STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

[FILED: April 25, 2014]

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

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

SUPPORT PROFESSIONALS, NEARI; :
GLOCESTER EDUCATIONAL SUPPORT :
PROFESSIONALS, NEARI, LOCAL 857; :
JAMESTOWN EDUCATIONAL SUPPORT :
PROFESSIONALS, NEARI, LOCAL 824; :
LITTLE COMPTON MUNICIPAL :
EMPLOYEES ASSOCIATION, NEARI, :
LOCAL 860; LITTLE COMPTON :
EDUCATIONAL SUPPORT PROFESSIONALS, :
NEARI, LOCAL 862; MIDDLETOWN :
AUXILIARY SCHOOL PERSONNEL, NEARI, :
LOCAL 853; MIDDLETOWN MUNICIPAL :
EMPLOYEES; ASSOCIATION, NEARI, :
LOCAL 869; NARRAGANSETT :
EDUCATIONAL SUPPORT PROFESSIONALS, :
NEARI, LOCAL 885; NEWPORT MUNICIPAL :
EMPLOYEES, NEARI, LOCAL 840; NORTH :
KINGSTOWN EDUCATIONAL SUPPORT :
PROFESSIONALS, NEARI, LOCAL 864; :
NORTH SMITHFIELD EDUCATIONAL :
SUPPORT PROFESSIONALS, NEARI, :
LOCAL 854; PONAGANSETT EDUCATIONAL :
SUPPORT PROFESSIONALS, NEARI, :
LOCAL 858; PORTSMOUTH MUNICIPAL :
EMPLOYEES' ASSOCIATION, NEARI, :
LOCAL 871; SCITUATE :
PARAPROFESSIONALS, NEARI, LOCAL :
804; SMITHFIELD EDUCATIONAL SUPPORT :
PROFESSIONALS, NEARI, LOCAL 891; :
SOUTH KINGSTOWN EDUCATIONAL :
SUPPORT PROFESSIONALS, NEARI, :
LOCAL 890; SOUTH KINGSTOWN :
MUNICIPAL EMPLOYEES' ASSOCIATION, :
NEARI, LOCAL 826; WOONSOCKET :
TEACHER ASSISTANTS, RIFTHP, AFL-CIO, :
LOCAL 951; CRANSTON TEACHER :
ASSISTANTS, RIFTHP, AFL-CIO, LOCAL :
1704; NORTH PROVIDENCE :
EDUCATIONAL WORKERS, RIFTHP, :
AFL-CIO, LOCAL 2435; NORTHERN RHODE :
ISLAND COLLABORATIVE EMPLOYEES' :
UNION, LOCAL 4940; RHODE ISLAND :
LABORERS' DISTRICT COUNCIL, LOCAL :
UNION 808; RHODE ISLAND LABORERS' :
DISTRICT COUNCIL, LOCAL UNION 1033; :
RHODE ISLAND LABORERS' DISTRICT :

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

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

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

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

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

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

DECISION

TAFT-CARTER, J. Plaintiffs in C.A. No. 2012-3167 consist of a number of local affiliates of the AFSCME, Council 94, representing general municipal employees. Plaintiffs in C.A. No. 2012-3169 consist of a number of local affiliates of the International Brotherhood of Police Officers, representing municipal police officers. Plaintiffs in C.A. No. 2012-3579 consist of a number of local affiliates of the International Association of Fire Fighters (IAFF), representing municipal fire fighters. Plaintiffs in C.A. No. 2012-3167, C.A. No. 2012-3169, and C.A. No. 2012-3579 (collectively, Plaintiffs) filed the underlying actions against the Governor and General Treasurer of the State of Rhode Island, the Employees' Retirement System of the State of Rhode Island, by and through the Retirement Board and the Chairman and Secretary of the Retirement Board (collectively, Defendants), challenging the constitutionality of the

Rhode Island Retirement Security Act (RIRSA) of 2011. Before this Court is Defendants' Motion for More Definite Statement pursuant to Super. R. Civ. P 12(e) (Rule 12(e)) or, in the alternative, a Motion to Dismiss pursuant to Super. R. Civ. P 12(b)(6) (Rule 12(b)(6)). Plaintiffs filed a consolidated objection to these motions. The instant motions concern three cases raising common issues of fact and law. For the purposes of judicial economy, this Court issues one Decision applying to each of the three separate actions.

