the base pension benefit would be adjusted to an average of the highest five consecutive years during the employee's final ten years of service, and pension benefits would be capped at one and one-half times the State's median household income. Trial Tr. 81:21–83:7, Apr. 19, 2016 (Afternoon Session) (Mayor Taveras); see Ex. 133 at 34–35.

The instant Complaints were filed by sixty-seven Retirees who elected to opt out of the settlement agreement. For organization purposes, Plaintiffs have been grouped into the following categories:

– Category A consists of nine retired firefighters[4] who retired on or before December 18, 1991, at a time when a ratified collective bargaining agreement (CBA) was in effect and binding on the City.[5] On December 18, 1991, the City, the Police Union, and the Fire Union entered into a final and consent judgment (1991 Consent Decree) by which certain retirees would receive COLAs to their pensions on an annual basis. See Ex. 271. Each Category A Plaintiff claims entitlement to a COLA pursuant to the 1991 Consent Decree. Furthermore, each claims entitlement to healthcare benefits for life under the CBA in effect at the time he retired.

– Category B consists of five retired police officers[6,7] who retired on or before December 18, 1991, at a time when a ratified CBA was in effect and binding on the City.[8] Each Retiree in

[4] They are Raymond Bergeron, Michael Cardi, Leo Jenkins, Jr., Walter Loiselle, Edward Maroney, Kevin Maroney, Gerald Penta, Thomas Pesaturo, and Richard Zompa.

[5] Mr. Jenkins retired under the CBA between the City of Providence and Local 799, International Association of Firefighters, AFL-CIO, 1979–1980, which was later extended to cover 1980–1981. See Exs. 136, 137. Mr. Loiselle retired under the CBA between the City of Providence and Local 799, International Association of Firefighters, AFL-CIO, 1982–1984. See Ex. 139. Mr. Pesaturo retired under the CBA between the City of Providence and Local 799, International Association of Firefighters, AFL-CIO, 1984–1985. See Ex. 140. Mr. E. Maroney retired under the CBA between the City of Providence and Local 799, International Association of Firefighters, AFL-CIO, 1987–1989. See Ex. 142. Mr. Bergeron, Mr. Cardi, Mr. K. Maroney, Mr. Penta, and Mr. Zompa retired under the CBA between the City of Providence and Local 799, International Association of Firefighters, AFL-CIO, 1990–1992. See Ex. 144.

[6] They are Manuel Andrews, Jr., Stephen Balestra, Linda Connell (who was substituted for her late husband, James Connell, when he passed away after litigation had commenced), Wayne Gill, and Tracie Martino (the widow of a retired police officer).

[7] The Court pauses to note that the parties' stipulation incorrectly places Ms. Martino in Category A and Mr. Penta in Category B. As the Court has just indicated, Ms. Martino is properly a Category B Plaintiff as the widow of a retired police officer, and Mr. Penta is appropriately a Category A Plaintiff as a retired firefighter. Furthermore, the Court has taken the liberty to ascribe to these two Retirees the correct CBAs under which they claim healthcare benefits, as those also were erroneous in the stipulation.

Category B claims entitlement to a COLA pursuant to the 1991 Consent Decree, and each claims entitlement to healthcare benefits for life under the CBA in effect at the time he retired.

– Category C is composed of both firefighters and police officers who retired after December 18, 1991, and therefore are unaffected by the 1991 Consent Decree.[9] These Plaintiffs retired either at a time when a ratified CBA was in place or during the pendency of a period covered by an interest arbitration award (IAA) made prior to the date of his retirement.[10] They claim both COLAs and healthcare benefits thereunder.

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[8] Ms. Connell's husband retired under the CBA between the City of Providence and Providence Lodge No. 3, Fraternal Order of Police, 1984–1985. See Ex. 158. Mr. Andrews, Mr. Balestra, Mr. Gill, and Ms. Martino's husband retired under the CBA between the City of Providence and Providence Lodge No. 3, Fraternal Order of Police, 1989–1991. See Ex. 162.

[9] They are Joseph Barkett, Napolean Brito, Robert Clements, Steven Cross, Michael DiFazio, Thomas DiLibero, Steven Dippolito, Alan Fortes, John Glancy, Keith Grant, Brian Hastings, Kenneth Hoskin, Richard Hughes, Brian Kreizinger, Timothy Lee, William Luke, Bruce McDermott, Anthony Pacheco, Timothy Patterson, Wayne Paull, Roy Persson, Jr., G. Scott Pierce, Eric Schauble, and Peter Sperduti.

[10] Mr. Barkett, Mr. DiLibero, Mr. Dippolito, Mr. Grant, Mr. Hastings, Mr. Hughes, and Mr. Paull retired under In the Matter of Providence Firefighters, Local 799, Int'l Ass'n of Firefighters, AAA # 11-390-00153-02 (Ryan, Ragosta, & Montanaro, arbs.) (regarding 2001–2002, 2002–2003, 2003–2004 Fire CBAs). See Ex. 148. Mr. Fortes retired under In the Matter of Providence Firefighters, Local 799, Int'l Ass'n of Firefighters, AAA # 11-390-02600-06 (Ryan, Ragosta, & Montanaro, arbs.) (regarding 2005–2006 Fire CBA). See Ex. 194. Mr. Hoskin, Mr. Pacheco, and Mr. Pierce retired under In the Matter of Providence Firefighters, Local 799, Int'l Ass'n of Firefighters, AAA # 11-390-02701-06 (Ryan, Ragosta, & Montanaro, arbs.) (regarding 2006–2007 Fire CBA). See Ex. 195. Mr. Schauble and Mr. Sperduti retired under the CBA between the City of Providence and Local 799, International Association of Firefighters, AFL-CIO, 2007–2010. See Ex. 149. Mr. DiFazio retired under the Tentative Agreement between the City of Providence and Local 799, International Association of Firefighters, AFL-CIO, 2010–2013. See Ex. 151. Mr. Kreizinger and Mr. McDermott retired under the CBA between the City of Providence and Local 799, International Association of Firefighters, AFL-CIO, 2011–2013. See Ex. 150. Mr. Cross retired under the CBA between the City of Providence and Providence Lodge No. 3, Fraternal Order of Police, 1996–1999. See Ex. 169. Mr. Patterson retired under the CBA between the City of Providence and Providence Lodge No. 3, Fraternal Order of Police, 1999–2001. See Ex. 170. Mr. Clements, Mr. Glancy, Mr. Luke, and Mr. Persson retired under the CBA between the City of Providence and Providence Lodge No. 3, Fraternal Order of Police, 2001–2004, as amended. See Exs. 171, 172. Mr. Brito retired under In the Matter of Providence Lodge No. 3, Fraternal Order of Police, AAA # 11-390-02335-07 (Boulanger, Ursillo, & St. Peter, arbs.) (regarding 2006–2007 Police CBA). See Ex. 186. Mr. Lee retired under the CBA

– Category D Plaintiffs are three retired firefighters who had been promoted to Battalion Chief and Deputy Assistant Chief and one retired police officer who had been promoted to the rank of Major.[11] See Trial Tr. 5:17–6:6, Apr. 5, 2016 (Morning Session) (Mr. D. Simoneau); Trial Tr. 59:20–24, Apr. 6, 2016 (Morning Session) (Mr. Costa); Trial Tr. 99:9–100:6, Apr. 11, 2016 (Morning Session) (Mr. Cochrane); Trial Tr. 118:14–20, 122:21–123:4, Apr. 14, 2016 (Morning Session) (Mr. Celeberto). In such positions, they were not covered by any CBA when they retired. Therefore, they rely on an implied-in-fact contract theory in claiming their rights to retirement benefits.

– Plaintiffs in Category E are two retired police officers and two retired firefighters[12] who are nearly identical to those Retirees in Category C in the sense that they retired on a date when a ratified CBA was in effect and binding on the City and claim entitlement to benefits thereunder.[13] However, Category E Plaintiffs emphasize the fact that their COLAs were suspended once and then reinstated after litigation. See Ex. 272.

– Retirees in Category F—nine retired firefighters and one retired police officer[14]—were plaintiffs in Arena v. City of Providence, 919 A.2d 379 (R.I. 2007). Our Supreme Court's prior decision in Providence City Council v. Cianci, 650 A.2d 499 (R.I. 1994), "effectively rendered the 1993–95 police CBA and the 1992–95 fire CBA invalid and unenforceable." Arena, 919

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between the City of Providence and Providence Lodge No. 3, Fraternal Order of Police, 2007–2010. See Ex. 174.

[11] They are Salvatore Celeberto, Henry Cochrane, Jr., Manuel Costa, and Dennis Simoneau.

[12] They are Robert Garvin, Linda Isherwood (the widow of a retired firefighter), Arthur Quattrucci, and John Santilli.

[13] Mr. Garvin and Mr. Santilli retired under the CBA between the City of Providence and Providence Lodge No. 3, Fraternal Order of Police, 1992–1993. See Ex. 166. Ms. Isherwood's husband and Mr. Quattrucci retired under the CBA between the City of Providence and Local 799, International Association of Firefighters, AFL-CIO, 1990–1992. See Ex. 144.

[14] They are Leonard Cummings, Peter Day, Edward Duggan, Armand Heron, Dennis Hodgkins, John McLaughlin, Sr., Gayland Miller, John Quigley, Kenneth Rinaldi, and John Simoneau.

A.2d at 383. Thus, there was no CBA in effect when these Plaintiffs retired. Nevertheless, in Arena, our Supreme Court held that these Category F Retirees had a vested right upon their retirements to receive the 5% COLAs provided by Providence, R.I., Code of Ordinances, ch. 1991-5, No. 81, §§ 9(17), 9(18) (Ordinance 1991-5). See Arena, 919 A.2d at 382–83, 395; see also Ex. 219 at 28a. The absence of a CBA leaves them relying on implied-in-fact contracts for their healthcare benefits.

– Category G consists of four retired police officers[15] who were plaintiffs in Abad v. City of Providence, C.A. No. PC-01-2223. They claim COLAs pursuant to settlement agreements that they individually entered into with the City in that case. See Exs. 207, 208, 209, 325. Category G Plaintiffs rely on implied contracts for their healthcare benefits.

– Category H contains two retired firefighters—Roger Farmer and Kenneth Robideau—who were plaintiffs in Bock v. City of Providence, C.A. No. PC-09-0599. They, too, claim COLAs in accordance with settlement agreements they entered into with the City in the previous case. See Exs. 205, 206. Both retired in late 1999. At that time, the 1996–1999 Fire CBA[16] had expired; however, it contained a carry-over provision by which it would remain in effect until the ratification of a new CBA. See Ex. 146 at 67, Art. XXX. Such new CBA,[17] which covered the dates when these Plaintiffs retired, was not signed into full force and effect until September 29, 2000—after they had retired. See Ex. 147.

– The lone Retiree in Category I, Stephen Day, is a retired firefighter who was a plaintiff in Battista v. City of Providence, C.A. No. PC-09-6047. He entered into a settlement agreement

[15] They are Robert Chin, Bonnie D'Agostino, Henry Roy, and Kathleen Simoneau.
[16] CBA between the City of Providence and Local 799, International Association of Firefighters, AFL-CIO, 1996–1999. See Ex. 146.
[17] CBA between the City of Providence and Local 799, International Association of Firefighters, AFL-CIO, 1999–2001. See Ex. 147.

with the City in that case and now claims a COLA calculated thereunder. See Ex. 210. An interest arbitration award covers the date of his retirement.[18]

– The two Category J Plaintiffs, retired firefighters Leo Simoneau and William Thomas, were plaintiffs in previous cases brought against the city—Mahar v. City of Providence, C.A. No. PC-05-5041, and Thomas v. City of Providence, C.A. No. PC-05-4547, respectively. They claim COLAs pursuant to settlement agreements they entered into in those cases. See Exs. 203, 204. Moreover, the dates of their retirements are covered by an IAA.[19]

– The singular Category K Plaintiff, Joseph Battista, is a retired firefighter who was a plaintiff in Battista v. City of Providence, C.A. No. PC-09-6047. He, too, entered into a settlement agreement with the City in that case and now claims entitlement to a COLA in accordance therewith. See Ex. 211. However, he retired at a time not covered by an IAA and when no CBA was in effect. He asserts an implied-in-fact contract as the basis of his right to healthcare for life.

– Finally, retired firefighter Robert Waters is alone in Category L. He relies on an implied-in-fact contract with the City for both the COLA and healthcare.

More facts as they relate to individual Plaintiffs, specific CBA provisions, and the City's attempts to remedy its fiscal crisis will be discussed where necessary throughout the Court's analysis.

[18] In the Matter of Providence Firefighters, Local 799, Int'l Ass'n of Firefighters, AAA # 11-390-00214-05 (Ryan, Ragosta, & Montanaro, arbs.) (regarding 2002–2003 Fire CBA). See Ex. 191.

[19] Arbitration Decision: City of Providence and Local 799, Int'l Ass'n of Firefighters, AFL-CIO, March 25, 1998 (O'Neil, McMahon, & Montanaro, arbs.) (regarding 1995–1996 Fire CBA). See Ex. 189.

A non-jury trial was held over the course of seventeen days, during which sixty-eight witnesses testified. At the close of the evidence, the City moved for judgment as a matter of law pursuant to Super. R. Civ. P. 52(c). Trial Tr. 8:15–9:18, May 10, 2016.

II

Standard of Review

Rule 52(a) of the Superior Court Rules of Civil Procedure (Rule 52(a)) provides that "[i]n all actions tried upon the facts without a jury . . . the court shall find the facts specially and state separately its conclusions of law . . . ." Rule 52(a). Accordingly, in a non-jury trial, "'[t]he trial justice sits as a trier of fact as well as of law.'" Parella v. Montalbano, 899 A.2d 1226, 1239 (R.I. 2006) (quoting Hood v. Hawkins, 478 A.2d 181, 184 (R.I. 1984)). In that role, the trial justice "'weighs and considers the evidence, passes upon the credibility of the witnesses, and draws proper inferences.'" Id. (quoting Hood, 478 A.2d at 184). Moreover, "it is permissible for the trial justice to 'draw inferences from the testimony of witnesses, and such inferences, if reasonable, are entitled on review to the same weight as other factual determinations.'" Cahill v. Morrow, 11 A.3d 82, 86 (R.I. 2011) (quoting DeSimone Elec., Inc. v. CMG, Inc., 901 A.2d 613, 621 (R.I. 2006)).

Yet, the trial justice is not required to conduct an "'extensive analysis'" in order to comply with Rule 52(a). Wilby v. Savoie, 86 A.3d 362, 372 (R.I. 2014) (quoting Connor v. Schlemmer, 996 A.2d 98, 109 (R.I. 2010)). In fact, the "'trial justice's analysis of the evidence and findings in the bench trial context need not be exhaustive . . . if the decision reasonably indicates that [he or she] exercised [his or her] independent judgment in passing on the weight of the testimony and the credibility of the witnesses . . . .'" Id. (alteration in original) (quoting Notarantonio v. Notarantonio, 941 A.2d 138, 144–45 (R.I. 2008)). "'Even brief findings and

conclusions are sufficient if they address and resolve the controlling and essential factual issues in the case.'" Broadley v. State, 939 A.2d 1016, 1021 (R.I. 2008) (quoting Donnelly v. Cowsill, 716 A.2d 742, 747 (R.I. 1998)).

Additionally, Rule 52(c) of the Rhode Island Superior Court Rules of Civil Procedure (Rule 52(c)) allows the Court, in a non-jury trial, to enter judgment as a matter of law after a party has been fully heard on an issue.[20] "[A] finding on a Rule 52(c) motion must comport with the requirements in Rule 52(a), which does not require extensive analysis and discussion of all the evidence presented in a bench trial." Broadley, 939 A.2d at 1021. The trial justice must therefore "assess the credibility of witnesses and weigh the evidence presented by the nonmoving party." Cathay Cathay, Inc. v. Vindalu, LLC, 962 A.2d 740, 745 (R.I. 2009).

Finally, it is well settled that this Court, sitting without a jury, "[is] vested with jurisdiction to grant or deny declaratory relief pursuant to the [Uniform Declaratory Judgments Act] and to grant or deny injunctive relief as a court of general equitable jurisdiction." R.I. Republican Party v. Daluz, 961 A.2d 287, 295 (R.I. 2008); see also §§ 9-30-1 to 9-30-16; § 8-2-13. The Uniform Declaratory Judgments Act grants this Court the "power to declare rights, status, and other legal relations whether or not further relief is or could be claimed . . . and such declarations shall have the force and effect of a final judgment or decree." Sec. 9-30-1. Thus,

[20] Rule 52(c) provides, in pertinent part:

> "If during a trial without a jury a party has been fully heard on an issue and the court finds against the party on that issue, the court may enter judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue, or the court may decline to render any judgment until the close of all the evidence. Such a judgment shall be supported by findings of fact and conclusions of law as required by subdivision (a) of this rule." Rule 52 (c).

"[a] decision to grant or deny declaratory or injunctive relief is addressed to the sound discretion of the trial justice . . . ." Foster Glocester Reg'l Sch. Bldg. Comm. v. Sette, 996 A.2d 1120, 1124 (R.I. 2010).

III

Analysis

A

Introduction

Plaintiffs have alleged in their Complaints that the City breached its contracts with Plaintiffs and violated the Contract Clause. See supra note 1. As a threshold matter, this Court must decide as a matter of law whether the ordinances and statute at issue constitute a breach of Plaintiffs' contracts with the City—triggering damages—or a more severe impairment of the obligations thereunder. The Contract Clause of the United States Constitution, as well as that of the Rhode Island Constitution, "limits the power of this state to modify its own contracts and to regulate private contracts."[21] Brennan v. Kirby, 529 A.2d 633, 638 (R.I. 1987) (citing U.S. Trust Co. of N.Y. v. New Jersey, 431 U.S. 1, 17 (1977)); U.S. Const. art. I, § 10; R.I. Const. art. I, § 12. Although the language of the Contract Clause appears literally to bar any impairment of public and private contracts, the United States Supreme Court has refused to interpret it that way. U.S. Trust Co., 431 U.S. at 20 (quoting Home Bldg. & Loan Ass'n v. Blaisdell, 290 U.S. 398, 428 (1934)) (reiterating that "'the prohibition is not an absolute one and is not to be read with literal exactness like a mathematical formula[]'"); see also Energy Reserves Grp., Inc. v. Kan. Power and Light Co., 459 U.S. 400, 410 (1983). Rather, the apparent absolute proscription of

[21] The prohibition against laws that impair contractual obligations contained in the Rhode Island Constitution mirrors that provision found in the United States Constitution. Brennan, 529 A.2d at 638 n.7; see U.S. Const. art. I, § 10; R.I. Const. art. I, § 12. Consequently, Rhode Island courts "will rely on federal case authority in this area." Brennan, 529 A.2d at 638 n.7

the Contract Clause has been "accommodated to the inherent police power of the State 'to safeguard the vital interests of its people.'" Energy Reserves Grp., 459 U.S. at 410 (quoting Blaisdell, 290 U.S. at 434).

In that regard, the interpretation of the Contract Clause calls for a careful balance between retaining "any meaning at all" from the words of the text and allowing "the exercise of [a state's] otherwise legitimate police power." Allied Structural Steel Co. v. Spannaus, 438 U.S. 234, 242 (1978). Such balance furthers the "principle of harmonizing the constitutional prohibition with the necessary residuum of state power . . . ." City of El Paso v. Simmons, 379 U.S. 497, 508 (1965). For that reason, "state laws that impair an obligation under a contract do not necessarily give rise to a viable Contract Clause claim." Buffalo Teachers Fed'n v. Tobe, 464 F.3d 362, 368 (2d Cir. 2006) (citing U.S. Trust Co., 431 U.S. at 16).

In the context of the Contract Clause, the United States Supreme Court has distinguished a mere breach of contract from an unconstitutional impairment of a contractual obligation. See Hays v. Port of Seattle, 251 U.S. 233, 237 (1920) ("[I]t is important to note the distinction between a statute that has the effect of violating or repudiating a contract previously made by the state and one that impairs its obligation."). A distinction between these spectrums of claims has been recognized by courts despite the fact that "[t]he cases struggle to articulate the distinction." Horwitz-Matthews, Inc. v. City of Chicago, 78 F.3d 1248, 1250 (7th Cir. 1996). The difference between these claims is premised on the remedy. A discrete disparity has developed in three areas, as courts differentiate "between a mere breach of contract and a measure that defeats the promisee's 'reasonable' or 'legitimate' 'expectations,' or between a mere breach and a repudiation of the contractual obligation itself, or between a measure that leaves the promisee

with a remedy in damages for breach of contract and one that extinguishes the remedy." Id. (citations omitted).

It is settled, however, that the crux of the Court's analysis focuses on the availability of a remedy in damages for breach. See E & E Hauling, Inc. v. Forest Pres. Dist. of Du Page Cty., Ill., 613 F.2d 675, 677 (7th Cir. 1980); see also St. Paul Gaslight Co. v. City of St. Paul, 181 U.S. 142, 148–49 (1901); Cherry v. Mayor and City Council of Baltimore City, 762 F.3d 366, 371 (4th Cir. 2014); Redondo Constr. Corp. v. Izquierdo, 662 F.3d 42, 48 (1st Cir. 2011); TM Park Ave. Assocs. v. Pataki, 214 F.3d 344, 348–49 (2d Cir. 2000); Horwitz-Matthews, Inc., 78 F.3d at 1250–51. After all, "[it] would be absurd to turn every breach of contract by a state or municipality into a violation of the federal Constitution." Horwitz-Matthews, Inc., 78 F.3d at 1250; see also Crosby v. City of Gastonia, 635 F.3d 634, 642 n.7 (4th Cir. 2011). "A contract creates alternative obligations: performance or payment of damages for breach." Redondo Constr. Corp., 662 F.3d at 48 (citing Oliver Wendell Holmes, The Path of the Law, 10 Harv. L. Rev. 457, 462 (1897)). Thus, when a "state exercises legislative power in a way that eliminates the availability of a remedy or action for damages by the non-breaching party, the state has impaired the contract. In contrast, if some legislative action announces the state's refusal to perform its contractual obligation, the state has simply breached the contract." Yellow Cab Co. v. City of Chicago, 3 F. Supp. 2d 919, 922 (N.D. Ill. 1998).