I

Facts and Travel

The Employees' Retirement System of Rhode Island (ERSRI), established by legislation in 1936, is a retirement system for state employees, school teachers, and other employees of cities and towns that chose to participate. See G.L. 1956 §§ 36-8-1 et seq. The ERSRI is administered by the Retirement Board (Board), which is chaired by the State Treasurer. Sec. 36-8-4. Amongst the retirement plans administered by the Retirement Board is the Municipal Employees' Retirement System (MERS), whose members are made up of general municipal employees, fire fighters, and police officers. G.L. 1956 §§ 45-21-1 et seq. The MERS was established by the State in 1951, allowing participating cities and towns to offer their workers retirement benefits.

The ERSRI provides MERS participants a mandatory, contributory defined benefit plan under which participants contribute a statutorily set percentage of their annual salary in exchange for a fixed retirement allowance, based on a formula for years of service and salary level achieved. Those cities or towns with MERS allocate assets and liabilities. They are combined for investment purposes but remain separated to pay

the pension of each municipality's employees. Employees become "vested" and entitled to receive a pension from the ERSRI upon making ten years of payments into the ERSRI. See § 45-21-16.

The retirement allowance becomes payable to participants in equal monthly installments after retirement. In addition to the retirement allowance, the pension benefits have been compounded by a Cost of Living Adjustment (COLA). The intent of a COLA is to maintain the real value of a person's pension, in light of changes to the cost of living occurring over the life of retirement. In 1968, the State provided for an alternative optional retirement plan for municipal police and fire fighters that included an option for a twenty year retirement allowance, regardless of age, equal to two and one-half percent of final compensation multiplied by the years of total service, to a maximum of seventy-five percent of final compensation. Sec. 45-21-2. The Plaintiff Unions also entered into collective bargaining agreements (CBAs) with their respective employers that provide for retirement benefits, including COLAs.

In November 2011, the General Assembly enacted the RIRSA, which altered the standards for retirement for employees in the retirement system.[1] The RIRSA changed

[1] As a consequence of the underfunding of Rhode Island's public pension system, the General Assembly has enacted, over the past several years, a number of changes to the statute governing the ERSRI (pension statute). In 2010, the General Assembly decreased the COLA benefits to employees who were not yet eligible to retire as of June 12, 2010. See P.L. 2010, ch. 23, art. 16 (2010 Act). The 2010 Act also eliminated the COLA for retirement benefits in excess of $35,000. A group of union members who participated in the ERSRI filed suit in this Court on May 12, 2010, challenging the 2009 and 2010 changes as being unconstitutional under the Contract Clause and the Takings Clause of the Rhode Island Constitution. This Court denied Defendants' motion for summary judgment on September 13, 2011, holding that Plaintiffs had a unilateral implied-in-fact contractual right arising from their partial performance by working at least ten years. See R.I. Council 94, AFSCME, AFL-CIO et al. v. Donald Carcieri, in his capacity as

the structure of the retirement program from a traditional defined benefit plan to a "hybrid plan" with a smaller defined benefit plan and a supplemental defined contribution plan. In creating this new supplemental defined contribution plan, the RIRSA diverted the majority of the contributions of the participants in the ERSRI into the separate defined contribution plan. The RIRSA also requires employees who were eligible to retire but had not yet retired as of June 30, 2012 to elect either to receive no further accrual towards retirement in their defined benefit plan, notwithstanding continued mandatory contributions, or to receive a reduced value for further services. The RIRSA further requires employees who were not eligible to retire as of June 30, 2012 to either work longer to receive the monthly pension benefit or to accept a reduced pension benefit, thus requiring more years of service to reach the previous benefit level. The RIRSA also permanently reduced all COLAs to apply only to the first $25,000 of a person's retirement allowance as well as suspended COLAs, except for every five years until the ERSRI is funded to eighty percent, which is estimated to take at least sixteen years. For police and fire fighters, the RIRSA increased the minimum service requirement from twenty years to twenty-five years and set in place a minimum retirement age of fifty-five years.

In June and July of 2012, Plaintiff Unions filed suit on behalf of their members, which includes employees who had at least ten years of contributory service and employees whose respective CBAs provided for their retirement benefits.[2] Plaintiffs

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Governor of the State of Rhode Island et al., No. 10-2859, 2011 WL 4198506 (Super. Ct. Sept. 13, 2011) (Pension I).

[2] The Complaint in C.A. No. 12-3167, on behalf of the Council 94 municipal employee unions, states that the Plaintiffs are "bring[ing] this action in their representative capacity on behalf of . . . 'the vested employees'" as well as those who are entitled to a COLA as a

assert that RIRSA is unconstitutional under the Contract Clause, the Due Process Clause, and the Takings Clause of the Rhode Island Constitution. Defendants filed the instant Motion for More Definite Statement or, in the alternative, Motion to Dismiss for failure to state a claim. Plaintiffs have filed a consolidated objection. Plaintiffs and Defendants have argued their respective positions and this Court is now prepared to issue its Decision.

II

Standard of Review

A

Rule 12(e)

It is well settled in Rhode Island that the role of a Rule 12(e) motion is limited. See 1 Robert B. Kent et al., Rhode Island Civil and Appellate Procedure § 12:15 (West 2006). However, in those instances when a court determines that a pleading is too vague and ambiguous, the court may, in its discretion, grant a motion for more definite statement under Rule 12(e).[3] Id.; see also Mitchell v. E-Z Way Towers, Inc., 269 F.2d 126, 130 (5th Cir.1959) (explaining that unlike a motion to dismiss for failure to state a claim, a motion for more definite statement involves the exercise of the trial justice's sound and considered discretion). When determining a motion for more definite

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result of a CBA or city or town resolution. (C.A. No. 12-3167 Compl. ¶¶ 83, 84.) The Complaint in C.A. No. 12-3169 and C.A. No. 12-3579, on behalf of the active Police and Fire Unions, respectively, allege that members of Plaintiff Unions are either vested or entitled to retirement benefits as a result of a CBA. (C.A. No. 12-3169 Compl. ¶ 41; C.A. No. 12-3579 Compl. ¶¶ 43, 46.)

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

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

B

Rule 12(b)(6)

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

party.'" Boyer, 57 A.3d at 270 (quoting Pellegrino, 788 A.2d at 1123); see also Palazzo, 944 A.2d at 149; Multi-State Restoration, Inc. v. DWS Properties, LLC, 61 A.3d 414, 417 (R.I. 2013). Thus, "[i]f it 'appears beyond a reasonable doubt that a plaintiff would not be entitled to relief under any conceivable set of facts,' the motion may be granted." Boyer, 57 A.3d at 270 (quoting Estate of Sherman v. Almeida, 747 A.2d 470, 473 (R.I. 2000).

III

Analysis

A

Motions for More Definite Statement

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

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

Kent at § 8:1. The rules require that a complaint give the opposing party "fair and adequate notice of the type of claim being asserted." Haley, 611 A.2d at 848. Thus, Rule 8(a) states that a claim for relief need only contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief the pleader seeks. Consequently, a complaint need not state all the possible facts to

be proven at trial, nor is it required that a complaint contain a high degree of factual specificity. See Haley, 611 A.2d at 848; Hyatt, 880 A.2d at 824. Rhode Island's liberal pleading standards will be satisfied as long as a complaint provides the opposing party with adequate notice of the type of claim being asserted. See Haley, 611 A.2d at 848.

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

Defendants first contend that Plaintiffs have not sufficiently detailed the existence of a contractual relationship. Accordingly, Defendants seek the production of certain CBAs containing provisions relating to the pension and retirement benefits. Defendants assert that Plaintiffs should be required to list each CBA at issue along with each of the respective unions who negotiated the CBA. To support this argument, Defendants rely on Defined Space Inc. v. Lakeshore East, LLC, 797 F. Supp. 2d 896 (N.D. Ill. 2011). This reliance, however, is misplaced. In Defined Space, a photography studio entered into a series of licensing agreements with a real estate company to produce photographs of the company's properties. 797 F. Supp. 2d at 897. When using the photographs, the real estate company only occasionally credited the studio. Id. In its complaint alleging copyright infringement, the studio included those pictures purported to have been infringed upon. Id. at 903. The real estate company moved to dismiss pursuant to Rule 12(e), arguing that additional information about each photograph was necessary to

properly respond. Id. The District Court disagreed, finding that a more definite statement was not required as the real estate company "should be able to match up the pictures [ ] attached with the [corresponding] contracts." Id. at 904. Similarly, as the CBAs are public records available to Defendants, and the Complaints describe the various unions bringing claims on behalf of their membership, Plaintiffs have satisfied Rhode Island's liberal pleading standard. See Haley, 611 A.2d at 848.

While Plaintiffs' claims are based on an impairment of contract rights, specific details concerning the contract(s) alleged to have been impaired are matters that may be left for discovery. Here, the facts pled in the Complaints concerning Plaintiffs' employment and the Rhode Island pension statute provide sufficient information for Defendants to frame a responsive pleading. See Oresman, 321 F. Supp. at 458. Moreover, constitutional violations do not fall within the narrow subset of claims in which additional particularity in a complaint is required. See also Super. R. Civ. P. 9(b) (requiring, for example, the circumstances surrounding claims of fraud or mistake to be pled with particularity).