Here, the Pension Ordinance and the Medicare Ordinance demonstrate the City's intent to preclude a damage remedy. See E & E Hauling, Inc., 613 F.2d at 680–81. For instance, the Ordinances begin with a statement that they apply "[n]otwithstanding any other ordinance, collective bargaining agreement, or interest arbitration award . . . ." See Ex. 84; Ex. 85 at 21. Neither Ordinance merely sets forth the City's intention not to pay Plaintiffs. Compare St. Paul

Gaslight Co., 181 U.S. at 149 (finding no impairment where the Supreme Court read the ordinance to "simply express[] the purpose of the city not in the future to pay the interest on the cost of construction of the lamp posts which were ordered to be removed"), with E & E Hauling, Inc., 613 F.2d at 680 (finding an impairment where there was "no indication that the ordinance is merely an indication that the District will no longer accept sludge and liquids while not precluding a damage remedy"). Rather, they establish revised benefit plans whereby Plaintiffs' COLAs will be reinstated and Plaintiffs will continue to receive equivalent healthcare coverage. Simple monetary damages would not provide Plaintiffs with a remedy that makes them whole. See E & E Hauling, Inc., 613 F.2d at 679 (discussing how "because the use of the ordinance precludes a damage remedy, the non-breaching party cannot be made whole"). The fact that the Medicare Ordinance was passed with authorization from the State through the Medicare Enrollment Statute further evidences that the Medicare Ordinance amounted to an impairment rather than a breach. See § 28-54-1; see also Horwitz-Matthews, Inc., 78 F.3d at 1251 (stating that "unless the city council has been delegated authority by the state to modify the law of contracts . . . there is no impairment of the obligation of the city's contracts").

In addition, the Pension Ordinance and the Medicare Ordinance provide the City with a defense to a breach of contract suit. See E & E Hauling, Inc., 613 F.2d at 679 ("Use of law normally will preclude a recovery of damages because the law will be a defense to a suit seeking damages unless it is clear the law is not to have that effect."). It is clear that the Ordinances are to have that effect. See id. In these types of public pension cases, the threshold issue of whether the state has breached or impaired a contract "would not appear to be an obstacle [to a Contract Clause claim] as plaintiffs could normally contend that they were barred from recovering damages from the State as the result of the State's amendment of their pension plan." Paul M.

Secunda, Constitutional Contracts Clause Challenges in Public Pension Litigation, 28 Hofstra Lab. & Emp. L.J. 263 (2011). "A resort to the use of the law in such a circumstance must be considered to raise a claim under the contract clause." E & E Hauling, Inc., 613 F.2d at 680–81.

Therefore, the claims presented to this Court for consideration concern the issue of the unconstitutional impairment of contract under the Contract Clause, not breach of contract. Accordingly, Plaintiffs' breach of contract claims are denied and dismissed.

B

Contract Clause

In determining whether a state law unconstitutionally impairs the obligations of a contract, this Court is called upon to conduct a three-prong analysis. See Energy Reserves Grp., 459 U.S. at 411–13; see also In re Advisory Op. to the Governor (DEPCO), 593 A.2d 943, 949 (R.I. 1991). This undertaking requires the following:

> "A court first must determine whether a contract exists. If a contract exists, the court then must determine whether the modification results in an impairment of that contract and, if so, whether this impairment can be characterized as substantial. Finally, if it is determined that the impairment is substantial, the court then must inquire whether the impairment, nonetheless, is reasonable and necessary to fulfill an important public purpose." Nonnenmacher v. City of Warwick, 722 A.2d 1199, 1202 (R.I. 1999) (internal citations omitted); see also Retired Adjunct Professors of R.I. v. Almond, 690 A.2d 1342 (R.I. 1997) (applying the same three-prong analysis); R.I. Depositors Econ. Prot. Corp. v. Brown, 659 A.2d 95, 106 (R.I. 1995).

Plaintiffs bear the burden of production in establishing beyond a reasonable doubt that the challenged ordinances constitute a substantial impairment of a contract. See Retired Adjunct Professors, 690 A.2d at 1344–45; see also Parella, 899 A.2d at 1233; Nonnenmacher, 722 A.2d at 1203–04. If Plaintiffs fail to meet their burden on either of the first two prongs, the case comes to an end. Otherwise, the burden of production shifts to the City to provide sufficient

credible evidence that the Ordinances were reasonable and necessary to fulfill a "significant and legitimate . . . purpose[.]" Toledo Area AFL-CIO Council v. Pizza, 154 F.3d 307, 323 (6th Cir. 1998); see also Energy Reserves Grp., 459 U.S. at 411. Thereafter, Plaintiffs may rebut the City's evidence on the third prong, but again it must do so beyond a reasonable doubt. See Donohue v. Mangano, 886 F. Supp. 2d 126, 160 (E.D.N.Y. 2012) ("A lack of reasonableness or necessity is an element of a Contract Clause claim which the Plaintiffs bear the burden of establishing.") (citations omitted). Although the burden of production shifts, Plaintiffs bear the burden of persuasion throughout. See Dowd v. Rayner, 655 A.2d 679, 681 (R.I. 1995) ("[T]he party challenging the constitutional validity of a statute carries the burden of persuading the court beyond a reasonable doubt . . . ."); Parella, 899 A.2d at 1232–33 ("[E]very statute enacted by the Legislature is presumed constitutional and will not be invalidated by this Court unless the party challenging the statute proves beyond a reasonable doubt that the legislative enactment is unconstitutional.") (emphasis in original).

First, the Court must determine whether a contract exists between the parties. See Nonnenmacher, 722 A.2d at 1202; see also Baltimore Teachers Union v. Mayor and City Council of Baltimore, 6 F.3d 1012, 1015 (4th Cir. 1993). If there is no contractual relationship, there cannot have been an unconstitutional impairment of a contract in violation of the Contract Clause. This part of the analysis "goes not just to whether there is any contractual relationship between the parties, but to whether there is a 'contractual agreement regarding the specific . . . terms allegedly at issue.'" Cycle City, Ltd. v. Harley-Davidson Motor Co., 81 F. Supp. 3d 993, 1004 (D. Haw. 2014) (quoting Gen. Motors Corp. v. Romein, 503 U.S. 181, 187 (1992)). Plaintiffs must prove the existence of a contractual obligation beyond a reasonable doubt. See Dowd, 655 A.2d at 681.

However, even if a contract exists, the Contract Clause is not a bar to state legislation unless the impairment of the City's contractual obligations is sufficiently substantial. See Energy Reserves Grp., 459 U.S. at 411; Nonnenmacher, 722 A.2d at 1202. Without setting forth specific guideposts, the United States Supreme Court has indicated that not all contractual impairments are substantial for Contract Clause purposes. For instance, technical impairments are unlikely substantial. See Spannaus, 438 U.S. at 245 ("Minimal alteration of contractual obligations may end the inquiry at its first stage."); see also U.S. Trust Co., 431 U.S. at 21 ("[A] finding that there has been a technical impairment is merely a preliminary step in resolving the more difficult question whether that impairment is permitted under the Constitution."). Yet, "[t]otal destruction of contractual expectations is not necessary for a finding of substantial impairment." Energy Reserves Grp., 459 U.S. at 411; see also U.S. Trust Co., 431 U.S. at 26. The Fourth Circuit has noted that "[t]he ground between these spectral ends, though, has yet to be charted with any precision." Baltimore Teachers Union, 6 F.3d at 1017.

It is clear, though, that two key factors are to be considered in this analysis: (1) whether the impaired right is one that "substantially induced" the parties to contract in the first place, City of El Paso, 379 U.S. at 514, and (2) whether the abridged right is one that was reasonably and especially relied upon by the complaining party. Spannaus, 438 U.S. at 246. Either factor may be independently sufficient for a finding of substantial impairment. See id. at 245–46; Buffalo Teachers Fed'n, 464 F.3d at 368 (finding substantial impairment based on reasonable reliance alone).

To constitute a substantial impairment with respect to inducement, the abridged right must have been a central undertaking or a primary consideration. City of El Paso, 379 U.S. at 514. Only rights that are "important," "basic," or "central" to the underlying contract are

sufficient to find substantial impairment based on inducement. See U.S. Trust Co., 431 U.S. at 19; see also Spannaus, 438 U.S. at 246; Baltimore Teachers Union, 6 F.3d at 1018; City of Charleston v. Pub. Serv. Comm'n of W. Va., 57 F.3d 385, 394 (4th Cir. 1995). Reliance, meanwhile, requires that the complaining party "relied heavily, and reasonably, on th[e] legitimate contractual expectation . . . ." Spannaus, 438 U.S. at 246; see also U.S. Trust Co., 431 U.S. at 31 (quoting City of El Paso, 379 U.S. at 515) (noting that in City of El Paso, a statute impairing contracts was upheld where it "'restrict[ed] a party to those gains reasonably to be expected from the contract'"). In that sense, a plaintiff must demonstrate reasonable and especial reliance on the abridged contractual provision to prove substantial impairment based on disruption of contractual expectations. See Baltimore Teachers Union, 6 F.3d at 1018; see also Buffalo Teachers Fed'n, 464 F.3d at 368 (discussing that "[t]he promise to pay a sum certain constitutes not only the primary inducement for employees to enter into a labor contract, but also the central provision upon which it can be said they reasonably rely[,]" and therefore, the court "may safely state the wage freeze so disrupts the reasonable expectations of Buffalo's . . . workers that the freeze substantially impairs the workers' contracts with the City").

Certainly, "at the very least, where the contract right or obligation impaired was one that induced the parties to enter into the contract and upon the continued existence of which they have especially relied, the impairment must be considered 'substantial' for purposes of the Contract Clause." Baltimore Teachers Union, 6 F.3d at 1018 (emphasis in original). Plaintiffs must prove these factors beyond a reasonable doubt. See Dowd, 655 A.2d at 681; Parella, 899 A.2d at 1232–33.

Yet, even if the Court finds the Ordinances to constitute substantial impairments of Plaintiffs' contracts with the City, they remain constitutionally valid if the City produces

sufficient credible evidence that modifying the contracts was reasonable and necessary in order to achieve a significant and legitimate purpose. See Buffalo Teachers Fed'n, 464 F.3d at 368; Nonnenmacher, 722 A.2d at 1202. Plaintiffs may rebut the City's credible evidence by establishing beyond a reasonable doubt that there was no significant and legitimate public purpose behind the City modifying their contracts. See Donohue, 886 F. Supp. 2d at 160.

A significant and legitimate public purpose is "one 'aimed at remedying an important general social or economic problem rather than providing a benefit to special interests.'" Buffalo Teachers Fed'n, 464 F.3d at 368 (quoting Sanitation and Recycling Indus. v. City of N.Y., 107 F.3d 985, 993 (2d Cir. 1997)). The purpose may not, on the other hand, be one "for the mere advantage of particular individuals . . . ." Blaisdell, 290 U.S. at 445. Furthermore, "the purpose may not be simply the financial benefit of the sovereign[,]" notwithstanding the fact that "addressing a fiscal emergency is a legitimate public interest." Buffalo Teachers Fed'n, 464 F.3d at 368, 369. "Although economic concerns can give rise to the City's legitimate use of the police power, such concerns must be related to 'unprecedented emergencies . . . .'" Am. Fed'n of State, Cty. and Mun. Emps. v. City of Benton, Ark., 513 F.3d 874, 882 (8th Cir. 2008) (quoting Spannaus, 438 U.S. at 242). In that sense, "[e]ven big, totally unpredictable impairments of the obligation of contracts can survive challenge under the contracts clause if they are responsive to economic emergencies . . . ." Chrysler Corp. v. Kolosso Auto Sales, Inc., 148 F.3d 892, 896 (7th Cir. 1998) (citing Energy Reserves Grp., 459 U.S. at 411–13; Blaisdell, 290 U.S. at 425–28).

The Court's analysis continues to ensure that the Pension Ordinance is "specifically tailored to 'meet the societal ill it is supposedly designed to ameliorate.'" Kent v. N.Y., No. 1:11-CV-1533, 2012 WL 6024998, at *21 (N.D.N.Y. Dec. 4, 2012) (quoting Spannaus, 438 U.S.

at 243). In essence, this inquiry "reads like a form of intermediate scrutiny." Jack M. Beermann, The Public Pension Crisis, 70 Wash. & Lee L. Rev. 3, 48 (2013). Analyzing whether the Ordinances were reasonable and necessary "involves a consideration of whether the adjustment of the rights and responsibilities of contracting parties is based upon reasonable conditions and is of a character appropriate to the public purpose justifying the legislation's adoption." Id.

Crucial to this "reasonable and necessary" analysis is the level of judicial deference afforded to the City in establishing that the Ordinances were, indeed, reasonable and necessary. See Buffalo Teachers Fed'n, 464 F.3d at 369. When a state law impairs a private contract, the state is afforded substantial deference. See Baltimore Teachers Union, 6 F.3d at 1018; see also Nonnenmacher, 722 A.2d at 1202 (citing N. Pac. Ry. Co. v. Minn. ex rel. City of Duluth, 208 U.S. 583, 590 (1908)) (stating that although the Contract Clause speaks only of impairment of a contract by a state, it has been interpreted to apply to municipalities as well). Conversely, impairment of a public contract is scrutinized by a heightened level of judicial inquiry. See id. Of course, "complete deference to a legislative assessment of reasonableness and necessity is not appropriate because the State's self-interest is at stake." U.S. Trust Co., 431 U.S. at 26. If judicial inquiry were to afford great deference to a state on the reasonableness and necessity of impairing a public contract, the Contract Clause would become utterly toothless. See Spannaus, 438 U.S. at 242 ("If the Contract Clause is to retain any meaning at all, however, it must be understood to impose some limits upon the power of a State to abridge existing contractual relationships . . . .").

As this case involves public contracts, the Court will afford the City less deference. However, "less deference does not imply no deference." Buffalo Teachers Fed'n, 464 F.3d at 370. This Court is not required "to reexamine all of the factors underlying the legislation at issue

and to make a de novo determination whether another alternative would have constituted a better statutory solution to a given problem." Id. Rather, the Court will use "less deference scrutiny" in evaluating the City's position that the Ordinances were reasonable and necessary. See id. at 371 (employing "less deference scrutiny" to assess whether the state's impairment of the contract was reasonable and necessary). To prove that the Ordinances were reasonable and necessary, the City must produce sufficient credible evidence of three factors: that it "did not (1) 'consider impairing the . . . contracts on par with other policy alternatives' or (2) 'impose a drastic impairment when an evident and more moderate course would serve its purpose equally well,' nor (3) act unreasonably 'in light of the surrounding circumstances.'" Id. (quoting U.S. Trust Co., 431 U.S. at 30–31).

As a means of determining the reasonableness of a particular government action, it must have been taken "only after other alternatives had been considered and tried." Id. Such efforts must be genuine and not simply for "political expediency." Ass'n of Surrogates & Supreme Court Reporters v. N.Y., 940 F.2d 766, 773 (2d Cir. 1991). However, "it is not the province of this Court to substitute its judgement for that of . . . a legislative body . . . ." Sal Tinnerello & Sons, Inc. v. Town of Stonington, 141 F.3d 46, 54 (2d Cir. 1998); see also Local Div. 589, Amalgamated Transit Union v. Mass., 666 F.2d 618, 643 (1st Cir. 1981) ("Answering these sorts of [policy] questions, and thereby determining the 'reasonableness and necessity' of a particular statute is a task far better suited to legislators than to judges.").

The City's chosen course of action is further examined to determine whether a more moderate course was available. Buffalo Teachers Fed'n, 464 F.3d at 371. In analyzing this factor, courts have looked to whether the government action was narrowly tailored such that it imposed no greater impairment than necessary to remedy the problem, whether it impaired only

part of the contractual obligation, or whether it was less drastic than at least one alternative. See Baltimore Teachers Union, 6 F.3d at 1020.

Finally, in determining whether the Ordinances were reasonable and necessary, the Court must consider whether the City acted reasonably in light of surrounding circumstances. See id. (quoting U.S. Trust Co., 431 U.S. at 30–31). The Supreme Court has noted that "[t]he extent of impairment is certainly a relevant factor in determining its reasonableness." U.S. Trust Co., 431 U.S. at 27. Additionally, "the existence of an emergency and the limited duration of a relief measure are factors to be assessed in determining the reasonableness of an impairment . . . ." Id. at 22 n.19; see also Energy Reserves Grp., 459 U.S. at 418–19 (finding contractual impairment justified where regulation is temporary). Courts have also found impairments reasonable if they operate prospectively. See Buffalo Teachers Fed'n, 464 F.3d at 371–72.

1

Pension Ordinance

a

Existence of a Contractual Obligation

The Court must first determine whether a contractual agreement exists between the City and Plaintiffs with respect to the annual COLA. See Baltimore Teachers Union, 6 F.3d at 1015; Nonnenmacher, 722 A.2d at 1202; see also Cycle City, Ltd., 81 F. Supp. 3d at 1004. Here, Plaintiffs in Categories A and B retired on or before December 18, 1991 pursuant to the terms of the 1991 Consent Decree.[22] See Ex. 271. In Mansolillo I, our Supreme Court considered the

[22] In C.A. No. PC-90-2119, certain taxpayers and the City filed suit against the Employee Retirement Board (board) and the treasurer seeking a declaration concerning the legality of certain board actions taken at a board meeting wherein the board voted to approve certain pension and retirement benefits for City employees, including various COLAs. Mansolillo v. Emp. Ret. Bd. of Providence, 668 A.2d 313, 314 (R.I. 1995) (Mansolillo I); see also City of

validity and finality of the very same 1991 Consent Decree that Plaintiffs here claim as the contractual basis of their right to COLAs. 668 A.2d at 315–17. The Court answered in the

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Providence v. Emp. Ret. Bd. of Providence, 749 A.2d 1088, 1089–90 (R.I. 2000) (Mansolillo II). Following a bench trial, the trial justice entered a written decision finding the board's actions to be valid and binding upon the City and denied the plaintiffs' request for injunctive relief. Mansolillo I, 668 A.2d at 314. The trial justice ordered counsel for the parties to prepare an appropriate judgment for entry, consistent with the findings contained in her decision, but they apparently agreed not to do so. Id. Instead, counsel requested and were granted time to negotiate a final settlement of the case that would modify some of the City's financial obligations resulting from the Court's decision. Id. Negotiations among counsel, the City mayor, and the board eventually resulted in the instant 1991 Consent Decree entered by the trial justice on December 18, 1991. See id. It provides, in pertinent part, as follows:

> "Effective January 1, 1992, all retired Class B employees of the City of Providence and all beneficiaries of such employees who receive any service or any ordinary disability retirement allowance, or any accidental disability retirement allowance pursuant to the provisions of this act, as amended, shall on the first day of January receive a cost of living retirement adjustment, in addition to the retirement allowance, in an amount equal to five (5%) percent of the retirement allowance, compounded. In each succeeding year thereafter during the month of January, the retirement allowance shall be increased an additional five (5%) percent of the retirement allowance, compounded, to be continued during the lifetime of said retirement employee or beneficiary. For the purpose of said computation, credit shall be given for a full calendar year, regardless of the effective date of such service retirement allowance.
>
> "Effective January 1, 1994, all retired Class B employees of the City of Providence and all beneficiaries of such employees who retired on or after January 1, 1990 and who receive any service or any ordinary disability retirement allowance, or any accidental disability retirement allowance pursuant to the provisions of this act, as amended, shall on the first day of January receive a cost of living retirement adjustment, in addition to the retirement allowance, in an amount equal to six (6%) percent of the retirement allowance, compounded. In each succeeding year thereafter during the month of January, the retirement allowance shall be increased an additional six (6%) percent of the retirement allowance, compounded, to be continued during the lifetime of said retirement employee or beneficiary. For the purpose of said computation, credit shall be given for a full calendar year, regardless of the effective date of such service retirement allowance." See Ex. 271 at 3–4.

affirmative the question of "[w]hether the Consent Decree entered December 18, 1991 is final and binding so that it cannot be vacated, modified, negated, amended and/or affected without the mutual consent of the parties thereto and/or those affected thereby."[23] Id. at 315, 317. The Court reasoned that it "has at times likened a consent decree, such as [this one], as being 'in the nature of a solemn contract or agreement of the parties made under the sanction of the court.'" Id. at 316 (quoting Durfee v. Ocean State Steel, Inc., 636 A.2d 698, 703 (R.I. 1994)). Therefore, this Court finds that Category A and B Retirees have proven beyond a reasonable doubt the existence of a contractual obligation.[24]

In addition, Plaintiffs in Category C established through credible testimony beyond a reasonable doubt that they made contributions to the City pension system through payroll deductions and that they all retired under various CBAs or IAAs that provided 3% compounded COLAs. See Ex. 148 at 63, 70, 71 (2001–2002, 2002–2003, 2003–2004 Fire IAA); Ex. 194 at 6–7, 52–56, 93–95 (2005–2006 Fire IAA); Ex. 195 at 6–7, 55–58, 93 (2006–2007 Fire IAA); Ex. 149 at 71–73, Art. XXV (2007–2010 Fire CBA); Ex. 151 at 69–70, Art. XXV (2010–2013 Tentative Fire CBA); Ex. 150 at Art. XXV (2011–2013 Fire CBA); Ex. 169 at 83, Art. XXI (1996–1999 Police CBA); Ex. 170 (1999–2001 Police CBA); Ex. 171 at 9, Art. XXI (2001–2004 Police CBA); Ex. 186 at 5 (2006–2007 Police IAA); Ex. 174 at 5–6 (2007–2010 Police CBA).