Defendants also assert that Plaintiffs' Complaints are deficient for not explicitly alleging that Plaintiff Unions each have standing to bring the suit. See, e.g., C.A. No. 12-3579, Defs.' Brief at 11 ("There is no allegation in Plaintiffs' Complaint that each of the Plaintiff Associations has at least one member with standing to sue in his or her own right."). Consequently, Defendants argue that the Complaints deprive them of the ability to raise standing as a defense.

In addressing the standing issue, this Court initially notes that, if necessary, a trial court is empowered to "allow or to require the plaintiff to supply, by amendment to the

complaint or by affidavits, further particularized allegations of fact deemed supportive of plaintiff's standing." Warth v. Seldin, 422 U.S. 490, 501 (1975). Under Rhode Island's liberal pleading standards, standing requires that the party seeking relief must show an injury in fact as a result of the challenged action. See R.I. Ophthalmological Soc'y v. Cannon, 113 R.I. 16, 26, 317 A.2d 124, 129 (1974). A "standing inquiry focuses on the party who is advancing the claim rather than on the issue the party seeks to have adjudicated." Bowen v. Mollis, 945 A.2d 314, 317 (R.I. 2008) (citing McKenna v. Williams, 874 A.2d 217, 225 (R.I. 2005)); see also Flast v. Cohen, 392 U.S. 83, 99 (1968). Thus, the doctrine of standing addresses whether a particular plaintiff has "alleged such a personal stake in the outcome of the controversy as to assure [a] concrete adverseness which sharpens the presentation of issues upon which the court so largely depends [upon] for illumination." Baker v. Carr, 369 U.S. 186, 204 (1962). Its essence is derived from the "case and controversy" requirement of Article III of the United States Constitution. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992). The "[s]tanding doctrine embraces several judicially self-imposed limits on the exercise of [ ] jurisdiction, such as the general prohibition on a litigant's raising another person's legal rights, the rule barring adjudication of generalized grievances more appropriately addressed in the representative branches, and the requirement that a plaintiff's complaint fall within the zone of interests protected by the law invoked." Allen v. Wright, 468 U.S. 737, 751 (1984).

Organizational standing was recognized in 1958. NAACP v. Alabama, ex rel. Patterson, 357 U.S. 449, 459 (1958). In a series of subsequent cases, the United States Supreme Court addressed the nature of organizational standing, established a three-

element test to evaluate organizational standing, and recognized the economy of organizational standing. Warth, 422 U.S. 490 at 511; Hunt v. Washington State Apple Adver. Comm'n, 432 U.S. 333, 343 (1977); Int'l Union, United Auto., Aerospace, and Agric. Implement Workers of Am. v. Brock, 477 U.S. 274, 290 (1986). It is now well established that "an association has standing to bring suit on behalf of its members when [(1)] its members would otherwise have standing to sue in their own right; [(2)] the interests it seeks to protect are germane to the organization's purpose; and [(3)] neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." Hunt, 432 U.S. at 343; see also In re Review of Proposed Town of New Shoreham Project, 19 A.3d 1226, 1227 (R.I. 2011) (quoting Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc., 528 U.S. 167, 181 (2000)).

In the instant matter, it is beyond dispute that the interests at stake—the retirement benefits and COLAs for the union members obtained through statute or by CBA—are germane to the purpose of the unions to represent the interests of its members. This Court notes that unions, as collective bargaining representatives for its members, have generally been recognized as possessing standing to sue on behalf of their members. See Arena v. City of Providence, 919 A.2d 379, 388-89 (R.I. 2007) (distinguishing between retirees and active workers for collective bargaining purposes and holding that retirees cannot be treated as current employees); see also Allied Chem. & Alkali Workers of America, Local Union No. 1 v. Pittsburgh Plate Glass Co., 404 U.S. 157, 166 (1971) (holding that a union for active workers may not also represent retirees for collective bargaining purposes). Additionally, nothing about the claims asserted or the relief requested appears to require the participation of individual members in the suit. See

Hunt, 432 U.S. at 344 (noting that constitutional claims and requests for declaratory and injunctive relief do not "require[] individualized proof" and may be "properly resolved in a group context."). Accordingly, the Court will focus its inquiry on whether the Plaintiffs' Complaints have sufficiently alleged that the members of each of the Plaintiff Unions have suffered an injury in fact.

Plaintiffs' Complaints state that each of the Plaintiff Unions serves as the exclusive bargaining representative in advocating for the interests of its members, the general municipal employees, fire fighters, and police officers. Plaintiffs' Complaints further allege that "among the membership of each of the plaintiffs" are vested employees in the MERS, as well as those whose respective CBAs include COLAs. Plaintiff Unions have alleged sufficiently particularized details as to the ways in which the RIRSA has altered the retirement standards and benefits for MERS members to their detriment. Also of significance is the fact that the Complaints allege that participation in the MERS is mandatory; consequently, there is no possibility that the membership of each of the Plaintiff Unions, as general municipal employees, fire fighters, and police, are not also MERS participants. Contrary to the Defendants' argument that the Complaints must explicitly allege that each of the Plaintiff Unions has at least one member with standing—a position that is not supported by Rhode Island's liberal pleading standard—the Court finds that Plaintiffs' Complaints have more than amply satisfied the standard for pleading associational standing. See U.S. v. Students Challenging Regulatory Agency Procedures (SCRAP), 412 U.S. 669, 688-89 (1973) (stating that allegations in a pleading only need to "[allege] a specific and perceptible harm" to the association's membership and be "capable of proof at trial").

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

Accordingly, this Court is satisfied that Plaintiffs have met the liberal pleading standard as their Complaints provide fair and adequate notice of the types of claims they are asserting. Defendants' Motions for More Definite Statement are denied.

B

Motions to Dismiss

In the alternative, Defendants contend that, to the extent Plaintiffs' claims are based on a contract arising under Rhode Island's pension statute, Plaintiffs are not entitled to relief because Plaintiffs do not have any contractual right to receipt of their pension benefits. The existence of a contractual relationship between the parties is the cornerstone of this contractual challenge.

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

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

A necessary prerequisite to finding a violation of the Contract Clause is, therefore, the existence of a contractual relationship. If there is no contractual relationship, then ipso facto, there cannot have been an unconstitutional impairment of a contract. Defendants, significantly, do not dispute that, to the extent Plaintiffs' COLAs and other retirement benefits are included in their CBAs, the CBAs constitute a contract. See Williston on Contracts § 55:3 (4th ed.). Defendants limit their challenge to the existence of a contractual relationship for the Plaintiffs, whose claims arise out of the general pension statute, and for the general municipal employees, the city or town ordinances which include provisions for COLAs.

Defendants, citing the federal unmistakability doctrine, maintain that Plaintiffs' claims fail as a matter of law because the pension legislation does not create a contractual relationship. This doctrine states that statutes are presumed not to create private contractual rights unless there is some clear and unequivocal indication that the legislature, in enacting the statute, intended to bind itself contractually. See U.S. v. Winstar, 518 U.S. 839 (1996). While our Supreme Court has not expressly referenced

the unmistakability doctrine, it has adopted its reasoning. Brennan v. Kirby, 529 A.2d 633, 638 (R.I. 1987). Our Supreme Court has stated that "absent a clear indication by the Legislature that it intended to bind itself contractually by passing an enactment, the presumption pervades that '[the] law is not intended to create private contractual or vested rights but merely declares a policy to be pursued until the legislature shall ordain otherwise.'" Id. (quoting Dodge v. Bd. of Educ. of City of Chicago, 302 U.S. 74, 75 (1937)). Still, it is well established that the government may not utilize these doctrines simply "as a means to escape from contracts that it subsequently concluded were unwise." Connor Bros. Construction Co., Inc. v. Pete Geren, 550 F.3d 1368, 1374 (Fed. Cir. 2008).

The unmistakability doctrine, moreover, speaks only to a presumption and not an unequivocal statement that legislation may never give rise to contractual rights. The presumption "can be overcome if the language of the statute and other indicia show that the legislature intended to bind itself contractually." Nat'l Educ. Ass'n-R.I. v. Retirement Bd. of R.I. Employees' Ret. Sys., 890 F. Supp. 1143, 1151 (D.R.I. 1995) (NEA I). "[A] statute is itself treated as a contract when the *language and circumstances* evince a legislative intent to create private rights of a contractual nature enforceable against the State." U.S. Trust Co. v. New Jersey, 431 U.S. 1, 17 n.14 (1977) (emphasis added). When determining whether legislation creates a contractual relationship, courts consider the language and circumstances of the enactment prior to the repeal or amendment. See id.; see also Retired Adjunct Professors of R.I. v. Almond, 690 A.2d 1342, 1346 (R.I. 1997); Brennan, 529 A.2d at 639. This Court will accordingly examine

the language of pension legislation and its surrounding circumstances to determine whether an enforceable contract was created between Plaintiffs and the State.