Clearly, CBAs are tantamount to contracts. See Esmark, Inc. v. N.L.R.B., 887 F.2d 739, 751–52 (7th Cir. 1989) (stating that although a labor contract has no greater binding effect than

[23] Later, in Mansolillo II, the Court held that the 1991 Consent Decree was valid and binding on the City, but covered only those employees who had retired on or before December 18, 1991. 749 A.2d at 1100.

[24] In Category A, Mr. Bergeron, Mr. Cardi, Mr. K. Maroney, Mr. Penta, and Mr. Zompa are entitled to 6% compounded COLAs; Mr. Jenkins, Mr. Loiselle, Mr. E. Maroney, and Mr. Pesaturo are entitled to 5% compounded COLAs. See Ex. 271 at 3–4. In Category B, Mr. Andrews, Mr. Balestra, Mr. Gill, and Ms. Martino are entitled to 6% compounded COLAs; Ms. Connell is entitled to a 5% compounded COLA. See id.

any other type of contract, neither should it be easier to avoid than any other contractual obligations); 20 Williston on Contracts § 55:3 (4th ed. 2016). Here, the plain and unambiguous language of the CBAs confers 3% compounded COLAs to the Retirees. See Local 369 Util. Workers v. NSTAR Elec. and Gas Corp., 317 F. Supp. 2d 69, 75–76 (D. Mass. 2004) (quoting Vasseur v. Halliburton Co., 950 F.2d 1002, 1006 (5th Cir. 1992)) ("It is certainly possible for an employer to 'oblige itself contractually to maintain benefits at a certain level . . . .'"). Accordingly, the City's impairment of its contractual obligation to pay the Category C Plaintiffs their COLAs is subject to Contract Clause scrutiny. See Buffalo Teachers Fed'n, 464 F.3d at 368 (analyzing impairment of union labor contracts under the Contract Clause).

Likewise, Category D Retirees proved through credible testimony beyond a reasonable doubt that, after promotions to positions outside the collective bargaining unit, they continued making contributions to the City pension system through payroll deductions. See Trial Tr. 4:24–5:16, Apr. 5, 2016 (Morning Session) (Mr. D. Simoneau); Trial Tr. 59:8–60:4, Apr. 6, 2016 (Morning Session) (Mr. Costa); Trial Tr. 105:18–24, Apr. 11, 2016 (Morning Session) (Mr. Cochrane); Trial Tr. 13:22–14:5, 14:8–17, Apr. 11, 2016 (Afternoon Session) (Mr. Cochrane). There were no written contracts associated with such promotions. Plaintiffs testified to their understanding that elevation to a higher rank came with a pay raise but no change in—or especially loss of—retirement benefits. See Trial Tr. 6:7–14, Apr. 5, 2016 (Morning Session) (Mr. D. Simoneau); Trial Tr. 62:25–64:14, 70:13–22, Apr. 6, 2016 (Morning Session) (Mr. Costa); Trial Tr. 100:7–101:8, Apr. 11, 2016 (Morning Session) (Mr. Cochrane); Trial Tr. 125:3–126:2, Apr. 14, 2016 (Morning Session) (Mr. Celeberto). This understanding was based on their observations of the experiences of coworkers who had previously been promoted out of the bargaining unit, as well as discussions with administrative personnel in the City pension

office. Plaintiffs' understanding was also based upon loss or receipt of benefits simultaneous to that of the bargaining unit. In addition, COLAs would continue to be received upon retirement. See Trial Tr. 6:15–7:13, 8:1–16, 10:17–11:24, Apr. 5, 2016 (Morning Session) (Mr. D. Simoneau); Trial Tr. 63:7–15, 66:7–15, 69:13–70:1, 70:23–71:13, Apr. 6, 2016 (Morning Session) (Mr. Costa); Trial Tr. 97:15–98:17, 101:14–22, 102:9–103:4, 103:15–104:10, 104:18–105:11, Apr. 11, 2016 (Morning Session) (Mr. Cochrane); Trial Tr. 125:3–127:3, 131:5–7, 131:11–13, Apr. 14, 2016 (Morning Session) (Mr. Celeberto).

It is well settled that an implied-in-fact contract must meet the offer, acceptance, and consideration requirements of all contracts. See generally 17A Am. Jur. 2d Contracts § 16. "An implied-in-fact contract 'is a form of express contract wherein the elements of the contract are found in and determined from the relations of, and communications between the parties, rather than from a single clearly expressed written document.'" Haviland v. Simmons, 45 A.3d 1246, 1257 (R.I. 2012) (quoting Marshall Contractors, Inc. v. Brown Univ., 692 A.2d 665, 669 (R.I. 1997)). Thus, the general principles of contract law determine if the circumstances and behavior of the parties evidence the essential elements of contractual formation. Our Supreme Court "has established that for parties to form a valid contract, each must have the intent to be bound by the terms of the agreement." Weaver v. Am. Power Conversion Corp., 863 A.2d 193, 198 (R.I. 2004).

The Court finds that the necessary offer, acceptance, and consideration to form an implied-in-fact contract are present here in the dealings between the Category D Retirees and the City. As members of the bargaining units, these Plaintiffs were privy to the relevant CBAs, and their promotions certainly did not discharge the City's obligations to them. Rather, the promotions were offers by the City of a pay increase in exchange for, or in consideration of,

increased responsibilities, while still maintaining the same level of retirement benefits. After all, "the promise of a pension is part of the compensation package that employers dangle to attract and retain qualified employees." McGrath v. R.I. Ret. Bd., 88 F.3d 12, 16–17 (1st Cir. 1996). Plaintiffs certainly accepted by performing their end of the bargain—namely, continued and faithful service and continued contributions to the retirement system through payroll deductions. See Matter of Almeida, 611 A.2d 1375, 1385 (R.I. 1992) (alteration in original) (quoting Steinmann v. State Dep't of Treasury, 562 A.2d 791, 795 (N.J. 1989)) (stating that a pension "'[acts] as an inducement to continued and faithful service'"). Therefore, Plaintiffs in Category D have established through credible testimony beyond a reasonable doubt the existence of a contractual obligation.

Retirees in Category E also have proven beyond a reasonable doubt the existence of a contractual obligation. These Plaintiffs assert the fact that they succeeded in previous litigation against the City, obtaining a permanent injunction whereby the City was enjoined from terminating their COLAs. See Ex. 272. In response, the City argues that Rule 60 of the Superior Court Rules of Civil Procedure allows the Court to vacate those prior judgments given that significant changed circumstances have rendered continued enforcement detrimental to the public interest. See Super. R. Civ. P. 60(b)(5) (allowing relief from a final judgment when "it is no longer equitable that the judgment should have prospective application"); Horne v. Flores, 557 U.S. 433, 447 (2009) (discussing that the federal counterpart "provides a means by which a party can ask a court to modify or vacate a judgment or order if 'a significant change either in factual conditions or in law' renders continued enforcement 'detrimental to the public interest'") (quoting Rufo v. Inmates of Suffolk Cty. Jail, 502 U.S. 367, 384 (1992)). However, this line of inquiry is neither necessary nor worthwhile. The existence of the valid CBAs underlying those

judgments is determinative. The plain and unambiguous language of the 1990–1992 Fire CBA and the 1992–1993 Police CBA confers 5% compounded COLAs to Plaintiffs in Category E. See Ex. 144 at 46 (Article XXIV); Ex. 166 at 67 (Article XIX) (incorporating Section 9(17) of Ordinance 1991-5, see Ex. 219 at 28); see also Ex. 272. As was the case in Category C, the City's impairment of its contractual obligation to pay the Category E Retirees their COLAs pursuant to the CBAs is subject to Contract Clause scrutiny.

Plaintiffs in Category F previously were plaintiffs in Arena. See 919 A.2d at 386–87. After our Supreme Court in Cianci invalidated the 1993–1995 Police CBA and the 1992–1995 Fire CBA under which these Plaintiffs retired, see 650 A.2d at 503, in Arena, the Court held that they had a vested right upon retiring to receive the 5% COLAs provided by Ordinance 1991-5, §§ 9(17), 9(18).[25] See 919 A.2d at 382–83, 395; see also Ex. 219 at 28a. Nevertheless, the Court

[25] Ordinance 1991-5 provides, in relevant part, as follows:

> "(17) Additional Benefits effective as of July 1, 1989, Police Department:
>
> "(a) In lieu of the current 3% non-compounded cost-of-living adjustment, a 3 1/2% compounded cost-of-living adjustment for members of the Police Department of the City who retire on or after July 1, 1989, a 4 1/2% compounded cost-of-living adjustment for members of the Police Department of the City who retire on or after July 1, 1990, and a 5% compounded cost-of-living adjustment for members of the Police Department of the City who retire on or after June 30, 1991, and
>
> "(b) Effective July 1, 1989, the percentage contribution required of members of the Police Department of the City shall be increased by three-quarters of 1% and effective July 1, 1990, an additional three-quarters of 1%.
>
> "(18) Additional Benefits effective as of July 1, 1990, Fire Department:
>
> "(a) In lieu of the current 3% non-compounded cost-of-living adjustment, a 4% compounded cost-of-living adjustment for members of the Fire Department of the City who retire on or after July 1, 1990, and a 5% compounded cost-of-living adjustment for

did not go so far as to hold that the Ordinance created the requisite contractual relationship between Plaintiffs and the City to sustain a Contract Clause challenge. Mere entitlement is insufficient.

Defendant cites the unmistakability doctrine in maintaining that Ordinance 1991-5 does not create a contractual relationship between Plaintiffs and the City. Under that doctrine, legislation is presumed not to create private contractual rights absent some clear and unequivocal indication that the legislature, in enacting it, intended to bind itself contractually. See U.S. v. Winstar Corp., 518 U.S. 839, 871–75 (1996); Me. Ass'n of Retirees v. Bd. of Trs. of Me. Pub. Emps. Ret. Sys., 758 F.3d 23, 29–30 (1st Cir. 2014). This requirement "serve[s] the dual purposes of limiting contractual incursions on a State's sovereign powers and of avoiding difficult constitutional questions about the extent of state authority to limit the subsequent exercise of legislative power." Winstar Corp., 518 U.S. at 875; see also Nat'l R.R. Passenger Corp. v. Atchison, Topeka & Santa Fe Ry. Co., 470 U.S. 451, 466 (1985) ("[T]o construe laws as contracts when the obligation is not clearly and unequivocally expressed would be to limit drastically the essential powers of a legislative body."). While our Supreme Court has not explicitly referenced the unmistakability doctrine, it has adopted its reasoning: "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.'"

> members of the Fire Department of the City who retire on or after July 1, 1991, and
>
> "(b) Effective July 1, 1990, the percentage contribution required of members of the Fire Department of the City shall be increased by three-quarters of 1%, and effective July 1, 1991, an additional three-quarters of 1%." Id. at §§ 9(17), 9(18); see Ex. 219 at 28a.

Brennan, 529 A.2d at 638 (alteration in original) (quoting Dodge v. Bd. of Educ. of Chicago, 302 US. 74, 79 (1937)). "A statute will be found to have created contractual obligations 'when the language and circumstances evince a legislative intent to create private rights of a contractual nature enforceable against the State.'" Me. Ass'n of Retirees, 758 F.3d at 29 (quoting U.S. Trust Co., 431 U.S. at 17 n.14). Accordingly, this Court will examine the language of Ordinance 1991-5 and its surrounding circumstances to determine whether an enforceable contract was created thereby between Category F Retirees and the City.

Ordinance 1991-5 does not use the language of contract, whether it be expressly authorizing a contract or expressly defining benefits as contractual. See Me. Ass'n of Retirees, 758 F.3d at 29; Parella v. Ret. Bd. of R.I. Emps.' Ret. Sys., 173 F.3d 46, 60 (1st. Cir. 1999). Moreover, the Ordinance does not expressly prohibit future amendments or enactments that would reduce or eliminate the COLAs granted by the Ordinance. See Me. Ass'n of Retirees, 758 F.3d at 29; Parella, 173 F.3d at 60. On the other hand, the Ordinance does not explicitly reserve the right to alter, amend, or repeal the COLA provisions, so it does not demonstrate the opposite intent either. See Me. Ass'n of Retirees, 758 F.3d at 30. "'But [the] analysis cannot end with the bare language of the statute, since a clear and unequivocal intent to contract can also be demonstrated by circumstances.'" Id. at 29–30 (alteration in original) (quoting Parella, 173 F.3d at 61). Thus, this Court turns to the surrounding circumstances and applies Supreme Court precedent to determine if Plaintiffs can overcome the presumption that Ordinance 1991-5 does not give rise to contractual rights.

Our Supreme Court has adopted what it referred to as a "middle-ground approach" between the gratuity model and the pure contract model of public pension plans. Almeida, 611 A.2d at 1385; compare Ballurio v. Castellini, 102 A.2d 662, 666 (N.J. Super. 1954) (describing

public pension plans as gratuities of the state, "a bounty springing from the appreciation and graciousness of the sovereign" that it can freely and unilaterally alter or revoke), with Yeazell v. Copins, 402 P.2d 541, 546 (Ariz. 1965) (holding that a police officer's right to his pension benefits was part of the contract between the officer and the state, and accordingly, the state could not make unilateral modifications to the contract). This approach considers a pension as comprising "elements of both the deferred compensation and the contract theories." Almeida, 611 A.2d at 1386. On the one hand, "[p]urely contractual pension rights, such as employee contributions, vest immediately once the employment contract is signed and employment begins." Arena, 919 A.2d at 392 (citing Almeida, 611 A.2d at 1385). "Alternatively, benefits that are deemed deferred compensation vest when the employee completes his or her years of eligibility." Id. Therefore, under the middle-ground approach, our Supreme Court has held that "[t]he right to deferred compensation vests upon meeting the terms of employment, but that vesting is subject to divestment because it is conditioned on continued honorable and faithful service." Almeida, 611 A.2d at 1386; see also Arena, 919 A.2d at 393 ("Therefore, in Rhode Island, pension benefits vest once an employee honorably and faithfully meets the applicable pension statute's requirements."). Most importantly, employees have contractual rights to their pensions under either theory, and both are theories of implied contract. Nat'l Educ. Ass'n–R.I. v. Ret. Bd. of R.I. Emps.' Ret. Sys., 890 F. Supp. 1143, 1156 (D.R.I. 1995); see also Almeida, 611 A.2d at 1385 (recognizing that while "[t]he right to [a pension as] deferred compensation . . . vest[s] when the employee completes the years of eligibility . . . [c]ontract rights may attach upon entering public employment and service") (emphasis added).

Consequently, this Court will utilize implied contract theories to determine whether Category F Plaintiffs have a protected contractual right to their pension benefits in order to

support a Contract Clause claim. As previously stated, it is well settled that an implied-in-fact contract must meet the offer, acceptance, and consideration requirements of all contracts. See generally 17A Am. Jur. 2d Contracts § 16. The general principles of contract law determine if the circumstances and behavior of the parties meet these essential elements of a contractual relationship.

First of all, the circumstances of Ordinance 1991-5 and the relationship between the City and Retirees—that of an employer and its employees—weigh in favor of finding an implied contract. See Nat'l Educ. Ass'n–R.I. v. Ret. Bd. of R.I. Emps.' Ret. Sys., 172 F.3d 22, 28 (1st Cir. 1999) ("The existence of an employer-employee relationship does weigh in favor of finding an implied contract[.]"); Pellegrino v. R.I. Ethics Comm'n, 788 A.2d 1119, 1125 (R.I. 2002) (holding that when the state "was acting 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'") (alterations in original) (citations omitted). In discerning whether the City, through the Ordinance, made an offer, the Court must inquire whether the City showed a "willingness to enter into a bargain." See Restatement (Second) Contracts § 24. The COLAs provided for in Ordinance 1991-5 are part of the overall compensation package that the City, as an employer, "dangle[d] to attract and retain qualified employees." See McGrath, 88 F.3d at 17. Undoubtedly, Ordinance 1991-5 constituted an offer to Plaintiffs to enter into a bargain, and that they did. COLAs such as these, and pension benefits in general, have been considered "'compensation for services previously rendered and . . . an inducement to continued and faithful service.'" See Almeida, 611 A.2d at 1385 (quoting Steinmann, 562 A.2d at 795). Through Ordinance 1991-5, the City offered COLAs in exchange for Plaintiffs' continued employment. 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 . . . ."). Indeed, the First Circuit previously stated, "a pension plan represents an implied-in-fact unilateral contract" in the context of both "state and municipal pension plans." McGrath, 88 F.3d at 17. Moreover, as members of the collective bargaining unit, Plaintiffs contributed money to the pension plan that, in addition to their continued service, was given in exchange for the City's promise to provide COLAs, among other benefits. Accordingly, the circumstances surrounding Plaintiffs' membership in the bargaining unit satisfied the consideration, or bargained-for exchange, requirement of contracts.

Finally, as our Supreme Court already held, Plaintiffs had a vested interest upon retiring to receive the 5% COLAs provided by Ordinance 1991-5, §§ 9(17), 9(18), rendering their implied-in-fact unilateral contract with the City enforceable. Arena, 919 A.2d at 395. Thus, this Court finds that Retirees in Category D have established beyond a reasonable doubt the existence of a contractual obligation and can maintain a Contract Clause challenge against the City.

Next, Plaintiffs in Categories G, H, I, J, and K have demonstrated beyond a reasonable doubt that they entered into settlement agreements with the City. These Plaintiffs entered into the settlement agreements in the previous lawsuits that sought to enforce their COLA rights. See Exs. 203 (Mr. Thomas), 204 (Mr. L. Simoneau), 205 (Mr. Robideau), 206 (Mr. Farmer), 207 (Mr. Roy), 208 (Mr. Chin), 209 (Ms. K. Simoneau), 210 (Mr. S. Day), 211 (Mr. Battista), and 325 (Ms. D'Agostino). Nine of the ten settlement agreements confer upon Retirees a 3% compounded COLA going forward and recalculated the pension amounts as though the 3% compounded COLAs had been paid beginning in the January immediately following the first anniversary of Plaintiffs' retirements. See Exs. 204, 205, 206, 207, 208, 209, 210, 211, and 325

at ¶¶ 3, 4. In the remaining settlement agreement, Mr. Thomas received a prospective 5% compounded COLA, as well as a recalculation dating back to the date of his retirement and reimbursement for part of that period. See Ex. 203 at ¶¶ 1–6. In exchange, Plaintiffs agreed to release their claims against the City and dismiss their respective lawsuits with prejudice. See Exs. 204, 205, 206, 207, 208, 209, 210, 211, and 325 at ¶ 1; Ex. 203 at ¶¶ 7, 8.

It is well settled that "[o]ur [Supreme Court's] policy is always to encourage settlement." Homar, Inc. v. N. Farm Assocs., 445 A.2d 288, 290 (R.I. 1982). As such, "[s]ettlement of a disputed liability is as conclusive of the parties' rights as is a judgment that terminates litigation between them." Id. Rhode Island law recognizes the general rule "'that a release or a contract of settlement of a disputed claim when timely pleaded is a bar to an action on such claim . . . .'" Lamoureaux v. Merrimack Mut. Fire Ins. Co., 751 A.2d 1290, 1293 (R.I. 2000) (quoting Pelletier v. Phoenix Mut. Life Ins. Co., 49 R.I. 135, 136, 141 A. 79, 80 (1928)). "Such a proposition also finds support in our well-settled rules of accord and satisfaction, wherein '[a]n agreement between two parties to give and accept something in satisfaction of a right of action which one has against the other, which when performed is a bar to all actions.'" Id. (quoting Kottis v. Cerilli, 612 A.2d 661, 664 (R.I. 1992)). Significantly, the Defendant does not dispute the existence of contracts between the City and these Plaintiffs. After all, with such a binding agreement in place, the City "cannot affirm the release as valid and operative so far as it is for [the City's] benefit, and disaffirm that part which is beneficial to the [Plaintiffs]." Pelletier, 49 R.I. at 137, 141 A. at 80. Hence, Retirees in Categories G, H, I, J, and K have demonstrated beyond a reasonable doubt the existence of a contractual obligation subject to a Contract Clause analysis.

Lastly, the lone Category L Retiree, Mr. Waters, established through credible testimony beyond a reasonable doubt that he had an implied-in-fact contract with the City whereby he was entitled to receive a 5% compounded COLA. Like those Plaintiffs in Category D, Mr. Waters was promoted to a position outside the collective bargaining unit; unlike them, however, there was no valid CBA covering the bargaining unit in force when he retired. Although he did not have a written contract with the City, he understood that he would still receive a COLA based upon the reality that other Battalion Chiefs he had spoken to continued to receive the same benefits as the union members after their promotions. Trial Tr. 20:4–21, 21:11–22:14, 24:12–26:1, Apr. 4, 2016 (Morning Session). Furthermore, he continued to make contributions to the City pension system through payroll deductions, including increased contributions after he was promoted in exchange for a higher COLA. Id. at 29:23–30:24. Mr. Waters went through the retirement process whereby he met with administrative personnel from the City to discuss and implement his benefits, and he did, indeed, receive his expected 6% COLA after he retired. Id. at 26:8–27:7, 29:10–22. However, after the CBA covering the date of Mr. Waters' retirement was invalidated by the Supreme Court in Arena, he stopped receiving his COLA. Id. at 16:17–22. As an Arena plaintiff, eventually Mr. Waters' COLA was reinstated, with some retroactive pay, but reduced to 5%; thereafter, he received his COLA until the City's passage of the Pension Ordinance. Id. at 41:17–43:3. For the same aforementioned reasons pertaining to Category D, Mr. Waters proved the existence of a contractual obligation.

In sum, all Plaintiffs have established beyond a reasonable doubt the existence of a contractual obligation. Accordingly, their Contract Clause claims can proceed.

b

Substantial Impairment

The Contract Clause is not a bar to the Pension Ordinance unless the impairment of the City's contractual obligations is sufficiently substantial. See Energy Reserves Grp., 459 U.S. at 411; Nonnenmacher, 722 A.2d at 1202. Here, the credible evidence demonstrates that the suspension of the COLAs is not sufficiently minimal to be considered a mere technical deprivation. See Spannaus, 438 U.S. at 245 ("Minimal alteration of contractual obligations may end the inquiry at its first stage."). The Pension Ordinance calls for the suspension to continue until such time as the City's pension plan reaches a funded level of 70%. Sec. 17-194(3); see Ex. 85 at 21. Testimony from William Fornia established that the plan likely will not reach healthy funding, and the COLAs will not be reinstated, until 2036. Trial Tr. 17:3–22, Apr. 15, 2016 (Morning Session). For Retirees, many of whom cannot work and survive on fixed incomes, the suspension of these annual payments for upwards of twenty years cannot be characterized as a nominal impairment. See, e.g., Trial Tr. 89:15–90:2, April 11, 2016 (Morning Session) (Mr. Pierce); Trial Tr. 38:14–21, Apr. 12, 2016 (Afternoon Session) (Mr. Hastings). However, a more searching inquiry of Plaintiffs' inducement and reliance is still warranted to determine if the suspension qualifies as a substantial impairment. See Baltimore Teachers Union, 6 F.3d at 1018.

Testimony from Plaintiffs established that the benefits of City employment, in general, induced most of them to enter the police force or fire department in the first place. See Trial Tr. 4:13–19, Apr. 5, 2016 (Morning Session) (Mr. D Simoneau); Trial Tr. 4:2–15, Apr. 6, 2016 (Morning Session) (Mr. Battista); Trial Tr. 26:8–18 (Mr. Day), 37:22–25 (Mr. Quattrucci), Apr. 7, 2016 (Afternoon Session); Trial Tr. 3:21–25 (Mr. Gill), 10:19–23 (Mr. Garvin), 28:23–29:1 (Mr. Sperduti), Apr. 11, 2016 (Morning Session); Trial Tr. 27:8–13, Apr. 11, 2016 (Afternoon

Session) (Mr. Cummings); Trial Tr. 10:7–14 (Mr. E. Maroney), 46:11–21 (Mr. Brito), 95:6–20 (Mr. Patterson), Apr. 12, 2016 (Morning Session); Trial Tr. 13:7–16, Apr. 12, 2016 (Afternoon Session) (Mr. Zompa); Trial Tr. 36:10–22 (Mr. Chin), 87:19–25 (Mr. Kreizinger), 117:9–16 (Mr. Penta), Apr. 13, 2016 (Morning Session); Trial Tr. 15:9–16:3 (Mr. L. Simoneau), 38:6–19 (Mr. DiLibero), 70:9–21 (Mr. Grant), Apr. 13, 2016 (Afternoon Session); Trial Tr. 94:19–95:2 (Mr. Andrews), 114:9–16 (Mr. Celeberto), Apr. 14, 2016 (Morning Session). However, very few Retirees indicated an actual awareness of the COLA benefit in particular when they decided to apply for and accept the job. See Trial Tr. 35:9–36:15, Apr. 4, 2016 (Afternoon Session) (Mr. Farmer); Trial Tr. 12:18–13:7, Apr. 7, 2016 (Morning Session) (Mr. J. Simoneau); Trial Tr. 2:1–24, Apr. 7, 2016 (Afternoon Session) (Ms. D'Agostino); Trial Tr. 3:1–5:9, Apr. 18, 2016 (Afternoon Session) (Mr. Hughes). Many could not recall if the COLAs were available at the time they were hired, let alone influential in their decisions. See, e.g., Trial Tr. 40:23–41:3 (Mr. DiLibero), 72:4–7 (Mr. Grant), Apr. 13, 2016 (Afternoon Session); Trial Tr. 95:6–9, Apr. 14, 2016 (Morning Session) (Mr. Andrews). The Court concludes that this lack of awareness or influence was almost certainly due to the fact that the promise of a pension was the main attraction and the defining characteristic of the proffered post-retirement income. The COLAs were merely a part subsumed in the whole pension benefit. Thus, Plaintiffs have not established beyond a reasonable doubt that the compounded COLAs were a "central undertaking" of the employment contract. See City of El Paso, 379 U.S. at 514.

Nevertheless, Retirees have presented through credible testimony beyond a reasonable doubt that they especially and reasonably relied upon the COLAs. They testified that the impact of the COLA suspension was significant, causing financial hardship and emotional distress. See Trial Tr. 51:8–24, Apr. 4, 2016 (Afternoon Session) (Mr. Waters); Trial Tr. 9:4–9, Apr. 7, 2016

(Afternoon Session) (Ms. D'Agostino); Trial Tr. 41:6–22 (Mr. DiFazio), 57:9–14 (Mr. Loiselle), 66:13–67:5 (Mr. Cardi), Apr. 11, 2016 (Morning Session); Trial Tr. 70:18–20, Apr. 11, 2016 (Afternoon Session) (Mr. Cross); Trial Tr. 3:4–9 (Mr. Cross), 15:7–16 (Mr. K. Maroney), 25:5–13 (Ms. K. Simoneau), 52:21–53:3 (Mr. Hoskin), Apr. 12, 2016 (Morning Session); Trial Tr. 15:17–17:4 (Mr. Zompa), 30:9–21 (Mr. Duggan), Apr. 12, 2016 (Afternoon Session); Trial Tr. 15:19–16:18, Apr. 13, 2016 (Morning Session) (Mr. Rinaldi); Trial Tr. 103:10–104:19, Apr. 13, 2016 (Afternoon Session) (Mr. S. Day); Trial Tr. 99:2–105:4, Apr. 14, 2016 (Morning Session) (Mr. Andrews); Trial Tr. 10:25–13:8, Apr. 18, 2016 (Afternoon Session) (Mr. Hughes). Many testified that they retired at the time they did in order to secure the then-current percentage compounded COLA. See Trial Tr. 28:20–29:7, Apr. 4, 2016 (Morning Session) (Mr. Waters); Trial Tr. 12:4–13:7, Apr. 5, 2016 (Morning Session) (Mr. D. Simoneau); Trial Tr. 31:25–32:14 (Mr. Cummings), 48:6–17 (Mr. Dippolito), 66:10–23 (Mr. Cross) Apr. 11, 2016 (Afternoon Session); Trial Tr. 10:10–22 (Mr. Rinaldi), 38:5–12 (Mr. Chin), Apr. 13, 2016 (Morning Session); Trial Tr. 59:21–60:6 (Mr. Fortes), 97:9–22 (Mr. S. Day), Apr. 13, 2016 (Afternoon Session); Trial Tr. 126:3–127:25, Apr. 14, 2016 (Morning Session) (Mr. Celeberto).

Still others testified that they based their futures and financial plans on the continued indefinite receipt of the COLAs, and the suspension has caused them the need to rearrange retirement plans and adjust their standards of living. See Trial Tr. 52:6–53:7, Apr. 4, 2016 (Afternoon Session) (Mr. Waters); Trial Tr. 21:2–22:7, Apr. 5, 2016 (Morning Session) (Mr. D. Simoneau); Trial Tr. 86:8–16, Apr. 7, 2016 (Morning Session) (Mr. Robideau); Trial Tr. 8:15–25 (Ms. D'Agostino), 31:18–25 (Mr. P. Day), Apr. 7, 2016 (Afternoon Session); Trial Tr. 18:10–19:8 (Mr. Garvin), 31:3–14 (Mr. Sperduti), Apr. 11, 2016 (Morning Session); Trial Tr. 70:21–71:15, Apr. 11, 2016 (Afternoon Session) (Mr. Cross); Trial Tr. 33:6–25 (Mr. Thomas), 42:9–18

(Mr. Schauble), 83:16–84:6 (Mr. Pesaturo), Apr. 12, 2016 (Morning Session); Trial Tr. 25:22–26:20 (Mr. McDermott), 58:9–22 (Mr. Clements), 89:18–90:18 (Mr. Kreizinger), Apr. 13, 2016 (Morning Session); Trial Tr. 7:15–8:18 (Mr. Penta), 28:17–30:8 (Mr. L. Simoneau), 62:12–63:11 (Mr. Fortes), 75:8–23 (Mr. Grant), Apr. 13, 2016 (Afternoon Session); Trial Tr. 5:24–6:22 (Mr. S. Day), 131:14–132:10 (Mr. Celeberto), Apr. 14, 2016 (Morning Session). Some cited the impact on their families, namely an inability to provide for and assist family members. See Trial Tr. 24:18–25:9, Apr. 6, 2016 (Morning Session) (Mr. Battista); Trial Tr. 32:3–17, Apr. 7, 2016 (Afternoon Session) (Mr. P. Day); Trial Tr. 19:14–20:7 (Mr. Garvin), 42:5–16 (Mr. DiFazio), 68:17–69:10 (Mr. Cardi), Apr. 11, 2016 (Morning Session); Trial Tr. 60:17–61:17, Apr. 12, 2016 (Morning Session) (Mr. Balestra); Trial Tr. 5:7–6:1, Apr. 13, 2016 (Afternoon Session) (Mr. Penta); Trial Tr. 2:12–3:16, 5:2–5, Apr. 14, 2016 (Morning Session) (Mr. S. Day). Although some Plaintiffs testified that the loss of the COLAs was not yet overly burdensome, the Court finds that the evidence credibly demonstrated the cumulative impact to the individual was substantial. See Trial Tr. 62:20–25, Apr. 7, 2016 (Morning Session) (Mr. Paull); Trial Tr. 78:16–18, Apr. 11, 2016 (Morning Session) (Mr. Luke); Trial Tr. 59:20–21 (Mr. Balestra), 96:19–22 (Mr. Patterson), Apr. 12, 2016 (Morning Session); Trial Tr. 47:2–9, Apr. 12, 2016 (Afternoon Session) (Mr. Pacheco); Trial Tr. 43:9–14, Apr. 13, 2016 (Morning Session) (Mr. Chin); Trial Tr. 44:21–25, Apr. 13, 2016 (Afternoon Session) (Mr. DiLibero).

Additionally, Mr. Fornia testified to the substantial nature of the impairment. He opined to a reasonable degree of actuarial certainty that the difference in value between the average COLA before the Pension Ordinance and the value of the COLA under the Pension Ordinance is approximately $441,889. Trial Tr. 34:10–21, Apr. 15, 2016 (Morning Session). Mr. Fornia further testified that this represents a reduction in value of 38.2% and a diminishment of

purchasing power by about 50%. Id. at 34:22–35:15. Cross-examination of Mr. Fornia revealed a flaw in his calculations. Mr. Fornia was incorrect in concluding that after the pension plan reaches a healthy 70% funding level, Plaintiffs will receive only a 3% simple (non-compounded) COLA up to the first $1000 of their retirement allowances. Trial Tr. 58:7–17, Apr. 15, 2016 (Afternoon Session); see § 17-194(1); Ex. 85 at 21; Ex. 225 at 21. A correct examination of the Pension Ordinance reveals that Plaintiffs will receive the 3% simple COLAs in addition to restoring their compounded COLAs. Trial Tr. 58:24–61:25, Apr. 15, 2016 (Afternoon Session); see Pension Ordinance at §§ 17-194(1), (3); Ex. 85 at 21; Ex. 225 at 21. Mr. Fornia's error resulted in a reduction of his average calculation by $100,000. Trial Tr. 62:3–4, Apr. 15, 2016 (Afternoon Session). Mr. Fornia was also challenged on the accuracy of the demographic information that he used to formulate his opinion. See id. at 13:25–20:15, 21:10–31:25, 32:17–36:10. Despite this seemingly significant and material difference in calculations, the Court will conclude that the decrease in monetary value caused by the reduction in the COLA benefit is, in fact, substantial. See id. at 62:4–6. Mr. Fornia's testimony on the issue of impairment was given weight.

It is clear to the Court that Plaintiffs have established beyond a reasonable doubt an especial reliance on the compounded COLAs. See Spannaus, 438 U.S. at 246 (finding substantial impairment where a party "relied heavily, and reasonably, on this legitimate contractual expectation"); see also Welch v. Brown, 551 F. App'x 804, 810 (6th Cir. 2014) (finding substantial impairment where "most of the Plaintiffs live on fixed incomes, and the proposed changes are material"). Moreover, the Court considers Retirees' reliance on the compounded COLAs to be reasonable. See Arena, 919 A.2d at 395 (finding that "plaintiffs had

a reasonable expectation at the time they retired that they would receive a 5 percent compounded COLA that would vest upon their retirement") (emphasis added).

Therefore, the Plaintiffs have demonstrated beyond a reasonable doubt that they especially and reasonably relied on the compounded COLAs. See Baltimore Teachers Union, 6 F.3d at 1018; see also Dowd, 655 A.2d at 681. Accordingly, the Pension Ordinance constitutes a substantial impairment of the contracts between Retirees and the City.

c

Significant and Legitimate Public Purpose

The Pension Ordinance will remain constitutionally valid if the City produces sufficient credible evidence establishing that the modification of the contracts was reasonable and necessary in order to achieve a significant and legitimate purpose. See Buffalo Teachers Fed'n, 464 F.3d at 368; Nonnenmacher, 722 A.2d at 1202. Plaintiffs may rebut the City's credible evidence by establishing beyond a reasonable doubt that there was no significant and legitimate public purpose behind the City modifying their contracts. See Donohue, 886 F. Supp. 2d at 160.

Here, the subcommittee made abundantly clear that "[t]he City's current financial situation is, by all accounts, dire and the severity of the crisis cannot be overstated." Ex. 133 at 3. In 2007, Ernest Almonte, then Auditor General for the State of Rhode Island, issued a report on the status of pension plans administered by towns and cities throughout the State. See Ex. 129. The purpose of the report was to shed light on the unfunded pension liabilities in an attempt to trigger statewide action. Trial Tr. 5:10–22, Apr. 22, 2016 (Afternoon Session) (Mr. Almonte). Mr. Almonte credibly testified that the City's pension plan was only 37.4% funded and that the City's $659 million in unfunded actuarial accrued liability absolutely dwarfed what took place in

Cranston, which was the next highest at around $217 million.[26] Id. at 7:12–8:15; see Ex. 129 at 9. Mr. Almonte's office issued an additional report in 2010 to evaluate whether cities and towns were taking steps to improve the status of their unfunded pension liabilities. See Ex. 131. Importantly, Mr. Almonte noted that despite the fact that the City was making at or near 100% of its ARC payments, the ARC continued to grow and the funded ratio was in fact lower than it had been in 2007. Trial Tr. 10:7–16, 12:7–22, Apr. 22, 2016 (Afternoon Session). Additionally, the City's unfunded pension liability was astronomically higher than those of other cities and towns in Rhode Island; for instance, the City's unfunded liability jumped to about $805 million, while the next two largest cities, Warwick and Cranston, had unfunded liabilities of about $203 million and $244 million, respectively. Id. at 11:8–18; see Ex. 131 at 11. Finally, the dollar amount of the City's ARC was the highest in the State by a substantial margin. In fact, the Providence ARC was double that of the City of Cranston. Trial Tr. 13:14–25, Apr. 22, 2016 (Afternoon Session); see Ex. 131 at 14. The City's ARC constituted roughly one-third of the total ARC for the thirty-nine cities and towns in the State combined. Trial Tr. 14:1–11, Apr. 22, 2016 (Afternoon Session).

From 1970 through the enactment of the 2012 Pension Ordinance, the City's retirement system was below a 70% funded level. Joint Statement of Undisputed Facts at ¶ 32. In 1988, the City's actuarial consulting firm, Buck Consultants, LLC (Buck), reported that the retirement system was 62% funded with plan assets valued at $196.46 million and an unfunded actuarial liability of $119.9 million. Id. at ¶ 9. That year, Buck recommended that the City make an

[26] This Court recently decided that City of Cranston ordinances substantially impairing its retirees' contractual rights to 3% compounded COLAs were reasonable and necessary to achieve a significant and legitimate public purpose—namely, remedying Cranston's own unprecedented fiscal emergency—and therefore survived a Contract Clause challenge. Cranston Police Retirees Action Comm. v. City of Cranston, No. KC-13-1059, 2016 WL 4059309 (R.I. Super. July 22, 2016).

$11.39 million ARC payment into the pension fund. Id. The following year, the City's retirement board voted in favor of a number of changes to pension benefits, including an increase of the minimum monthly pension benefit from $300 to $1000 and providing 5% and 6% compounded COLAs on pension benefits. Id. at ¶ 10.

An even bleaker state of affairs therefore existed when Mayor Taveras took office in 2011. The panel concluded that the City pension plan was 34% funded with $828,484,000 in unfunded accrued actuarial liability. Ex. 104 at 11. The ARC was expected to increase dramatically. It was projected that for the fiscal year ending June 30, 2039, the ARC would total in excess of $210 million. Id. The failure of the City to address the mounting unfunded pension liability would have mandated a bankruptcy filing. Trial Tr. 21:7–16, Apr. 21, 2016 (Afternoon Session) (Mayor Taveras). The austere reality of the dire financial straits could have resulted in the Governor appointing a fiscal overseer. This is an intermediate step before receivership or bankruptcy. Id. at 18:21–19:3. However, a fiscal overseer, much like a receivership, could not have cut many more expenses than Mayor Taveras. The Governor directed Mayor Taveras to continue his work to solve the problem. Id. at 19:5–21:2. It was concluded by all that bankruptcy would have been devastating to the City, its businesses, and the people who call it home. Mayor Taveras was determined to do all he could to avoid bankruptcy. Trial Tr. 66:4–14, 67:2–6, Apr. 19, 2016 (Afternoon Session).

This stark realization was bolstered by the credible testimony of Mr. D'Amico. Mr. D'Amico credibly testified that the City would be forced into bankruptcy if it failed to rectify the staggering structural deficit it faced—and would continue to face—year after year. Trial Tr. 12:8–14:8, Apr. 20, 2016 (Morning Session). Like Mayor Taveras, it was readily apparent to Mr. D'Amico that filing for bankruptcy would bring even greater costs to bear on the City.

Although it would allow the City to break certain contracts and give the City leverage in dealing with its creditors, readily apparent downsides far outweighed such potential benefits. Id. at 16:1–25. Mr. D'Amico expressed the administration's concern when it came to attracting new businesses and the survival of local vendors. Therefore, the City made the decision to file for bankruptcy only if it was left with no alternative. Id. at 17:2–3. Clearly, if the City did not take further steps to remedy the unfunded pension liability—by means such as enacting and implementing the Pension Ordinance—grave consequences would result. In fact, despite the Pension Ordinance, the current administration estimated that it would face approximately a $3 to $5 million deficit for the 2016–2017 fiscal year, which is arguably the residual effect of the original $110 million structural deficit. Id. at 49:13–16. Further evidence of the trying times is found in the fact that over ten years the structural deficit will grow to be $36 million and the total cumulative deficit will be in excess of $170 million. Id. at 50:3–5.

Plaintiffs presented Mr. Fornia to address the issue. In analyzing the condition of the Providence pension system historically, Mr. Fornia found that the pension plan was approximately 30% funded in the late 1970s. Trial Tr. 40:23–42:4, Apr. 15, 2016 (Morning Session). In the following ten to fifteen years, funding levels increased to above 60%; then, beginning around 1989 or 1990, the funding level steadily decreased again until it reached 32% funded in 2011. Id. at 42:1–22. Mr. Fornia opined that the pension funding problem was in large part the City's own creation—the decrease in the funding level resulted from the City agreeing to pay higher COLAs and failing to make the full ARC payments starting in 1995, instead only paying somewhere between 40-70% of the ARCs. Id. at 42:23–44:19. Mr. Fornia further opined that as of 1996, the condition of the City's pension system in 2012 was reasonably

foreseeable because the cost of the 5% and 6% COLAs was known to the City. Id. at 79:20–80:1, 80:11–19, 83:8–84:1, 84:9–85:2, 86:23–87:8.

On cross-examination, the City established that Mr. Fornia was not especially concerned with his calculations. See Trial Tr. 10:25–13:24, Apr. 15, 2016 (Afternoon Session). When questioned about his assertion that the increase in the ARC from the 1980s to the 1990s was a result of the City agreeing to pay higher COLAs, Mr. Fornia testified that the COLAs were only in part to blame and that he had not done the math. Id. at 51:11–16. Moreover, the City presented its own expert, Daniel Sherman, who credibly testified that the $14.5 million increase in the ARC from 1995 to 1996 based on the change in the COLAs was substantial and of a magnitude that he had never seen in a municipality before, clearly making it difficult for the City to secure the funds. Trial Tr. 56:1–57:14, Apr. 28, 2016 (Morning Session); see Ex. 179. Mr. Sherman also observed that the City paid 93.58% of the ARC in 1997. Trial Tr. 44:1–2, Apr. 28, 2016 (Morning Session); see Ex. 176. Again, the increase in the ARC from 1997 to 1998 was so dramatic that Mr. Sherman would not expect any municipality to be able to cover the difference initially. Trial Tr. 44:13–17, Apr. 28, 2016 (Morning Session); see Ex. 176. Nevertheless, by 2007, the City had caught up and was making the full ARC payment. Trial Tr. 44:17–22, Apr. 28, 2016 (Morning Session); see Ex. 176. Accordingly, the Court finds more plausible the testimony of Mr. Sherman on these issues. The Court therefore affords little weight to Mr. Fornia's testimony. Plaintiffs have failed to rebut the City's credible evidence beyond a reasonable doubt. See Donohue, 886 F. Supp. 2d at 160.