It is noted that unlike that of certain sister states, Rhode Island law does not expressly provide that pension benefits are contractual in nature. Cf. Mass. Gen. Laws ch. 32, § 25(5); N.Y. CONST. art. V, § 7. In analyzing the pension statute in Nat'l Educ. Ass'n-Rhode Island ex rel. Scigulinsky v. Ret. Bd. of R.I. Employees' Ret. Sys., (NEA II), the First Circuit held that the language of the pension statute did not "clearly and unequivocally" create a contract with participants in the ERS. 172 F.3d 22, 29 (1st Cir. 1999). The NEA II Court stated, "[n]owhere does the statute call the pension plan a 'contract' or contain an anti-retroactivity clause as to future changes." Id. at 29. The statute is not, as Defendants have emphasized, ever explicitly referred to as being a "contract," nor does it include language that clearly indicates a legislative intention to be contractually bound.

Plaintiffs, arguing otherwise, cite the statutory guaranty provision in § 36-10-7, which states that "it is the intention of the state to make payment of the annuities, benefits, and retirement allowances provided for under the provisions of this chapter," as evidence of an intent to form a contract. While the State has promised to provide pension benefits, § 36-10-7 does not promise any particular amount of pension benefits, nor does it indicate that benefit levels may not be changed or altered. See § 36-10-7. Rather, § 36-10-7 relates to the payment of a benefit, as well as a mandate for the General Assembly to make an annual appropriation. The First Circuit has similarly concluded that the language of § 36-10-7 "falls at least a step short of clearly expressing a contractual commitment not to change benefit levels or other plan variables by

legislation." NEA II, 172 F.3d at 28. Furthermore, with respect to the retirement of municipal employees, the right to amend, alter, or repeal the provisions of the MERS was expressly reserved. See § 45-21-47.

This Court acknowledges that the General Assembly clearly could have—but did not—expressly reserve the right to amend or repeal the provisions of the State Employees' Retirement System. This Court cannot, however, construe the absence of such a provision as evidence of an unmistakable intent to be contractually bound. The statute remains ambiguous as to the existence of a contractual relationship between Plaintiffs and the State. The statute was enacted to "[protect] the fiscal integrity of the pension systems [and assure] public employees that their entitlement to benefits is secure. . . ." Uricoli v. Bd. of Trustees, Police and Firemen's Ret. Sys., 449 A.2d 1267, 1273 (N.J. 1982). This Court thus looks to the surrounding circumstances and applies Supreme Court precedent to determine the existence of a contractual relationship.

To begin its analysis, a brief review of the landscape of public pension plans, as related to the existence of contractual rights between its participants and the states, is instructive. States differ in their characterization of public pension plans. At one end of the spectrum, courts consider public pension plans to be gratuities of the state, "'a bounty springing from the appreciation and graciousness of the sovereign.'" In re Almeida, 611 A.2d 1375, 1385 (R.I. 1992) (quoting Ballurio v. Castellini, 102 A.2d 662, 666 (N.J. Super. 1954)). Under the gratuity approach to public pensions, a state may freely and unilaterally alter or revoke the public pension plan, and plan participants have no contractual protection in their pensions. At the other end of the spectrum is the contract approach, which provides that a public pension plan establishes a contractual relationship

between the state and public employees. See, e.g., Yeazell v. Copins, 402 P.2d 541 (Ariz. 1965) (holding that a police officer's right to his pension benefits were part of the contract between the officer and the state and accordingly, the state could not make unilateral modifications to the contract). A growing number of states have expressly adopted the contract approach with respect to their public pension plans by passing constitutional amendments stating that public employees have contractual rights to their pensions, or through including a similar provision in the retirement statute itself. See, e.g., N.Y. CONST. art. V, § 7 ("[M]embership in any pension or retirement system of the state or of a civil division thereof shall be a contractual relationship, the benefits of which shall not be diminished or impaired."); Mass. Gen. Laws ch. 32, § 25(5) (stating that the pension statute "shall be deemed to establish and to have established membership in the retirement system as a contractual relationship under which members who are or may be retired for superannuation are entitled to contractual rights and benefits . . .").