The Court is further satisfied that the City has produced sufficient credible evidence through the testimony of Mayor Taveras, Mr. D'Amico, Mr. Almonte, and Mr. Sherman that the ever-increasing unfunded pension liability resulting from the escalating, unmanageable ARC

payments created an unprecedented fiscal emergency for the City. The purpose behind the Pension Ordinance was not simply the financial benefit of the sovereign—rather, it was "'aimed at remedying an important general social or economic problem . . . .'" Buffalo Teachers Fed'n, 464 F.3d at 368 (quoting Sanitation and Recycling Indus., 107 F.3d at 993). Additionally, there is no indication that the Pension Ordinance provided a benefit to special interests or was passed merely for the advantage of particular individuals. See id.; Blaisdell, 290 U.S. at 445. Thus, the Court finds that the Pension Ordinance was passed for a significant and legitimate public purpose. See Buffalo Teachers Fed'n, 464 F.3d at 368 (finding a legitimate public purpose in actions attempting to remedy a fiscal crisis).

d

Reasonable and Necessary

The Court's analysis continues to ensure that the Pension Ordinance is "specifically tailored to 'meet the societal ill it is supposedly designed to ameliorate.'" Kent, 2012 WL 6024998, at *21 (quoting Spannaus, 438 U.S. at 243). As this case involves a public contract, the Court will afford the City less deference. See Buffalo Teachers Fed'n, 464 F.3d at 370–71. To prove that the Pension Ordinance was reasonable and necessary, the City must produce sufficient credible evidence of three factors: that it "did not (1) 'consider impairing the . . . contracts on par with other policy alternatives' or (2) 'impose a drastic impairment when an evident and more moderate course would serve its purpose equally well,' nor (3) act unreasonably 'in light of the surrounding circumstances.'" Id. at 371 (quoting U.S. Trust Co., 431 U.S. at 30–31).

i

Other Policy Alternatives

Here, the City presented sufficient credible evidence that it adequately considered and tried other policy alternatives before enacting the Pension Ordinance. See id. For example, immediately upon learning of the severity of the City's fiscal crisis when he entered office, Mayor Taveras took numerous significant steps to cut spending and generate revenue. He reduced his compensation by a 10% pay-cut, renounced his elected official pension, laid off nonunion employees, terminated teachers, closed schools, received help from the General Assembly in the form of reimbursement for payment in lieu of taxes, generated fees, increased parking enforcement, cut funding to libraries and across departments, and negotiated for increased contributions from the tax-exempt universities and hospitals. Trial Tr. 56:9–25, 58:25–59:11, Apr. 19, 2016 (Afternoon Session) (Mayor Taveras). The subcommittee's report further detailed the City's efforts as follows:

> "The City already has taken numerous difficult, but necessary cost-saving and revenue-generating steps to work towards closing the structural deficit and making the pension system sustainable. Some of these cost-saving measures include: reducing the budget of the Mayor's office, reducing the size of the City's workforce through lay-offs, reducing the budget of the fire and police departments, closing schools, and revising labor contracts with police, fire, education and municipal employees. Some of these revenue-generating measures include: increasing parking fees, enhancing enforcement of parking regulations, increasing dumpster and mattress disposal fees, increasing both residential and commercial property taxes, and increasing the taxable assessment on motor vehicles." Ex. 133 at 28 (footnotes omitted).

Additionally, Mr. D'Amico testified that the City generated extra revenue with the assistance of State legislation allowing the City to charge for master fire alarm boxes and to keep more of the money that was generated from traffic violations caught on cameras. Trial Tr. 41:3–25, Apr. 20,

2016 (Morning Session). Particularly helpful to the City was its negotiations with the tax-exempt hospitals and universities producing between $6 and $7 million in additional annual revenues in the form of increased support for, or contributions to, the City. Id. at 42:2–15.

Nonetheless, the subcommittee made evident that "[d]espite all the measures that the City and this Subcommittee have taken to reduce the City's budget shortfalls, additional measures are necessary to keep the City operating and to sustain the City's pension system." Ex. 133 at 2. The only additional way the City could have further cut costs was to stop funding the City's libraries and recreational centers, thereby closing them, and Mayor Taveras alerted the Governor to such a possibility. Trial Tr. 66:20–24, Apr. 19, 2016 (Afternoon Session) (Mayor Taveras). However, Mayor Taveras credibly testified that it would not solve the problem and that he felt it would be detrimental to the City's youth and could cause a spike in crime, leading visitors to stop coming to the City. Id. at 66:24–67:1; Trial Tr. 20:8–20, Apr. 21, 2016 (Afternoon Session).

The Court gives considerable weight to the testimony of Mayor Taveras and Mr. D'Amico that the City's residents and businesses were already significantly overtaxed and overburdened. Trial Tr. 60:15–61:15, Apr. 19, 2016 (Afternoon Session) (Mayor Taveras); Trial Tr. 45:9–19, Apr. 20, 2016 (Morning Session) (Mr. D'Amico). Although the City exceeded the tax levy cap in the first year of the Mayor Taveras administration and raised the residential tax rate in the third, repeatedly doing so was neither prudent nor necessarily permitted. Trial Tr. 59:12–60:12, Apr. 19, 2016 (Afternoon Session) (Mayor Taveras). As Mr. D'Amico explained, exceeding the tax levy required State approval. He further testified that the City's corporate, tangible, car, and non-owner occupied tax rates were prohibitively high already, and continuing to raise them would have only exacerbated the negative impact on the City's economy. Trial Tr.

45:1–19, Apr. 20, 2016 (Morning Session). Thus, Defendant has demonstrated to the Court's satisfaction that increased taxation was not a feasible solution to the City's fiscal crisis. See Buffalo Teachers Fed'n, 464 F.3d at 372 ("[I]t is always the case that to meet a fiscal emergency taxes conceivably may be raised. It cannot be the case, however, that a legislature's only response to a fiscal emergency is to raise taxes. Also, defendants have shown that Buffalo had already increased City taxes to meet its fiscal needs, and it is reasonable to believe that any additional increase would have further exacerbated Buffalo's financial condition.").

There were numerous other alternatives that the City considered, many of which it actually implemented. The City adopted recommendations of the subcommittee in addition to the suspension of the COLAs. It required employees to contribute to the pension system for as long as they were accruing pension credit, adjusted the base pension benefit, reduced the benefit for accidental disability, capped pension benefits, required retirees and spouses receiving health benefits to pay a copay, and adopted a formal process for considering and accepting an assumed rate of return on pension investments. Trial Tr. 81:21–83:7, Apr. 19, 2016 (Afternoon Session) (Mayor Taveras); see Ex. 133 at 34–35. Additionally, Mayor Taveras addressed the City's retirees with a PowerPoint presentation laying out the shared sacrifices of all interested parties—not just them—that had already been made and that remained to be made. Trial Tr. 97:9–103:4, Apr. 19, 2016 (Afternoon Session); see Ex. 266. The City also considered, but ultimately decided against, the panel's recommendation that the City pension system merge into the State administered Municipal Employees' Retirement System. Trial Tr. 18:19–19:22, Apr. 20, 2016 (Morning Session) (Mr. D'Amico); see Ex. 104 at 13. Finally, the City explored the panel's recommendation that the City move from a defined benefit plan to a defined contribution or hybrid plan, but again it determined that such a transition would not provide the answer to its

fiscal crisis. Trial Tr. 20:10–21:19, Apr. 20, 2016 (Morning Session) (Mr. D'Amico); see Ex. 104 at 13. Clearly, the credible evidence provided demonstrates that the City did not consider impairing Plaintiffs' contractual rights to COLAs on par with other policy alternatives. See Buffalo Teachers Fed'n, 464 F.3d at 371 (quoting U.S. Trust Co., 431 U.S. at 30–31); see also id. at 372 ("[W]e find no need to second-guess the wisdom of picking the wage freeze over other policy alternatives, especially those that appear more Draconian, such as further layoffs or elimination of essential services.").

ii

More Moderate Course Available

The City presented sufficient credible evidence that a more moderate course was not available. See id. at 371. The City's pension plan had a funded ratio of only 34%, while the unfunded accrued actuarial liability was $828,484,000 and the ARC was approaching $60 million. Ex. 104 at 11. By implementing the subcommittee's recommendation to suspend all COLAs until the pension plan reached 70% funded, the City would immediately achieve a $15.6 million reduction in the ARC and a $236.1 million reduction in unfunded liability. Ex. 133 at 34–35. The remaining recommendations of the subcommittee combined would achieve nowhere near the same results. See id. Furthermore, simply finding ways to cut costs and generate revenue—which the City did—went toward lowering the crippling structural deficit the City faced; it did not achieve any direct decrease in the unfunded pension liability or exponentially growing ARC payments haunting the City.

Additionally, the Pension Ordinance did not impair the entirety of the City's contractual obligations to Plaintiffs and was not a total deprivation of Plaintiffs' contractual rights. See Baltimore Teachers Union, 6 F.3d at 1020. Although the loss of their COLAs is substantial to

Plaintiffs, their ultimate economic loss was minimal. See, e.g., Trial Tr. 63:20–65:18 (Mr. Balestra), 84:25–86:3, 88:4–91:25 (Mr. Pesaturo), Apr. 12, 2016 (Morning Session); Trial Tr. 108:19–110:16, Apr. 14, 2016 (Morning Session) (Mr. Andrews). Plaintiffs continue to receive their full pension payments, some of which have grown to staggering figures. See Ex. A to Apr. 12, 2016 Stipulation. Furthermore, the suspension is temporary. See Baltimore Teachers Union, 6 F.3d at 1020 (citing U.S. Trust Co., 431 U.S. at 27) (finding only a portion of the contractual obligation impaired where "the plan did not alter pay-dependent benefits, overtime pay, hourly rates of pay, or the orientation of pay"). This Court previously noted that "Retirees receive their full pension benefits, and only a small percentage is being withheld to enable the City to address providing a more sustainable retirement system and balanced budget for the rest of the City." Andrews v. Lombardi, Nos. KC-13-1128, KC-13-1129, 2016 WL 1083913, at *5 (R.I. Super. Mar. 16, 2016).

Plaintiffs' expert, Mr. Fornia, opined that the City did not choose the least drastic alternative in suspending the COLAs. He testified that the City could have enacted alternative reforms impacting current City employees' future retirement benefits. Trial Tr. 90:9–22, Apr. 15, 2016 (Morning Session). However, the more credible evidence demonstrates that the unfunded pension liability was largely due to the City's retired, as opposed to its active, employees. The subcommittee heard from the City's actuaries that roughly 72% of the City's liabilities were from the retirees and only 27% from the active employees, thereby necessitating that the focus of any remedial measures be on the retiree side. See Ex. 133 at Ex. 4, p. 7. Mr. Fornia also suggested that a ten-year COLA suspension—like that contained in the settlement agreement in C.A. No. PC-11-5853, which Plaintiffs opted out of—was a less imposing alternative. Trial Tr. 92:1–10, Apr. 15, 2016 (Morning Session); Trial Tr. 4:22–5:2, Apr. 15,

2016 (Afternoon Session); see Ex. 106. This testimony is given little weight. Obviously, ten years may very well be a shorter period of time than waiting until the funded ratio reaches 70%, which Mr. Fornia testified would not occur until 2036. Trial Tr. 17:3–22, Apr. 15, 2016 (Morning Session). However, Plaintiffs offered no evidence that the pension plan would ultimately reach a healthy funding level following a ten-year suspension of the COLAs.

Therefore, the Court finds that the City presented sufficient credible evidence that there was no more moderate course available to adequately address the City's fiscal crisis by attempting to remedy the prohibitive unfunded pension liability and ARC payments. See Buffalo Teachers Fed'n, 464 F.3d at 371; Baltimore Teachers Union, 6 F.3d at 1020. The Court is satisfied that the City did not "'impose a drastic impairment when an evident and more moderate course would serve its purpose equally well . . . .'" Buffalo Teachers Fed'n, 464 F.3d at 371 (quoting U.S. Trust Co., 431 U.S. at 30–31).

iii

Acting Reasonably in Light of Surrounding Circumstances

Here, the City presented sufficient credible evidence that the Pension Ordinance was circumscribed, temporary, prospective, and, again, necessitated by a fiscal emergency. See U.S. Trust Co., 431 U.S. at 22 n.19, 27, 30–31; Energy Reserves Grp., 459 U.S. at 418–19; Buffalo Teachers Fed'n, 464 F.3d at 371–72. Most importantly, Plaintiffs' benefits are intact and the suspension of a COLA is a small percentage of the benefit. Their base pension payments, which have grown exponentially over the years since their retirements due to the compounded COLAs, remain intact; only the minimal COLA payments are lost, and only prospectively. Furthermore, the suspension of the COLAs is temporary, and the temporary nature of a contractual impairment weighs in favor of finding that the impairment was reasonable and necessary. See Buffalo

Teachers Fed'n, 464 F.3d at 372 ("[T]he prospective and temporary quality of the wage freeze convinces us of its reasonableness.").

In support of their position that the actions of the City were unreasonable in light of the circumstances and did not achieve a significant and legitimate public purpose, Plaintiffs presented Mr. Fornia. He testified that a significant percentage of Plaintiffs will be deceased by the time the COLAs are reinstated. See Trial Tr. 24:12–28:15, Apr. 15, 2016 (Morning Session). This testimony is flawed, however, because his mortality rates and opinion as to Plaintiffs' life expectancies assume that the pension plan will not reach the requisite 70% funded level until 2036. In his calculations, Mr. Fornia did not include the mandated continuation of pension benefit payments to Plaintiffs' beneficiaries in arriving at his figures. See id.; Trial Tr. 13:25–20:15, 21:10–25:15, Apr. 15, 2016 (Afternoon Session). Therefore, his testimony is given no weight. Conversely, the City's expert, Mr. Sherman, included beneficiaries in determining that by 2027 the City will be paying pension benefits to roughly 95% of Retirees or their beneficiaries, and the number will remain as high as 79% in 2036. Trial Tr. 46:6–48:25, Apr. 28, 2016 (Morning Session).

Finally, the City takes the position that it is compensating Plaintiffs for the temporary, prospective suspension of the compounded COLAs. As previously discussed, the Pension Ordinance provides for an entirely new 3% simple COLA for Retirees. See § 17-194(1); Ex. 85 at 21. In that sense, when the pension plan reaches a healthy funding level of 70%, Plaintiffs will receive their compounded COLAs as well as the additional non-compounded COLA. Therefore, once the temporary suspension of the compounded COLAs is lifted, the City will provide Plaintiffs with a gratuitous benefit.

The Court is satisfied that the Pension Ordinance was reasonable under the circumstances. Accordingly, the Court finds that the City presented sufficient credible evidence that the Pension Ordinance was reasonable and necessary. See Buffalo Teachers Fed'n, 464 F.3d at 371; see also U.S. Trust Co., 431 U.S. at 22. The Court further finds that Plaintiffs have not rebutted this credible evidence beyond a reasonable doubt. See Donohue, 886 F. Supp. 2d at 160. Thus, the Court concludes that the Pension Ordinance does not violate the Contract Clause of either the Rhode Island or United States Constitutions.[27]

2

Medicare Ordinance

The Medicare Ordinance mandates that "all retired individuals and spouses of retired individuals shall enroll in Medicare immediately upon eligibility." Ex. 84. Eligibility for Medicare is at age sixty-five. According to Defendant, this fact renders Plaintiffs' alleged injuries too remote and tenuous to adequately predict with any certainty. The City claims that it is impossible to ascertain the state of the Medicare system by the date of eligibility of the younger Plaintiffs.[28] See, e.g., Trial Tr. 31:11–14, Apr. 7, 2016 (Afternoon Session) (Mr. P. Day); Trial Tr. 67:3–5, Apr. 13, 2016 (Morning Session) (Mr. Clements). Plaintiffs' expert, Dale Yamamoto, confirms this fact. Trial Tr. 10:17–11:9, Apr. 19, 2016 (Afternoon Session); see also id. at 17:20–18:2. The ripeness of this claim must therefore be considered by this Court.

[27] Following the non-jury trial of this case, the Court elects to make its findings of fact and conclusions of law and render judgment under Rule 52(a). It would reach the same conclusion were it to decide the case as a matter of law pursuant to Rule 52(c). See Broadley, 939 A.2d at 1021 (noting that Rule 52(c) and Rule 52(a) require the same standard of review).

[28] The following thirty-two Plaintiffs are sixty-one years old or younger: Mr. Andrews, Mr. Balestra, Mr. Barkett, Mr. Brito, Mr. Cardi, Mr. Clements, Ms. D'Agostino, Mr. P. Day, Mr. S. Day, Mr. DiFazio, Mr. Dippolito, Mr. Farmer, Mr. Garvin, Mr. Glancy, Mr. Grant, Mr. Hastings, Mr. Hoskins, Mr. Hughes, Mr. Kreizinger, Mr. Lee, Ms. Martino, Mr. McDermott, Mr. Pacheco, Mr. Patterson, Mr. Paull, Mr. Persson, Mr. Pierce, Mr. Robideau, Mr. Roy, Mr. Schauble, Mr. J. Simoneau, and Mr. Sperdutti.

"'Unlike the United States Constitution, there is no express language in the Rhode Island [C]onstitution which confines the exercise of [the Rhode Island Court's] judicial power to actual 'cases and controversies.'" State v. Lead Indus. Ass'n, Inc., 898 A.2d 1234, 1237 (R.I. 2006) (alterations in original) (quoting Vose v. R.I. Bhd. of Corr. Officers, 587 A.2d 913, 915 n.2 (R.I. 1991)). Nevertheless, our Supreme Court recognizes that "[a]s a general rule, a claim is not ripe for adjudication if it rests upon 'contingent future events that may not occur as anticipated, or indeed may not occur at all.'" State v. Gaylor, 971 A.2d 611, 614 (R.I. 2009) (quoting Thomas v. Union Carbide Agric. Prods. Co., 473 U.S. 568, 580–81 (1985)). This requirement of justiciability stems from "'the deeply rooted commitment not to pass on questions of constitutionality unless adjudication of the constitutional issue is necessary.'" Lead Indus. Ass'n, 898 A.2d at 1238 (internal quotation marks omitted) (quoting Elk Grove Unified Sch. Dist. v. Newdow, 542 U.S. 1, 11 (2004)).

Adjudication of the constitutionality of the Medicare Ordinance is unavoidable in this case. See Rescue Army v. Mun. Court of Los Angeles, 331 U.S. 549, 570 n.34 (1947) (quoting Spector Motor Serv., Inc. v. McLaughlin, 323 U.S. 101, 105 (1944)) ("'If there is one doctrine more deeply rooted than any other in the process of constitutional adjudication, it is that we ought not to pass on questions of constitutionality . . . unless such adjudication is unavoidable.'"). If the Court were to dismiss the younger Plaintiffs' claims as not ripe, it would still be necessary to decide whether the Medicare Ordinance was constitutional as applied to the Medicare-eligible Plaintiffs. Therefore, the Court concludes that it is necessary to decide the claim.

a

Existence of a Contractual Obligation

Whether a contract exists between the parties is the first inquiry for the Court. See Nonnenmacher, 722 A.2d at 1202; see also Baltimore Teachers Union, 6 F.3d at 1015. If there is no contractual relationship between the parties as to healthcare benefits in particular, there is no viable claim to be considered. See Cycle City, Ltd., 81 F. Supp. 3d at 1004.

Here, Plaintiffs in Categories A, B, C, E, I, and J established beyond a reasonable doubt that they retired at times covered by various CBAs and IAAs providing healthcare benefits to retired City employees. At this point, the Court must examine the Fire and Police CBAs and IAAs under which Plaintiffs claim a contractual right to lifetime health insurance for themselves and their spouses.

The 1979–1980 Fire CBA, which was extended to cover the 1980–1981 contract year (see Ex. 137), provided in pertinent part as follows:

> "B. Commencing July 1, 1977, the City agrees to assume the cost of family coverage under the Rhode Island Hospital Service Corporation (Blue Cross) in the present Semi-Private Plan and Family Coverage under the Rhode Island Medical Society Physician's Service Plan B and Blue Shield Plan 100 or the Rhode Island Group Health Association Plan, for all members retiring on or after said date.
>
> "Should said member or any member of his family be eligible for medical insurance under Blue Cross or any other plan, then the City will be obligated to furnish only excess coverage so that said member will have equivalent coverage as that offered by the City. Should a retired member subsequent to retirement lose said alternate coverage then the City will pick up full coverage under this section." Ex. 136 at 21, Art. XIII, Sec. 1B (emphasis added).

This retiree healthcare provision, and the accompanying guarantee that the City would provide excess coverage should a retiree become eligible for medical insurance under another plan,

remained unchanged in all material respects through the 1990–1992 Fire CBA. See Ex. 139 at 5–6, Art. XIII, Sec. 1B (1982–1984 Fire CBA); Ex. 140 at 1 (1984–1985 Fire CBA) (incorporating by reference 1982–1984 Fire CBA); Ex. 142 at 31, Art. XIII, Sec. 1B (1987–1989 Fire CBA); Ex. 144 at 34, Art. XIII, Sec. 1B (1990–1992 Fire CBA).

There were no substantial changes in the agreement for over a decade.[29] Most importantly, the original guarantee that the City would provide excess coverage should a retiree become eligible for medical insurance under another plan remained in place throughout all relevant CBAs and IAAs.[30] See Ex. 189 at 8 (1995–1996 Fire IAA); Ex. 148 at 59, 70, 71

[29] In the arbitration regarding the 2003–2004 Fire CBA, the panel granted the City's proposal to change its primary health insurance plan to Healthmate Coast-to-Coast. Ex. 148 at 70–71 (2003–2004 Fire IAA). In the arbitration regarding the 2006–2007 CBA, the panel granted some of the City's health insurance proposals, including requiring an annual premium contribution from the active firefighters and adding a third tier to the prescription co-payment schedule. Ex. 195 at 83–86, 93. The panel also granted the City's proposal to convert all firefighters who would retire after the date of the award and all retirees who were not yet age sixty-five to Blue Cross Plan 65 once they attained age sixty-five. Id. at 87–88, 93–94.

[30] The language changed for the first time in the 2011–2013 Fire CBA, but it retained the same meaning. It set forth:

> "The City's obligation to provide retiree healthcare coverage to a specific retiree may be suspended in the event that the retiree is eligible for medical insurance under any healthcare plan, including that made available through the retiree's spouse, and providing that the said plan is equivalent in all aspects of coverage and cost. If coverage is not equivalent or if the plan's cost exceeds the cost to the retiree of the city plan, then the City shall have the option of providing payment to make the cost equal and/or providing only such coverage as to make the plans equivalent or maintaining the city plan for the retiree, all pursuant to all provisions contained herein for retirees on said retirement date. At the request of the City, the retiree shall be obligated to provide proof that he or she is not eligible to receive healthcare coverage from another source or that coverage is not otherwise equivalent coverage pursuant to this agreement. Should a retiree subsequent to retirement, whose healthcare coverage is suspended in accordance with this provision, lose alternate coverage from an alternate source, the City shall restore coverage on the first day of

(2001–2002, 2002–2003, 2003–2004 Fire IAAs); Ex. 194 at 78, 95 (2005–2006 Fire IAA); Ex. 195 at 83–84, 93–94 (2006–2007 Fire IAA); Ex. 149 at 52, Art. XIV, Sec. 1B (2007–2010 Fire CBA); Ex. 151 at 49, Art. XIV, Sec. 1B (2010–2013 Tentative Fire CBA); Ex. 150 at Art. XIV (2011–2013 Fire CBA) (amending 2010–2013 Tentative Fire CBA).

The retiree health insurance provisions of the Police CBAs were nearly identical to those of the Fire CBAs. The 1984–1985 Police CBA provided, in pertinent part:

> "Commencing July 1, 1977, the City agrees to assume the cost of family coverage under the Rhode Island Hospital Service Corporation (Blue Cross) in the present semi-private plan and family coverage under the Rhode Island Medical Society Physician's Service Plan B and Blue Shield Plan 100, or Rhode Island Group Health Association Plan with riders for Alcoholism, Mental Health, and Prescription Drug for all members retiring on or after said date.
>
> "Should any member or any member of his family be eligible for medical insurance under Blue Cross or any other plan, then the City will be obligated to furnish only excess coverage so that said member will have equivalent coverage as that offered by the City. Should a retired member subsequent to retirement lose said alternate coverage then the City will pick up the full cost of coverage under this section." Ex. 158 at 41–42, Art. XIV, Sec. 2 (emphasis added).

The 1992–1993 Police CBA added the following paragraph in between the two above:

> "Members of the bargaining unit who retire on or after July 1, 1992 shall receive the same benefits as set forth in the preceding paragraph with the following exceptions: (a) the managed benefits program may be implemented; (b) the major medical deductible may be increased from $50.00 to $100.00; (c) the City shall have the right to change health benefit providers so long as all covered benefits identified herein are offered by the new provider." Ex. 166 at 53, Art. XIV, Sec. 2.

> the month after notice has been received under the same terms as those that existed at the retiree's date of retirement." Ex. 150 at Art. XIV.

The 1996–1999 Police CBA made the aforementioned retiree healthcare section applicable to those who retired on or before June 30, 1998. Ex. 169 at 71, Art. XV, Sec. 2A. It also consolidated the above three paragraphs as subsection A and added two more subsections:

> "B. The City agrees to add City Blue Health Care, either individual or family coverage, as an option to the list of current medical providers for retired members who were hired on or before June 30, 1998. Retirees may voluntarily subscribe to this option during normal enrollment periods. This option is not intended to replace any other option currently offered to retired members. Nothing contained herein shall be construed to alter and/or modify in any way the health care provided to retired members who were hired on or before June 30, 1998, as set forth above. Nothing contained herein shall prevent any member from selecting an alternative during an enrollment period (as currently offered).
>
> "C. All members of the bargaining unit who were hired on or after July 1, 1998, and who retire either on regular or disability retirement, shall receive City Blue health care for individual coverage only. Retired members will be allowed to purchase, at the retired member's expense, spousal coverage at the City's rate, and the City will agree to pay any rate increase over and above the cost of the spousal portion in all years after the member completes one year of retirement." Id. at 71–72, Art. XV, Sec. 2.

The 1999–2001 Police CBA changed from Blue Cross "City Blue" to Blue Cross "City Blue Coast to Coast" so long as it provided at least an identical level of coverage as the previous version of City Blue without Coast to Coast. Ex. 170 at 9. It also mandated that the health care coverage or plan referenced in subsections B and C of Section 2 would be the same coverage or plan that was in effect when the specific retiree was an active employee. Id. at 10.

Subsequent Police CBAs up through and including the 2007–2010 Police CBA did not change in any material respects. Most importantly, the guarantee that the City would provide excess coverage should a retiree become eligible for medical insurance under another plan remained unchanged throughout all relevant CBAs and IAAs. See Ex. 162 at 49, Art. XIV, Sec. 2 (1989–1991 Police CBA); Ex. 166 at 53, Art. XIV, Sec. 2 (1992–1993 Police CBA); Ex. 169 at

71, Art. XV, Sec. 2A (1996–1999 Police CBA); Ex. 170 at 9–10 (1999–2001 Police CBA) (listing the only changes to Art. XV, Sec. 2 of 1996–1999 Police CBA); Ex. 171 at 65–66, Art. XV, Sec. 2A (2001–2004 Police CBA); Ex. 186 at 6–7 (2006–2007 Police IAA) (arbitration award re health insurance); Ex. 174 at 5–6 (2007–2010 Police CBA) (setting forth the only changes enacted in 2007–2010 Police CBA).

As stated earlier, CBAs are equivalent to contracts. See Esmark, Inc., 887 F.2d at 751–52 (stating that although a labor contract has no greater binding effect than any other type of contract, neither should it be easier to avoid than any other contractual obligations); 20 Williston on Contracts § 55:3 (4th ed. 2016). Here, the plain and unambiguous language of the CBAs requires the City to provide Retirees with health insurance. See Local 369 Util. Workers, 317 F. Supp. 2d at 75–76 (quoting Vasseur, 950 F.2d at 1006) ("It is certainly possible for an employer to 'oblige itself contractually to maintain benefits at a certain level . . . .'"). Accordingly, the City's impairment of its contractual obligation to assume the cost of Plaintiffs' health insurance is subject to Contract Clause scrutiny. See Buffalo Teachers Fed'n, 464 F.3d at 368 (analyzing impairment of union labor contracts under the Contract Clause).

Next, Plaintiffs in Categories D, F, G, K, and L credibly testified as to the representations by the City upon which they based their beliefs that they were entitled to receive healthcare benefits for life. Category D, K, and L Retirees were promoted to positions outside the bargaining unit and therefore were not covered by CBAs when they retired.[31] It was their

[31] Although they were not privy to any CBA as a result of their higher-ranking positions, Category D Plaintiffs retired during a time period when the bargaining unit was covered by a ratified CBA. Plaintiffs in Categories K and L, on the other hand, retired at a time when there was no valid CBA in place to cover the bargaining unit either. Thus, they did not retire under any CBA as a result of both their positions and the lack of a ratified CBA. Due to the similarities stemming from their promotions out of the bargaining unit, Category D, K, and L Retirees have been grouped together for the Court's present purpose. Plaintiffs in Categories K and L also

understanding that their promotions came with slight raises in pay, but no reduction in healthcare benefits. See Trial Tr. 20:4–10, Apr. 4, 2016 (Morning Session) (Mr. Waters); Trial Tr. 6:7–14, Apr. 5, 2016 (Morning Session) (Mr. D. Simoneau); Trial Tr. 6:12–20 (Mr. Battista), 67:12–23, 70:13–22 (Mr. Costa), Apr. 6, 2016 (Morning Session); Trial Tr. 100:7–18, Apr. 11, 2016 (Morning Session) (Mr. Cochrane); Trial Tr. 125:3–15, Apr. 14, 2016 (Morning Session) (Mr. Celeberto). That understanding was based on general knowledge and practice within the departments as well as conversations with, and the experiences of, other firefighters and police officers who had been promoted before them and continued to receive the same healthcare benefits. See Trial Tr. 20:11–21, 21:11–21, 24:12–26:1, Apr. 4, 2016 (Morning Session) (Mr. Waters); Trial Tr. 6:15–7:13, 11:25–12:3, Apr. 5, 2016 (Morning Session) (Mr. D. Simoneau); Trial Tr. 15:6–23, 16:13–17:7 (Mr. Battista), 63:25–64:14, 65:3–14 (Mr. Costa), Apr. 6, 2016 (Morning Session); Trial Tr. 101:14–22, 102:9–103:4, 103:15–104:10, 104:18–105:11, Apr. 11, 2016 (Morning Session) (Mr. Cochrane); Trial Tr. 123:9–124:24, Apr. 14, 2016 (Morning Session) (Mr. Celeberto). Furthermore, when the retirement process was initiated, they met with administrative personnel in the City retirement office who confirmed that the City would provide Plaintiffs with health insurance for life. See Trial Tr. 26:8–27:7, 27:14–20, Apr. 4, 2016 (Morning Session) (Mr. Waters); Trial Tr. 8:1–16, 10:17–11:15, Apr. 5, 2016 (Morning Session) (Mr. D. Simoneau); Trial Tr. 7:20–8:13, 9:9–20 (Mr. Battista), 70:23–73:13 (Mr. Costa), Apr. 6, 2016 (Morning Session); Trial Tr. 97:15–98:17, Apr. 11, 2016 (Morning Session) (Mr. Cochrane); Trial Tr. 125:3–127:3, Apr. 14, 2016 (Morning Session) (Mr. Celeberto). Indeed, they continued to receive the same healthcare benefits after retiring. See Trial Tr. 26:8–18, Apr.

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could have been grouped with Category F and G Retirees—those in the bargaining unit who did not retire under a valid CBA—to determine whether a contractual obligation existed. Either way, the Court would reach the same conclusion.

4, 2016 (Morning Session) (Mr. Waters); Trial Tr. 11:6–18, 16:9–11, Apr. 5, 2016 (Morning Session) (Mr. D. Simoneau); Trial Tr. 9:21–11:11, Apr. 6, 2016 (Morning Session) (Mr. Battista); Trial Tr. 98:21–22, Apr. 11, 2016 (Morning Session) (Mr. Cochrane).

Category F and G Plaintiffs retired during a period of time when there was no valid CBA in effect and binding on the City. They experienced the same assurances from the City regarding lifetime healthcare benefits as Retirees in Categories D, K, and L. Before retiring, they, too, met with administrative personnel from the City to discuss post-retirement benefits. See Trial Tr. 17:14–20, Apr. 7, 2016 (Morning Session) (Mr. J. Simoneau); Trial Tr. 29:25–30:13, Apr. 7, 2016 (Afternoon Session) (Mr. P. Day); Trial Tr. 28:22–29:7, Apr. 11, 2016 (Afternoon Session) (Mr. Cummings); Trial Tr. 29:3–15, Apr. 12, 2016 (Afternoon Session) (Mr. Duggan); Trial Tr. 11:11–16 (Mr. Rinaldi), 38:22–39:2 (Mr. Chin), Apr. 13, 2016 (Morning Session). The City, through its employees in the retirement office and the terms of the later-invalidated CBA, assured Plaintiffs that they would receive health insurance for life in accordance with their expectations. See Trial Tr. 12:9–22, 13:12–18 (Mr. Roy), 46:8–12, 46:25–47:3 (Mr. Quigley), 73:11–14, 74:1–3, 75:3–17 (Mr. McLaughlin), Apr. 6, 2016 (Afternoon Session); Trial Tr. 17:14–18:12, Apr. 7, 2016 (Morning Session) (Mr. J. Simoneau); Trial Tr. 2:7–16, 4:6–9 (Ms. D'Agostino), 27:24–28:6, 29:25–30:13 (Mr. P. Day), Apr. 7, 2016 (Afternoon Session); Trial Tr. 27:16–28:4, 28:22–29:7, Apr. 11, 2016 (Afternoon Session) (Mr. Cummings); Trial Tr. 22:14–20, Apr. 12, 2016 (Morning Session) (Ms. K. Simoneau); Trial Tr. 28:6–29:15, Apr. 12, 2016 (Afternoon Session) (Mr. Duggan); Trial Tr. 9:23–10:16, 10:23–11:7 (Mr. Rinaldi), 38:15–39:2 (Mr. Chin), Apr. 13, 2016 (Morning Session). Again, these Plaintiffs actually continued to receive their same anticipated healthcare benefits after they retired. See Trial Tr. 15:11–20 (Mr. Roy), 77:9–22 (Mr. McLaughlin), Apr. 6, 2016 (Afternoon Session); Trial Tr. 18:25–19:21, Apr.

7, 2016 (Morning Session) (Mr. J. Simoneau); Trial Tr. 6:4–8 (Ms. D'Agostino), 29:6–13 (Mr. P. Day), Apr. 7, 2016 (Afternoon Session); Trial Tr. 28:5–21, 36:10–20, Apr. 11, 2016 (Afternoon Session) (Mr. Cummings); Trial Tr. 22:21–25, Apr. 12, 2016 (Morning Session) (Ms. K. Simoneau); Trial Tr. 29:19–21, Apr. 12, 2016 (Afternoon Session) (Mr. Duggan); Trial Tr. 39:3–22, Apr. 13, 2016 (Morning Session) (Mr. Chin).

Defendant argues that Plaintiffs in Categories F, G, and K are barred by the doctrines of collateral estoppel and res judicata from arguing the existence of a contractual obligation. Defendant claims that "[e]ach of these Plaintiffs actually litigated, in Cianci and Arena, the issue of whether they had a contractual relationship with the City." Def.'s Post-Tr. Mem. at 54. The Court disagrees.

"[T]he doctrine of res judicata operates as an absolute bar to a subsequent cause of action when there exist the following: (1) identity of parties, (2) identity of issues, and (3) finality of judgment in an earlier action." E.W. Audet & Sons, Inc. v. Fireman's Fund Ins. Co. of Newark, 635 A.2d 1181, 1186 (R.I. 1994) (citing Gaudreau v. Blasbalg, 618 A.2d 1272, 1275 (R.I. 1993)). "Usually asserted in a subsequent action based upon the same claim or demand, the doctrine precludes the relitigation of all the issues that were tried or might have been tried in the original suit." Id. (citing Providence Teachers Union, Local 958 v. McGovern, 113 R.I. 169, 172, 319 A.2d 358, 361 (1974)).

For collateral estoppel to apply, "the requirements are (1) that there be an identity of issues, (2) that the prior proceeding resulted in a final judgment on the merits, and (3) that the party against whom collateral estoppel is asserted be the same as or in privity with a party in the prior proceeding." Id. (citing State v. Chase, 588 A.2d 120, 122 (R.I. 1991). Our Supreme Court has "subdivided the first requirement, identity of issues, into three factors: (1) the issue sought to

be precluded must be identical to the issue determined in the earlier proceeding, (2) the issue must actually have been litigated in the prior proceeding, and (3) the issue must necessarily have been decided." Id. (citing Chase, 588 A.2d at 123). "The doctrine of collateral estoppel makes conclusive in a later action on a different claim the determination of issues that were actually litigated in a prior action." Id. (emphasis added) (citing Providence Teachers, 113 R.I. at 172, 319 A.2d at 361).

With respect to the first prong of res judicata and the third prong of collateral estoppel, the Court can dispose of the City's argument that Category F, G, and K Plaintiffs actually litigated—or, for that matter, even could have litigated—in Cianci the issue of whether they had a contractual relationship with the City because these Plaintiffs were neither parties to that action nor in privity with any party in that case. "A party to an action has been defined as '[a] person who is named as a party to an action and subjected to the jurisdiction of the court . . . .'" Id. at 1186–87 (citing Restatement (Second) Judgments, § 34(1) at 345). In Cianci, the Providence City Council filed suit against the Mayor of Providence and joined the Local 1033 Laborers Union. 650 A.2d at 500–01. It is clear that Plaintiffs were neither in privity with nor themselves parties to that action who could have litigated any claim whatsoever. Thus, Defendant's argument that Plaintiffs are barred by res judicata and collateral estoppel based on our Supreme Court's final judgment in Cianci fails because the requisite identity of parties is lacking. See E.W. Audet & Sons, Inc., 635 A.2d at 1186.

Category F, G, and K Plaintiffs, on the other hand, were parties to our Supreme Court's final judgment in Arena. See 919 A.2d 379. While there is no evidence that the lone Category K Plaintiff was himself a litigant in Arena, and while the Category G Plaintiffs settled their claims against the City in that action, they were in privity with the plaintiffs in that case. "'Parties are in

privity when there is a commonality of interest between the two entities and when they sufficiently represent each other's interests.'" Reynolds v. First NLC Fin. Servs., LLC, 81 A.3d 1111, 1116 (R.I. 2014) (internal quotation marks omitted) (quoting Lennon v. Dacomed Corp., 901 A.2d 582, 591 (R.I. 2006)). The retired City employees in Arena who sued the City seeking to have their compounded COLAs reinstated, see 919 A.2d at 384, shared a commonality of interests with these Plaintiffs, and those who were actually parties to Arena sufficiently represented the others' interests. See Reynolds, 81 A.3d at 1116.

However, the Court finds that the requisite "identity of issues" to maintain Defendant's res judicata and collateral estoppel arguments is not present between Arena and this case. See E.W. Audet & Sons, Inc., 635 A.2d at 1186. In Arena, the plaintiffs sued the City seeking declaratory judgments, injunctions, and monetary damages when it reduced the 5% compounded COLA they retired with to a 3% simple COLA. 919 A.2d at 383–84. Here, Plaintiffs are challenging the constitutionality of the Medicare Ordinance following the loss of their City-provided healthcare benefits. Our Supreme Court has adopted the broad "transactional" rule in determining the scope of issues that were tried or might have been tried in an earlier action to be precluded by res judicata in a subsequent action. Reynolds, 81 A.3d at 1116. "In accordance with that rule, res judicata 'precludes the relitigation of all or any part of the transaction, or series of connected transactions, out of which the [first] action arose.'" Id. (alteration in original) (internal quotation marks omitted) (quoting Lennon, 901 A.2d at 592). The transaction out of which Arena arose was the reduction of the plaintiffs' COLAs via certain City ordinances. 919 A.2d at 383–84. The transaction out of which the present litigation arose was the passage and implementation of the Medicare Ordinance, which required Plaintiffs to enroll in Medicare upon eligibility. The first case involved COLAs; the case at bar involves health insurance. Both arose

out of different transactions. A distinction exists between this cause of action and the Arena case. Defendant's res judicata claim is therefore defeated. See Reynolds, 81 A.3d at 1116.

As for collateral estoppel, identity of issues requires that "(1) the issue sought to be precluded must be identical to the issue determined in the earlier proceeding, (2) the issue must actually have been litigated in the prior proceeding, and (3) the issue must necessarily have been decided." E.W. Audet & Sons, Inc., 635 A.2d at 1186. In Arena, "[the] plaintiffs presented two possible sources for determining their proper COLA percentage: the terms of their last ratified CBAs or Ordinance 1991-5, both of which provide plaintiffs with a 5 percent compounded COLA upon retirement." 919 A.2d at 391. Our Supreme Court stated that "[t]here is no authority that allows us to take the terms of an expired CBA and graft them onto a nonexistent CBA[,]" and it thus concluded that "Ordinance 1991-5 governed plaintiffs' COLA benefits at the time of their retirement." Id. at 391–92. It is clear that the issue of whether Plaintiffs have an implied-in-fact contract with the City is not identical to the issue litigated or decided in Arena. See E.W. Audet & Sons, Inc., 635 A.2d at 1186. Therefore, Plaintiffs in Categories F, G, and K are not barred by either res judicata or collateral estoppel from arguing the existence of an implied-in-fact contract with the City for healthcare benefits.

It is well settled that an implied-in-fact contract must meet the offer, acceptance, and consideration requirements of all contracts. See generally 17A Am. Jur. 2d Contracts § 16. "An implied-in-fact contract 'is a form of express contract wherein the elements of the contract are found in and determined from the relations of, and communications between the parties, rather than from a single clearly expressed written document.'" Haviland, 45 A.3d at 1257 (quoting Marshall Contractors, Inc., 692 A.2d at 669). Thus, the general principles of contract law determine if the circumstances and behavior of the parties evidence the essential elements of

contractual formation. Our Supreme Court "has established that for parties to form a valid contract, each must have the intent to be bound by the terms of the agreement." Weaver, 863 A.2d at 198.

Here, the Court finds the necessary offer, acceptance, and consideration to form an implied-in-fact contract from the relations of and communications between the Category D, F, G, K, and L Retirees and the City. See Haviland, 45 A.3d at 1257. Like the pension and COLA, the promise of healthcare benefits was part of the post-retirement benefits package that the City offered to Plaintiffs in exchange for diligent and continuous employment in their dangerous jobs as firefighters and police officers. See McGrath, 88 F.3d at 16–17 (discussing how "the promise of a pension is part of the compensation package that employers dangle to attract and retain qualified employees"). Plaintiffs accepted and performed their end of the bargained-for exchange through continued and faithful service to the City. See Almeida, 611 A.2d at 1385. Thus, Plaintiffs in Categories D, F, G, K, and L have established through credible testimony beyond a reasonable doubt the existence of a contractual obligation, and the City's impairment of that obligation is subject to Contract Clause scrutiny.