In those states without clear constitutional or statutory provisions, many have held that pension plans represent implied-in-fact unilateral contracts. This view acknowledges that "the promise of a pension is part of the compensation package that employers dangle to attract and retain qualified employees." McGrath v. R.I. Retirement Bd., 88 F.3d 12, 16-17 (1st Cir. 1996). Within the implied-in-fact unilateral contract view, states differ as to "when contractually enforceable rights accrue under [state and municipal pension] plans." Id. at 17. Some states, most notably California, have adopted the rule that public employees' rights to their pensions begin from the first day of employment. See, e.g., Betts v. Bd. of Admin. of the Pub. Employees' Ret. Sys., 582 P.2d 614, 617 (Cal. 1978) (stating that a public employee's right to a "substantial or reasonable pension" accrues

"upon acceptance of employment."). Other states, in contrast, follow a rule that public employees' contract rights accrue only upon retirement or eligibility for retirement. See, e.g., State ex rel. Horvath v. State Teachers' Ret. Bd., 697 N.E.2d 644, 650-53 (Ohio 1998) (holding that for Takings Clause purposes, a public employee had no vested property right to a pension before reaching retirement age). In between these two extremes, other jurisdictions have adopted a rule whereby retirement benefits accrue at some time after the start of employment and before retirement. See, e.g., Everson v. State, 228 P.3d 282, 299 (Haw. 2010) (holding that health benefits are included in the pension benefits that accrue to public employees so that the legislature may only reduce benefits for persons already in the retirement system insofar as their future services are concerned but could not reduce the benefits that had accrued from past service); State ex rel. State Bd. of Pension Trustees v. Dineen, 409 A.2d 1256, 1259 (Del. Ch. 1979) (holding that public employees possess contractual rights to their pensions once they have completed the statutory years of service for eligibility for a pension); Singer v. City of Topeka, 607 P.2d 467, 474-75 (Kan. 1980) (holding that employees acquire a contract right to their pensions after "[c]ontinued employment over a reasonable period of time during which substantial services are furnished to the employer, plan membership is maintained, and regular contributions into the fund are made").

The Rhode Island Supreme Court has expressly declined to categorize pensions as a mere gratuity eligible to be unilaterally altered or revoked at the whim of the state. See In re Almeida, 611 A.2d at 1385. Our Supreme Court instead adopted what it referred to as a "middle-ground approach" between the gratuity model and the pure contract model. Id. This approach considers a pension as comprising "elements of both the deferred

compensation and the contract theories." Id. at 1386. Under the deferred compensation theory, "contract rights may attach upon entering public employment and service." Id. at 1385. Under the contract theory, "contractual obligations are formed when the conditions of employment are satisfied." Id. The difference between the theories is when employees may assert contractual rights to receive a pension. NEA I., 890 F. Supp. at 1156. Under either theory, employees "[have] some contractual rights in receiving a pension." Id. This Court finds it significant, however, that "both the 'deferred compensation' [theory] and 'contract' theory are [ ] theories of implied contract." Id.

Recognizing the deferred compensation and contract elements of the "middle ground approach," this Court will utilize implied contract theories to determine whether Plaintiffs have a protected contractual right to their pension benefits in order to support a Contract Clause claim. 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 evidence the offer, acceptance, and consideration, which are the essence of contractual formation.

Here, this Court preliminarily notes that the circumstances of the pension statute and the relationship between the State and Plaintiffs—that of an employer and its employees—weigh in favor of finding an implied contract. See U.S. v. Reyes, 87 F.3d 676, 680 (5th Cir. 1996) (quoting Bush v. Lucas, 647 F.2d 573, 576 (5th Cir. 1981) ("There is ample support for constitutionally distinguishing government acting as employer from government acting as sovereign. . . . '[T]he role of the Government as an employer toward its employees is fundamentally different from its role as sovereign over

private citizens generally.'"); see also NEA II, 172 F.3d at 28 ("The existence of an employer-employee relationship does weigh in favor of finding an implied contract."). In enacting the pension statute to create the ERSRI, the State was acting as an employer in setting up a system of providing pension benefits to its employees. See Pellegrino, 788 A.2d at 1125 (holding that when the state "[acted] as a private employer would in arranging to compensate its employees . . . '[the state] laid aside its attributes as a sovereign and bound itself substantially as one of its citizens does when he [or she] enters into a contract'") (internal citations omitted).