Finally, the source of the City's contractual obligation to the Category H Plaintiffs is disputed. Plaintiffs claim the right to healthcare benefits by virtue of: (1) the 1996–1999 Fire CBA, which had expired when they retired but contained a carry-over provision,[32] see Ex. 146; (2) the 1999–2001 Fire CBA, which covered to the dates of their retirements but was not ratified

[32] The "Duration" Article of the 1996–1999 Fire CBA provided as follows:

> "The parties agree that the terms and conditions of this July 1, 1996 to June 30, 1999 Agreement shall, upon ratification by the appropriate authorities of each party, remain in full force and effect until such time as the parties enter into, and have ratified or arbitrated, a successor agreement." Ex. 146 at 67, Art. XXX (emphasis added).

until after they had retired, see Ex. 147; or (3) an implied-in-fact contract. In arguing against the applicability of the 1996–1999 Fire CBA to Plaintiffs, Defendant cites Arena for the proposition that "[t]here is no authority that allows [the Court] to take the terms of an expired CBA and graft them onto a nonexistent CBA." See 919 A.2d at 391–92. However, Arena concerned the 1992–1995 Fire CBA, which our Supreme Court "effectively rendered . . . invalid and unenforceable" in Cianci. See Arena, 919 A.2d at 383, 391–92. In that sense, "[i]t [was] undisputed that . . . the 1992–95 fire CBA expired before plaintiffs' retirement dates, that no valid CBAs existed when plaintiffs retired, and that the terms of the next ratified fire . . . CBA[] were effectuated after plaintiffs retired." Id. at 391. The Court then concluded that "[s]imply because uncontested terms would continue in the next CBA does not mean that they fill a gap between CBAs . . . ." Id. at 392.

Here, the presence of the carry-over provision in the 1996–1999 Fire CBA alleviates any concern regarding the gap between that CBA and the 1999–2001 Fire CBA. The Tentative Agreement accompanying the 1996–1999 Fire CBA and the CBA itself indicate that the carry-over provision was new language the City and firefighters agreed to add and that such language was lacking in the 1992–1995 Fire CBA. See Ex. 146. In Arena, our Supreme Court's refusal "to take the terms of an expired CBA and graft them onto a nonexistent CBA" could have stemmed from the lack of any sort of durational language as is present here. See 919 A.2d at 391–92. Furthermore, it is entirely possible that such a provision was added to the next CBA in direct response to our Supreme Court's holding in Arena. Therefore, this Court finds that the Category H Plaintiffs have proven beyond a reasonable doubt that they were covered by the terms of the 1996–1999 Fire CBA[33] when they retired.

[33] The retiree healthcare benefits set forth in that CBA were as follows:

In conclusion, Plaintiffs' Contract Clause claims survive this threshold inquiry, as they all succeeded in establishing beyond a reasonable doubt the existence of a contractual obligation.

b

Substantial Impairment

As stated in § III.B of this Decision, the Contract Clause is not a bar to the Medicare Ordinance unless the impairment of the City's contractual obligations is sufficiently substantial. See Energy Reserves Grp., 459 U.S. at 411; Nonnenmacher, 722 A.2d at 1202. The Court will not repeat any law except to note that it applies herein.

Here, the City's "[m]inimal alteration" of its contractual obligation to Plaintiffs in Categories A, B, C, E, H, I, and J "end[s] the inquiry at its first stage." Spannaus, 438 U.S. at 245. The CBAs did not include a provision for lifetime healthcare benefits. The clear and unambiguous language of the CBAs did state that if a Retiree were to become eligible for another insurance plan, the City would only be obligated to provide excess coverage such that Plaintiffs would receive an equivalent level of healthcare benefits.

> "B. The City agrees to assume the cost of family coverage under the Rhode Island Hospital Service Corporation (Blue Cross) in the present Semi-Private Plan and Family Coverage under the Rhode Island Medical Society Physician's Service Plan B and Blue Shield Plan 100 or the Rhode Island Group Health Association Plan and paid prescriptions for all retired members who were hired on or before June 30, 1996.
>
> "Should said member or any member of his/her family be eligible for medical insurance under Blue Cross or any other plan, then the City will be obligated to furnish only excess coverage so that said member will have equivalent coverage as that offered by the City. Should a retired member subsequent to retirement lose said alternate coverage, then the City will pick up full coverage under this section." Ex. 146 at 46, Art. XIV, Sec. 1B.

Defendant cites the recent United States Supreme Court case of M & G Polymers USA, LLC v. Tackett for the propositions that ordinary principles of contract interpretation govern the extent of a retiree's healthcare benefits based upon a CBA, that the duration of the benefit may be specified by the CBA, and that where no duration is specified, the term of the benefit is for a reasonable period. See 135 S. Ct. 926 (2015). This Court agrees with Defendant's interpretation of that case as holding that ordinary principles of contract interpretation apply in determining the length of time the City agreed to provide health insurance to Retirees. However, Defendant misinterprets that case as holding that where no duration is specified, the term of Plaintiffs' receipt of the healthcare benefits would be for a reasonable period.

In M & G Polymers USA, LLC, the Supreme Court denounced certain inferences applied by the Sixth Circuit in the context of collective bargaining disputes, stating that they "violate[d] ordinary contract principles by placing a thumb on the scale in favor of vested retiree benefits in all collective-bargaining agreements. That rule has no basis in ordinary principles of contract law. And it distorts the attempt 'to ascertain the intention of the parties.'" Id. at 935 (quoting 11 Williston on Contracts § 30:2 at 18 (4th ed. 2012)); see also id. at 932 (citing Int'l Union Auto., Aerospace, and Agric. Implement Workers of Am. v. Yard-Man, Inc., 716 F.2d 1476, 1482 (6th Cir. 1983)) (where the Sixth Circuit "inferred that parties to collective bargaining would intend retiree benefits to vest for life because such benefits are 'not mandatory' or required to be included in collective-bargaining agreements, are 'typically understood as a form of delayed compensation or reward for past services,' and are keyed to the acquisition of retirement status"). "Under the 'cardinal principle' of contract interpretation, 'the intention of the parties, to be gathered from the whole instrument, must prevail.'" Id. at 937 (Ginsburg, J., concurring) (quoting 11 Williston on Contracts § 30:2 at 27 (4th ed. 2012)). "When the intent of the parties

is unambiguously expressed in the contract, that expression controls, and the court's inquiry should proceed no further." Id. at 938 (citing 11 Williston on Contracts § 30:6 at 98–104 (4th ed. 2012)).

Therefore, this Court must apply ordinary principles of contract interpretation to determine whether the relevant CBAs provided lifetime healthcare benefits to Plaintiffs in Categories A, B, C, E, H, I, and J at the expense of the City. Our Supreme Court has "consistently held that a contract is ambiguous only when it is reasonably and clearly susceptible of more than one interpretation." Rotelli v. Catanzaro, 686 A.2d 91, 94 (R.I. 1996) (citing W.P. Assocs. v. Forcier, Inc., 637 A.2d 353, 356 (R.I. 1994)). "'In determining whether a contract is clear and unambiguous, the document must be viewed in its entirety and its language be given its plain, ordinary and usual meaning.'" Id. (quoting Paradis v. Greater Providence Deposit Corp., 651 A.2d 738, 741 (R.I. 1994)).

Here, the provisions regarding retiree healthcare benefits in all relevant CBAs are clear and unambiguous. The plain language contained therein is susceptible to only one interpretation. Both the oldest Police CBA and the oldest Fire CBA at issue in this case contain the following identical language: "Should said member or any member of his family be eligible for medical insurance under Blue Cross or any other plan, then the City will be obligated to furnish only excess coverage so that said member will have equivalent coverage as that offered by the City." See Ex. 136 at 21, Art. XIII, Sec. 1B (1979–1980 Fire CBA) (emphasis added); Ex. 158 at 41–42, Art. XIV, Sec. 2 (1984–1985 Police CBA) (emphasis added). This guarantee that the City would provide excess coverage should a retiree become eligible for medical insurance under another plan remained constant throughout all CBAs and IAAs under which Plaintiffs claim

healthcare benefits.[34] Medicare is a federal health insurance plan for people over the age of sixty-five. See Trial Tr. 17:3–20:14, Apr. 18, 2016 (Morning Session) (Mr. Yamamoto) (generally explaining the Medicare program without mentioning that eligibility begins at sixty-five years of age); see also Trial Tr. 77:13–78:5, Apr. 19, 2016 (Afternoon Session) (Mayor Taveras) (indicating that retirees must enroll in Medicare when they become eligible at age sixty-five); Trial Tr. 45:20–46:4, Apr. 20, 2016 (Morning Session) (Mr. D'Amico) (same); Trial Tr. 52:24–25, Apr. 21, 2016 (Afternoon Session) (Ms. Wingate) (same). Plaintiffs are or will be eligible for medical insurance offered under Medicare.

The language of the CBAs is unambiguous. Therefore, the Court is bound to "accept . . . and apply it at face value." Young v. Warwick Rollermagic Skating Ctr., Inc., 973 A.2d 553, 559 (R.I. 2009); see also Zarrella v. Minnesota Mut. Life Ins. Co., 824 A.2d 1249, 1259 (R.I. 2003) ("If the terms are found to be unambiguous, . . . the task of judicial construction is at an end and the parties are bound by the plain and ordinary meaning of the terms of the contract."). Applying the language of the CBAs at face value, the Court concludes that the City has not impaired—let alone substantially impaired—its contractual obligation to Plaintiffs. See Spannaus, 438 U.S. at 245 ("Minimal alteration of contractual obligations may end the inquiry at

[34] See Ex. 137 at 1 (1980–1981 Fire CBA) (incorporating by reference 1979–1980 Fire CBA); Ex. 139 at 5–6, Art. XIII, Sec. 1B (1982–1984 Fire CBA); Ex. 140 at 1 (1984–1985 Fire CBA) (incorporating by reference 1982–1984 Fire CBA); Ex. 142 at 31, Art. XIII, Sec. 1B (1987–1989 Fire CBA); Ex. 144 at 34, Art. XIII, Sec. 1B (1990–1992 Fire CBA); Ex. 189 at 8 (1995–1996 Fire IAA); Ex. 148 at 59, 70, 71 (2001–2002, 2002–2003, 2003–2004 Fire IAAs); Ex. 194 at 78, 95 (2005–2006 Fire IAA); Ex. 195 at 83–84, 93–94 (2006–2007 Fire IAA); Ex. 149 at 52, Art. XIV, Sec. 1B (2007–2010 Fire CBA); Ex. 151 at 49, Art. XIV, Sec. 1B (2010–2013 Tentative Fire CBA); Ex. 150 at Art. XIV (2011–2013 Fire CBA) (amending 2010–2013 Tentative Fire CBA); Ex. 162 at 49, Art. XIV, Sec. 2 (1989–1991 Police CBA); Ex. 166 at 53, Art. XIV, Sec. 2 (1992–1993 Police CBA); Ex. 169 at 71, Art. XV, Sec. 2A (1996–1999 Police CBA); Ex. 170 at 9–10 (1999–2001 Police CBA) (listing the only changes to Art. XV, Sec. 2 of 1996–1999 Police CBA); Ex. 171 at 65–66, Art. XV, Sec. 2A (2001–2004 Police CBA); Ex. 186 at 6–7 (2006–2007 Police IAA) (arbitration award re health insurance); Ex. 174 at 5–6 (2007–2010 Police CBA) (setting forth the only changes enacted in 2007–2010 Police CBA).

its first stage."). Thus, Plaintiffs in Categories A, B, C, E, H, I, and J have not demonstrated substantial impairment beyond a reasonable doubt; consequently, the Contract Clause does not bar the Medicare Ordinance as applied to those Retirees. See Energy Reserves Grp., 459 U.S. at 411; Nonnenmacher, 722 A.2d at 1202.

The Court next considers whether the City substantially impaired its contractual obligation to Plaintiffs in Categories D, F, G, K, and L. The source of the City's obligation to pay for medical benefits arose from an implied-in-fact contract between the City and Plaintiffs. There is no language stating that the City need only provide supplemental coverage if Retirees were to become eligible for medical insurance under another plan. As such, the Court must determine whether the impaired right—lifetime healthcare benefits—is one that substantially induced the parties to contract in the first place or one that was reasonably and especially relied upon by Plaintiffs. See Spannaus, 438 U.S. at 246; City of El Paso, 379 U.S. at 514; see also Baltimore Teachers Union, 6 F.3d at 1018.

The credible testimony demonstrated that the promise of healthcare benefits for life induced Plaintiffs to work for the City, and they relied upon continued receipt of that benefit when they retired. Plaintiffs were generally aware of the benefits package that came with City employment. See Trial Tr. 3:3–18, Apr. 5, 2016 (Morning Session) (Mr. D. Simoneau); Trial Tr. 55:18–56:5, Apr. 6, 2016 (Morning Session) (Mr. Costa); Trial Tr. 10:24–11:2 (Mr. Roy), 43:23–44:5 (Mr. Quigley), 77:23–78:8 (Mr. McLaughlin), Apr. 6, 2016 (Afternoon Session); Trial Tr. 12:18–13:7, Apr. 7, 2016 (Morning Session) (Mr. J. Simoneau); Trial Tr. 2:7– 16 (Ms. D'Agostino), 26:8–14 (Mr. P. Day), Apr. 7, 2016 (Afternoon Session); Trial Tr. 27:8–10, Apr. 11, 2016 (Afternoon Session) (Mr. Cummings); Trial Tr. 14:22–15:14, Apr. 13, 2016 (Morning Session) (Mr. Rinaldi). Many Retirees were particularly aware of and enticed by the City's

promise to provide them and their families with health insurance. See Trial Tr. 4:13–19, Apr. 5, 2016 (Morning Session) (Mr. D. Simoneau); Trial Tr. 4:2–7 (Mr. Battista), 56:6–9 (Mr. Costa), Apr. 6, 2016 (Morning Session); Trial Tr. 11:8–12:3 (Mr. Roy), 52:24–53:4 (Mr. Quigley), 78:9–22 (Mr. McLaughlin), Apr. 6, 2016 (Afternoon Session); Trial Tr. 26:15–23, 32:21–33:10 (Mr. P. Day), 53:24–54:5 (Mr. Hodgkins), Apr. 7, 2016 (Afternoon Session); Trial Tr. 36:10–22, Apr. 13, 2016 (Morning Session) (Mr. Chin); Trial Tr. 114:9–16, Apr. 14, 2016 (Morning Session) (Mr. Celeberto).

Moreover, Plaintiffs relied upon continuing to receive their healthcare benefits into retirement. Some Retirees, their spouses, and their children suffer from debilitating injuries, and Plaintiffs relied financially and emotionally on the City maintaining their healthcare benefits. See Trial Tr. 23:4–24:10, Apr. 5, 2016 (Morning Session) (Mr. D. Simoneau); Trial Tr. 73:25–74:20, Apr. 6, 2016 (Morning Session) (Mr. Costa); Trial Tr. 49:13–50:15 (Mr. Quigley), 81:9–82:2 (Mr. McLaughlin), Apr. 6, 2016 (Afternoon Session); Trial Tr. 6:17–8:4, 9:10–20, Apr. 7, 2016 (Afternoon Session) (Ms. D'Agostino); Trial Tr. 23:1–19, Apr. 12, 2016 (Morning Session) (Ms. K. Simoneau); Trial Tr. 33:20–34:16, Trial Tr. Apr. 12, 2016 (Afternoon Session) (Mr. Duggan). The decision to retire for other Plaintiffs was based on the security of the continued receipt of health insurance provided by the City. See Trial Tr. 27:21–28:9, Apr. 4, 2016 (Morning Session) (Mr. Waters); Trial Tr. 11:25–13:7, Apr. 5, 2016 (Morning Session) (Mr. D. Simoneau); Trial Tr. 38:5–12, Apr. 13, 2016 (Morning Session) (Mr. Chin); Trial Tr. 126:24–127:25, Apr. 14, 2016 (Morning Session) (Mr. Celeberto).

Plaintiffs offered the testimony of Dale Yamamoto to discuss the issue of the substantial nature of the impairment. Mr. Yamamoto, a former chief actuary at Hewitt Associates, worked with private sector clients in addressing the question of redesigning healthcare programs. Trial

Tr. 8:4–11:11, Apr. 18, 2016 (Morning Session). He has no direct experience working with public sector employers to redesign healthcare plans for the purpose of cost saving. Trial Tr. 68:18–69:3, Apr. 18, 2016 (Afternoon Session). As such, he testified that he was unsure whether his advice on this issue would be considered by a public sector employer. Id. at 69:12–21.

Mr. Yamamoto compared the "richness" of the City-provided plans and Medicare through a confusing demonstrative aid. He attempted to demonstrate what percentage of covered medical expenses is paid for by the plan. Trial Tr. 75:18–22, Apr. 18, 2016 (Morning Session). On this point, his testimony was disjointed and confusing. He testified that the ten City plans that covered Plaintiffs in 2011 had a richness between 95% and 99%, while the highest richness level of a Medicare plan is between 88% and 92%. Id. at 86:21–88:15. This difference would result in increased out-of-pocket costs—consisting of inpatient costs under Part A, Part B deductibles, Part B premiums, co-insurance under Part B, and Part D premiums—for Retirees on an annual basis as well as throughout the remainder of their lifetimes. Trial Tr. 33:20–35:25, 38:12–39:17, 40:4–46:16, 46:22–47:7, 48:3–10, 48:18–52:19, Apr. 18, 2016 (Afternoon Session). Mr. Yamamoto further testified that the transition to Medicare would result in noneconomic changes for Plaintiffs, including the ability to choose a medical provider. Id. at 58:22–59:8. However, Mr. Yamamoto's testimony at trial contradicted his earlier assessment of the damages Plaintiffs would incur as a result of the transition to Medicare. Trial Tr. 74:23–75:10, Apr. 19, 2016 (Morning Session). Furthermore, the City demonstrated that one of the City plans Mr. Yamamoto evaluated actually was less generous than Medicare. Id. at 79:24–80:18. These contradictions made by Mr. Yamamoto afford little weight to his testimony.

Nevertheless, the credible testimony established that the promise of healthcare benefits induced Plaintiffs to enter City employment, and they especially and reasonably relied on

continuing to receive health insurance from the City. The Court finds that Plaintiffs have proven both inducement and reliance beyond a reasonable doubt. See Baltimore Teachers Union, 6 F.3d at 1018 (stating that "at the very least, where the contract right or obligation impaired was one that induced the parties to enter into the contract and upon the continued existence of which they have especially relied, the impairment must be considered 'substantial' for purposes of the Contract Clause"). Accordingly, the Medicare Ordinance amounts to a substantial impairment of the contractual rights of Plaintiffs in Categories D, F, G, K, and L.

c

Significant and Legitimate Public Purpose

The Medicare Ordinance will remain constitutionally valid if the City produces sufficient credible evidence that modifying the contracts was reasonable and necessary in order to achieve a significant and legitimate purpose. See Buffalo Teachers Fed'n, 464 F.3d at 368; Nonnenmacher, 722 A.2d at 1202. Again, Plaintiffs may rebut the City's credible evidence by establishing beyond a reasonable doubt that there was no significant and legitimate public purpose behind the City modifying their contracts. See Donohue, 886 F. Supp. 2d at 160.

The unrebutted evidence indicates that the unfunded accrued actuarial liability of the City's retiree healthcare system totaled nearly $1.5 billion. Ex. 104 at 15. The funded ratio of the plan was .07%. Id. As Mr. Almonte credibly testified, the City had set aside the "completely insignificant" amount of $1 million to address the $1.5 billion in unfunded retiree healthcare liability. Trial Tr. 20:17–21, Apr. 22, 2016 (Afternoon Session). Mr. Almonte was steadfast in his belief that such a funded ratio was severe and entirely unreasonable. Id. at 20:22–21:4.

A comparison of the unfunded healthcare liability of the City to that of the State was made by the panel in 2011. Id. at 21:5–9. It was determined that the unfunded accrued liability

of the State for its 21,287 active and retired members was $777,945,736. Ex. 104 at 16. The City's unfunded accrued liability for its 9,557 members, on the other hand, was $1,497,451,000. Id. Mr. Almonte testified that the difference was staggering. The City's ability to pay the debt was less likely compared to that of the State. Trial Tr. 21:14–24, Apr. 22, 2016 (Afternoon Session). The discrepancy was further illustrated by the panel by analyzing the cost per retiree. See id. at 21:25–22:15. The State's average liability per member was $36,546, while the City's was $156,686. Ex. 104 at 16. Again, Mr. Almonte credibly testified that the number was staggering. Trial Tr. 22:7–8, Apr. 22, 2016 (Afternoon Session). As a result of this analysis, the panel highlighted the unfunded accrued actuarial liabilities of the City's pension and retiree healthcare systems. Id. at 22:8–15; see Ex. 104 at 2. It was concluded that merely discussing and focusing on the City's overall structural deficit would not be sufficient to remedy its fiscal crisis. It was imperative for the City to address the unfunded liabilities. Trial Tr. 22:11–15, Apr. 22, 2016 (Afternoon Session) (Mr. Almonte).

Mr. Almonte testified that this type of public fiscal crisis had occurred previously. Id. at 22:16–19. He recalled the Depositors Economic Protection Corporation (DEPCO) crisis where the financial issue was staggering. Id. at 22:22–23:9. Here, one City in the State had one item of debt over one-and-a-half times the debt of DEPCO based on healthcare. Id. at 23:9–13. When the unfunded pension liability is factored into the equation, the total debt was $2.3 billion—more than two times what the DEPCO and banking crisis liability was in 1994. Id. at 23:14–18.

Plaintiffs presented Mr. Yamamoto in rebuttal to the City's contention that the Medicare Ordinance was enacted for a significant and legitimate public purpose. Again, the Court notes that Mr. Yamamoto has never worked directly with public sector clients to redesign healthcare programs, and he is unsure whether they would employ his advice. Trial Tr. 68:18–69:3, 69:12–

21, Apr. 18, 2016 (Afternoon Session). Mr. Yamamoto testified that in 1991, the Financial Accounting Standards Board (FASB) began requiring private sector employers to prefund their retiree healthcare benefits. Trial Tr. 36:24–37:14, Apr. 18, 2016 (Morning Session). Since then, there has been a steady decline in the prevalence of employers offering post-Medicare-eligibility healthcare. Id. at 37:18–38:8. Thus, Mr. Yamamoto concluded to a reasonable degree of actuarial certainty that the condition of the City's retiree healthcare program as of 2011 was foreseeable. Id. at 53:5–18. However, Mr. Yamamoto clarified that the 1991 FASB statement applied only to private sector employers. Trial Tr. 88:11–16, Apr. 19, 2016 (Morning Session). The Governmental Accounting Standards Board (GASB), on the other hand, did not adopt a requirement of advanced accounting for other post-employment benefits (OPEB) liabilities—similar to that of the FASB—until 2003, and a scaled implementation meant it did not even become effective at that time. Id. at 89:12–19. Despite his assertion that the downfall of the City's retiree healthcare program was foreseeable, Mr. Yamamoto was unaware of when the GASB requirement was implemented by the City. Id. at 89:20–90:19.