This Court's first inquiry is whether the State, through the pension statute, made an offer; in other words, whether the State showed a "willingness to enter into a bargain." See Restatement (Second) of Contracts § 24. Courts have generally accepted that "the promise of a pension is part of the compensation package that employers dangle to attract and retain qualified employees." McGrath, 88 F.3d at 17. Our Supreme Court has recognized "the major purposes underlying public pensions [as inducing] people to enter public employment and continue faithful and diligent employment." Almeida, 611 A.2d at 1387. In accepting this premise, the pension statute clearly constitutes an offer to Plaintiffs to enter into a bargain. See Almeida, 611 A.2d at 1385 (finding that the ERSRI constituted offers to induce people to enter public employment). Public employees faithfully and diligently complete years of employment to become vested by statute.

In common with other courts, our Supreme Court has further recognized that pension benefits are "compensation for services previously rendered and . . . an inducement to continued and faithful service." Almeida, 611 A.2d at 1385. In the instant matter, through the ERSRI, the State offered pension benefits in exchange for the

Plaintiffs' "continued and faithful service." 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. Furthermore, the Plaintiffs, as members of the ERSRI, have contributed money to the retirement system that in addition to their continued service, was given in exchange for the State's promise to provide pension benefits. Accordingly, the circumstances surrounding Plaintiffs' membership in the ERSRI constitute the "bargained-for-exchange that is the hallmark of contracts." Retired Adjunct Professors of R.I., 690 A.2d at 1346 (internal quotations omitted).

With the pension plan representing an implied-in-fact contract, the question remains as to when the implied contract becomes vested and enforceable. See McGrath, 88 F.3d at 17 ("[T]here is significant disagreement about when contractually enforceable rights accrue under such [pension] plans."). Here, each Plaintiff has completed at least ten years of contributory service and, as a result, has met the terms for vesting under the pension statute. See § 36-10-9 (for state employees) and § 16-16-12 (for public school teachers). Plaintiffs have thus partially performed. This Court is further satisfied that ten years of service constitutes substantial performance so as to render a contract binding and enforceable. See Williston on Contracts § 44:52 (stating that "substantial fulfillment of an obligation by one party suffices to trigger a corresponding duty on behalf of the other

party" and that "a plaintiff who has substantially performed a contract may maintain an action on the contract") (internal quotations omitted).

Our Supreme Court has additionally stated that pension rights become enforceable as contracts once an employee has fulfilled the statutory requirements, if not before. Almeida, 611 A.2d at 1385. In Almeida, our Supreme Court recognized that while "the 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." Id. (emphasis added). Moreover, our Supreme Court has affirmed that "pension benefits vest once an employee honorably and faithfully meets the applicable pension statute's requirements." Arena, 919 A.2d at 393.

Plaintiffs, here, are all vested employees who have fulfilled the statutory requirements. See Almeida, 611 A.2d at 1386 (stating that "pension rights are to vest once the requirements of the pension statute are met" with the vesting being subject to divestment for misconduct). Absent some misconduct, the Plaintiffs—being vested employees—possess a protected and enforceable contractual right to their pension benefits. See Arena, 919 A.2d at 393. This finding conforms to our Supreme Court's view that a pension is a form of "compensation for services previously rendered." Almeida, 611 A.2d at 1385 (internal quotations omitted); see also Pellegrino, 788 A.2d at 1126 (holding that a statute "[operating] to confer on commission members a legitimate claim of entitlement to receipt of the compensation in question" became enforceable once the plaintiffs performed their duties and accordingly "vested them with a protected property interest under the Rhode Island Constitution"). This Court, therefore, finds that Plaintiffs, having fulfilled the statutory requirements for vesting, possess implied

unilateral contract rights arising from the ERSRI. Finding an implied-in-fact contract between Plaintiffs and the State, this Court denies Defendants' Motion to Dismiss.

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

IV

Conclusion

Having considered the arguments made by counsel, this Court holds that Plaintiffs have implied contractual rights that may sustain Plaintiffs' Contract Clause claim. In so ruling, this Court makes neither findings nor conclusions with respect to the merits of Plaintiffs' claims. Defendants' Motion for More Definite Statement and Motion to Dismiss are hereby denied.

Counsel shall submit the appropriate order for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	Bristol/Warren Regional School Employees, et al. v. Lincoln D. Chafee, et al.; City of Cranston Police Officers, et al. v. Lincoln D. Chafee, et al.; Woonsocket Fire Fighters, et al. v. Lincoln D. Chafee, et al.
CASE NO:	C.A. Nos. PC 12-3167; PC 12-3169; PC 12-3579
COURT:	Providence County Superior Court
DATE DECISION FILED:	April 25, 2014
JUSTICE/MAGISTRATE:	Taft-Carter, J.
ATTORNEYS:	
For Plaintiff:	*See attached list
For Defendant:	*See attached list