Furthermore, when the GASB first introduced its accounting rule, there was widespread confusion regarding what discount rate—that is, the interest rate used to discount future benefit values to the current time—to use to calculate OPEB liabilities. Id. at 94:13–95:18. The City changed its discount rate from 8% to 4% between 2010 and 2011 based upon clarification from the GASB. Id. at 94:24–95:21. Mr. Yamamoto acknowledged that the City's discount rate assumption change was reasonable and appropriate. Id. at 95:22–96:3. Mr. Yamamoto also agreed that the result of this assumption change was a dramatic increase in the City's unfunded retiree healthcare liability. Id. at 97:3–8. In fact, it increased the City's OPEB liability by nearly a billion dollars, from approximately $594 million to $1.5 billion. Id. at 97:9–13. Mr.

Yamamoto admitted that the change in the discount rate assumption was the primary reason for such a dramatic increase in the City's liability. Id. at 97:19–98:4, 98:22–99:9.

The Court is satisfied that the City presented sufficient credible evidence through the testimony of Mr. Almonte that the staggering unfunded retiree healthcare liability created an "unprecedented emergency." See Am. Fed'n of State, Cty. and Mun. Emps., 513 F.3d at 882 (quoting Spannaus, 438 U.S. at 242) ("Although economic concerns can give rise to the City's legitimate use of the police power, such concerns must be related to 'unprecedented emergencies . . . .'"); see also Chrysler Corp., 148 F.3d at 896 (citing Energy Reserves Grp., 459 U.S. at 411–13; Blaisdell, 290 U.S. at 425–28) ("Even big, totally unpredictable impairments of the obligation of contracts can survive challenge under the contracts clause if they are responsive to economic emergencies . . . ."). The purpose behind the Medicare Ordinance was not simply the financial benefit of the City—instead, it was "'aimed at remedying an important general social or economic problem . . . .'" Buffalo Teachers Fed'n, 464 F.3d at 368 (quoting Sanitation and Recycling Indus., 107 F.3d at 993). Furthermore, there is no evidence that the Medicare Ordinance provided a benefit to special interests or was passed merely for the advantage of particular individuals. See id.; Blaisdell, 290 U.S. at 445. Plaintiffs did not rebut the City's credible evidence by establishing beyond a reasonable doubt that there was no significant and legitimate public purpose behind the City modifying its contractual obligations to them. See Donohue, 886 F. Supp. 2d at 160. The Court therefore finds that the Medicare Ordinance was passed for a significant and legitimate public purpose. See Buffalo Teachers Fed'n, 464 F.3d at 368 (finding a legitimate public purpose in actions attempting to remedy a fiscal crisis).

d

Reasonable and Necessary

The Court must continue its analysis to ensure that the Medicare Ordinance was reasonable and necessary to remedy the City's fiscal crisis. See id. at 370–71.

i

Other Policy Alternatives

There is sufficient credible evidence on this record demonstrating that the City adequately considered and attempted other policy alternatives. See id. at 371. Mayor Taveras took numerous significant steps to cut spending and generate revenue. Trial Tr. 56:9–25, 58:25–59:11, Apr. 19, 2016 (Afternoon Session) (Mayor Taveras). The City sought the assistance of State legislation to generate further revenue. Trial Tr. 41:3–25, Apr. 20, 2016 (Morning Session). Additionally, the City negotiated for increased contributions from the tax-exempt hospitals and universities, producing between $6 and $7 million extra in annual revenues. Id. at 42:2–15. The only additional course for the City to cut costs would have been to close its libraries and recreational centers. Trial Tr. 66:20–24, Apr. 19, 2016 (Afternoon Session) (Mayor Taveras). Again, Mayor Taveras credibly testified that such action would not solve the problem and that he was concerned for the impact on the City's youth as well as public safety. Id. at 66:24–67:1; Trial Tr. 20:8–20, Apr. 21, 2016 (Afternoon Session).

There is ample evidence on this record as demonstrated primarily through the credible testimony of Mayor Taveras and Mr. D'Amico that the City's residents and businesses were already significantly overtaxed and overburdened. Trial Tr. 60:15–61:15, Apr. 19, 2016 (Afternoon Session) (Mayor Taveras); Trial Tr. 45:9–19, Apr. 20, 2016 (Morning Session) (Mr. D'Amico). Although the City exceeded the tax levy cap in the first year of the Mayor Taveras

administration and raised the residential tax rate in the third, repeatedly doing so was neither prudent nor necessarily permitted. Trial Tr. 59:12–60:12, Apr. 19, 2016 (Afternoon Session) (Mayor Taveras). As Mr. D'Amico explained, the City could not repeatedly exceed the cap. Moreover, its tangible and car tax rates were among the highest in the State and its corporate tax rates among the highest in the country, already causing a negative impact on the City's economy. Trial Tr. 45:1–19, Apr. 20, 2016 (Morning Session). Thus, Defendant has demonstrated to the Court's satisfaction that increased taxation was not a feasible solution to the City's fiscal crisis. See Buffalo Teachers Fed'n, 464 F.3d at 372 ("[I]t is always the case that to meet a fiscal emergency taxes conceivably may be raised. It cannot be the case, however, that a legislature's only response to a fiscal emergency is to raise taxes. Also, defendants have shown that Buffalo had already increased City taxes to meet its fiscal needs, and it is reasonable to believe that any additional increase would have further exacerbated Buffalo's financial condition.").

The City considered other alternatives to address the cost of healthcare benefits on both the active employee and retiree sides. The City adopted some of the options that the panel suggested it consider. For example, the panel recommended that the City negotiate for employee medical benefit provisions similar to those enacted by the State by adopting uniform minimum copays for all employee classes. Ex. 104 at 15. In response, Mr. D'Amico testified that the City was able to increase the co-shares for active employees in all unions. Trial Tr. 28:16–29:10, Apr. 20, 2016 (Morning Session). The panel also recommended the exact course of action that the City took with the Medicare Ordinance. Ex. 104 at 17. Mr. D'Amico testified that the panel suggested such because it would achieve substantial cost savings for the City, and two members of the panel had extensive experience in the State government, which had already accomplished savings by requiring conversion to Medicare upon attainment of eligibility. Trial Tr. 30:1–13,

Apr. 20, 2016 (Morning Session). Clearly, the credible evidence provided demonstrates that the City did not consider impairing Plaintiffs' contractual rights to healthcare benefits on par with other policy alternatives. See Buffalo Teachers Fed'n, 464 F.3d at 371 (quoting U.S. Trust Co., 431 U.S. at 30–31); see also id. at 372 ("[W]e find no need to second-guess the wisdom of picking the wage freeze over other policy alternatives, especially those that appear more Draconian, such as further layoffs or elimination of essential services.").

ii

More Moderate Course Available

The record contains sufficient credible evidence that a more moderate course was not available. See id. at 371. Margaret Wingate, the City's Manager of Benefits, was involved in administering the so-called "hybrid plan." Trial Tr. 52:9–21, Apr. 21, 2016 (Afternoon Session). She explained the design of the hybrid plan. Once a retiree approaches the age of sixty-five, the City notifies him or her that he or she must enroll in Part A, which normally happens automatically; Part B, which requires an application to Medicare; the supplemental plan to Medicare, which requires an application to the City; and Part D, a Blue MedicareRx product, which calls for another application. Id. at 53:7–21. Crucially, Ms. Wingate credibly testified that the overall objective of the hybrid plan was for the City to ensure that it provided at least equal, if not greater, coverage than what retirees had prior to moving to Medicare. Id. at 54:9–16. In reviewing the Classic or HealthMate plans that retirees had previously, Ms. Wingate examined the most prevalent and richest plans to make sure that the hybrid plan did, in fact, provide equal or greater coverage. Id. at 54:17–56:17; see Ex. 110.

The implementation of the hybrid plan resulted in significant savings to the City that a more moderate course would not have. The legacy plans that retirees had previously were, or are

for those who currently are not eligible for Medicare, more expensive for the City to provide than the hybrid plan. Trial Tr. 61:7–24, Apr. 21, 2016 (Afternoon Session) (Ms. Wingate). The actual "per employee per year" cost to the City of the legacy plans was $17,966 for retired firefighters; the same for retired police officers was $15,580. Id. at 72:14–73:8; see Ex. 110 at 4. Meanwhile, the actual per employee per year cost to the City for the hybrid plan is $5510. Trial Tr. 73:9–74:17, Apr. 21, 2016 (Afternoon Session) (Ms. Wingate); see Ex. 110 at 4.

Mr. Yamamoto opined that the City had available to it more moderate alternatives that would have had a lesser impact on Plaintiffs. Trial Tr. 49:11–20, Apr. 19, 2016 (Morning Session). This testimony is given minimal weight. The "easiest" change Mr. Yamamoto propounded would have been to still require retirees to join Medicare but for the City to pay any premiums, maintain its own prescription drug plan, and receive an employer group waiver subsidy from Medicare. Id. at 49:25–50:22. However, Mr. Yamamoto did not testify as to how much it would cost the City to implement those options and whether the City would still be able to achieve the necessary savings by doing so. Moreover, the subsidy program is less rich than the City's legacy plans, which would directly conflict with the objective of the hybrid plan to provide retirees with equal or greater coverage than they had before. See id. at 52:21–24. Finally, upon reviewing the relevant CBA language during cross-examination, Mr. Yamamoto himself admitted that the City should have had its retirees sign up for Medicare and only provide excess coverage so they would receive the same level of coverage as before. Id. at 105:1–6. It appears to the Court that such solution was unavoidable.

Therefore, the Court finds that the City presented sufficient credible evidence that there was no more moderate course available to adequately address the City's fiscal crisis and remedy the staggering unfunded retiree healthcare liability. See Buffalo Teachers Fed'n, 464 F.3d at

371; Baltimore Teachers Union, 6 F.3d at 1020. The Court is satisfied that the City did not "'impose a drastic impairment when an evident and more moderate course would serve its purpose equally well . . . .'" Buffalo Teachers Fed'n, 464 F.3d at 371 (quoting U.S. Trust Co., 431 U.S. at 30–31).

iii

Acting Reasonably in Light of Surrounding Circumstances

In analyzing "[t]he extent of impairment[,]" this Court reiterates that Plaintiffs in Categories D, F, G, K, and L were found to have implied-in-fact contracts that the City substantially impaired through the Medicare Ordinance. See U.S. Trust Co., 431 U.S. at 27. Conversely, their counterparts who retired under valid CBAs did not have their contractual rights impaired by the City by virtue of the very language therein; thus, their claims did not reach this point in the Court's Contract Clause analysis. The fact that all Plaintiffs were similarly situated during their employment and believed they were on equal footing, whether within the bargaining unit or not and whether covered by a valid CBA or not, lends itself to the conclusion that the City acted reasonably in light of the surrounding circumstances. After all, Category D, K, and L Plaintiffs testified that they should receive the same rights and the same protection as Retirees in the bargaining units. See Trial Tr. 20:4–10, Apr. 4, 2016 (Morning Session) (Mr. Waters); Trial Tr. 6:7–14, Apr. 5, 2016 (Morning Session) (Mr. D. Simoneau); Trial Tr. 6:12–20 (Mr. Battista), 67:12–23, 70:13–22 (Mr. Costa), Apr. 6, 2016 (Morning Session); Trial Tr. 100:7–18, Apr. 11, 2016 (Morning Session) (Mr. Cochrane); Trial Tr. 125:3–15, Apr. 14, 2016 (Morning Session) (Mr. Celeberto). Moreover, Plaintiffs in Categories F and G had to claim implied-in-fact contracts as the bases of their contractual rights to healthcare benefits only because the CBAs that they thought they were privy to—which contained the very same provisions as those that the

City was found not to have impaired—were later invalidated. Therefore, looking at "[t]he extent of impairment" works in favor of the City. See U.S. Trust Co., 431 U.S. at 27.

Next, "the existence of an emergency" also demonstrates the reasonableness of the Medicare Ordinance. See id. at 22 n.19. The City faced a Category 5 fiscal hurricane, and the Court has found throughout this Decision that it was a significant and legitimate public purpose for the City to face that emergency head on. The City had no option but to address its prohibitive unfunded pension and retiree healthcare liabilities. If it did not, the credible evidence showed that the emergency would spiral further out of control, culminating in the City's filing for bankruptcy. See Trial Tr. 66:4–14, 67:2–6, Apr. 19, 2016 (Afternoon Session) (Mayor Taveras); Trial Tr. 12:8–14:8, 17:2–3, Apr. 20, 2016 (Morning Session) (Mr. D'Amico); Trial Tr. 21:7–16, Apr. 21, 2016 (Afternoon Session) (Mayor Taveras).

Finally, the fact that the Medicare Ordinance operates only prospectively also shows its reasonableness. See Buffalo Teachers Fed'n, 464 F.3d at 371–72. Again, since the time of their retirements, Plaintiffs actually received the healthcare benefits they had expected. See Trial Tr. 26:8–18, Apr. 4, 2016 (Morning Session) (Mr. Waters); Trial Tr. 11:6–18, 16:9–11, Apr. 5, 2016 (Morning Session) (Mr. D. Simoneau); Trial Tr. 9:21–11:11, Apr. 6, 2016 (Morning Session) (Mr. Battista); Trial Tr. 15:11–20 (Mr. Roy), 77:9–22 (Mr. McLaughlin), Apr. 6, 2016 (Afternoon Session); Trial Tr. 18:25–19:21, Apr. 7, 2016 (Morning Session) (Mr. J. Simoneau); Trial Tr. 6:4–8 (Ms. D'Agostino), 29:6–13 (Mr. P. Day), Apr. 7, 2016 (Afternoon Session); Trial Tr. 98:21–22, Apr. 11, 2016 (Morning Session) (Mr. Cochrane); Trial Tr. 28:5–21, 36:10–20, Apr. 11, 2016 (Afternoon Session) (Mr. Cummings); Trial Tr. 22:21–25, Apr. 12, 2016 (Morning Session) (Ms. K. Simoneau); Trial Tr. 29:19–21, Apr. 12, 2016 (Afternoon Session) (Mr. Duggan); Trial Tr. 39:3–22, Apr. 13, 2016 (Morning Session) (Mr. Chin). Furthermore, for

those Retirees who have not yet attained Medicare eligibility, they continue to receive said health insurance. It is only moving forward that Plaintiffs' rights to health care benefits are impaired, weighing in favor of the reasonableness of the Medicare Ordinance. See Buffalo Teachers Fed'n, 464 F.3d at 371–72.

The Court is satisfied that the Medicare Ordinance was reasonable under the circumstances. Accordingly, the Court finds that the City presented sufficient credible evidence that the Medicare Ordinance was reasonable and necessary. See id. at 371; see also U.S. Trust Co., 431 U.S. at 22. The Court further finds that Plaintiffs have not rebutted this credible evidence beyond a reasonable doubt. See Donohue, 886 F. Supp. 2d at 160. Therefore, the Court concludes that the Medicare Ordinance does not violate the Contract Clause of either the Rhode Island or United States Constitutions.[35]

3

Medicare Statute

Before enacting the Medicare Ordinance, the City sought enabling legislation from the State that would allow the City to shift retirees to Medicare. Trial Tr. 77:15–18, Apr. 19, 2016 (Afternoon Session) (Mayor Taveras). The General Assembly obliged by passing the Medicare Enrollment Statute, which provides that "[e]very municipality . . . may require its retirees, as a condition of receiving or continuing to receive retirement payments and health benefits, to enroll in Medicare as soon as he or she is eligible, notwithstanding the provisions of any other statute,

[35] The Court pauses to note that, even if it had found that Plaintiffs in Categories A, B, C, E, H, I, and J proved beyond a reasonable doubt that the City substantially impaired their contractual rights to healthcare benefits, their Contract Clause claims would suffer the same fate as those of Category D, F, G, K, and L Retirees. For the same reasons set forth in this Decision, the Medicare Ordinance still would be constitutional as applied to those Plaintiffs because of the City's significant and legitimate public purpose and the reasonableness and necessity of the Medicare Ordinance to achieve that purpose.

ordinance, interest arbitration award, or collective bargaining agreement to the contrary." Sec. 28-54-1 (emphasis added). It further states that "[m]unicipalities that require said enrollment . . . shall not be required to provide any other healthcare benefits to any Medicare-eligible retiree or his or her spouse who has reached sixty-five (65) years of age . . . ." Id. In addition, "[m]unicipality provided benefits that are provided to Medicare-eligible individuals shall be secondary to Medicare benefits." Id. Thereafter, the City passed the Medicare Ordinance, implementing the changes allowed by the Medicare Enrollment Statute. See Trial Tr. 77:25–78:5, Apr. 19, 2016 (Afternoon Session) (Mayor Taveras).

It is clear that no contractual obligation existed between the State and Plaintiffs. As the Court found herein, all Plaintiffs were in a contractual relationship with the City that provided for healthcare benefits. The issue, therefore, is whether the State substantially impaired the contracts between the City and Plaintiffs by passing the Medicare Enrollment Statute.

First of all, the State is given substantial leeway in passing the Medicare Enrollment Statute. Our Supreme Court has noted that "legislative enactments of the General Assembly are presumed to be valid and constitutional[,]" and as such are afforded "every reasonable intendment in favor of . . . constitutionality in order to preserve the statute." Narragansett Indian Tribe v. State, 110 A.3d 1160, 1162 (R.I. 2015). "Therefore, '[t]o be deemed unconstitutional, a statute must palpably and unmistakably be characterized as an excess of legislative power.'" Id. (alteration in original) (quoting State v. Faria, 947 A.2d 863, 867 (R.I. 2008)). Again, Plaintiffs must prove beyond a reasonable doubt that the Medicare Enrollment Statute violated the Contract Clause. See id.; Dowd, 655 A.2d at 681; Parella, 899 A.2d at 1232–33.

Here, the Medicare Enrollment Statute does not direct the City to transfer its retirees to Medicare; rather, it simply permits any city in the State to do so. The Medicare Enrollment

Statute is nothing more than an enabling statute by which cities are granted discretionary authority to enact laws such as the Medicare Ordinance. The Court finds that Plaintiffs did not prove beyond a reasonable doubt that the Medicare Enrollment Statute substantially impaired the City's contractual obligations. See Energy Reserves Grp., 459 U.S. at 411; Nonnenmacher, 722 A.2d at 1202. Because the Medicare Enrollment Statute did not impair any of Plaintiffs' contractual rights to healthcare benefits from the City, their as-applied Contract Clause challenges to the Medicare Enrollment Statute fail. See Spannaus, 438 U.S. at 245 ("Minimal alteration of contractual obligations may end the inquiry at its first stage.").

C

Injunctive Relief

The decision to grant or deny injunctive relief rests within the sound discretion of the trial justice. See Cullen v. Tarini, 15 A.3d 968, 981 (R.I. 2011). The moving party must "'demonstrate that it stands to suffer some irreparable harm that is presently threatened or imminent and for which no adequate legal remedy exists to restore that plaintiff to its rightful position.'" Nye v. Brousseau, 992 A.2d 1002, 1010 (R.I. 2010) (quoting Nat'l Lumber & Bldg. Materials Co. v. Langevin, 798 A.2d 429, 434 (R.I. 2002)). "'Irreparable injury must be either 'presently threatened' or 'imminent'; injuries that are prospective only and might never occur cannot form the basis of a permanent injunction.'" Nat'l Lumber & Bldg. Materials Co., 798 A.2d at 434 (quoting R.I. Tpk. & Bridge Auth. v. Cohen, 433 A.2d 179, 182 (R.I. 1981)). To grant a permanent injunction, the Court must find that (1) the plaintiff demonstrates success on the merits; (2) the plaintiff will suffer irreparable harm if the injunction is not granted; and (3) a balance of the equities and hardships, including the public interest, weighs in favor of the

plaintiff. See id.; see also Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 32 (2008) (noting that permanent injunctions require a showing of actual success on the merits).

Having found that Plaintiffs' breach of contract and Contract Clause claims fail as a matter of law, the Court finds that Plaintiffs have not demonstrated actual success on the merits of any claim. "An injunction is a remedy, not a cause of action." Long v. Dell, Inc., 93 A.3d 988, 1004 (R.I. 2014). Where a plaintiff "has no underlying cause of action remaining, he has no right to seek the remedy of injunctive relief." Id. Accordingly, Plaintiffs' request for a permanent injunction is denied.

IV

Conclusion

After due consideration of all the evidence and arguments advanced by counsel before the Court and in their memoranda, the Court finds that Plaintiffs failed to meet their burden of demonstrating their claims. Therefore, this Court denies and dismisses Counts I, III, V, and VII in the Medicare case and Counts I, III, and V in the Pension case and enters judgment for the Defendant.

Counsel shall submit an appropriate order for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Manuel Andrews, Jr., et al. v. James J. Lombardi**
CASE NOS:	**KC-13-1128 and KC-13-1129**
COURT:	**Kent County Superior Court**
DATE DECISION FILED:	**February 2, 2017**
JUSTICE/MAGISTRATE:	**Taft-Carter, J.**
ATTORNEYS:	
For Plaintiff:	**Stephen H. Burke, Esq.; Thomas J. McAndrew, Esq.; Kevin F. Bowen, Esq.**
For Defendant:	**Jeffrey M. Padwa, Esq.; William M. Dolan, III, Esq.; Nicholas L. Nybo, Esq.**