

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: February 26, 2015)

<b>In re Pension Cases</b>	:	<b>C.A. No. PC 10-2859</b>
	:	<b>PC 12-3166</b>
	:	<b>PC 12-3167</b>
	:	<b>PC 12-3168</b>
	:	<b>PC 12-3169</b>
	:	<b>PC 12-3579</b>

<b>Joseph Clifford, et al.</b>	:	
	:	
<b>v.</b>	:	<b>C.A. No. KC 14-0345</b>
	:	
<b>Gina M. Raimondo, in her capacity as Governor of the State of Rhode Island, et al.</b>	:	

<b>Cranston Firefighters, IAFF Local 1363, AFL-CIO</b>	:	
	:	
<b>v.</b>	:	<b>C.A. No. PC 14-4343</b>
	:	
<b>Gina M. Raimondo, in her capacity as Governor of the State of Rhode Island, et al.</b>	:	

<b>International Brotherhood of Police Officers, Local 301, AFL-CIO</b>	:	
	:	
<b>v.</b>	:	<b>C.A. No. PC 14-4768</b>
	:	
<b>Gina M. Raimondo, in her capacity as Governor of the State of Rhode Island, et al.</b>	:	

## DECISION

**TAFT-CARTER, J.** Before this Court is the State Defendants' Motion to Consolidate all the above-captioned cases for trial.<sup>1</sup> Before this Court is also the municipal Defendants' Motion to Consolidate the cases docketed as C.A. No. PC 12-3166, C.A. No. PC 12-3167, C.A. No. PC 12-3169, and C.A. No. PC 12-3579 for trial.<sup>2</sup> Additionally before this Court is the Plaintiffs' Motion to Consolidate the cases docketed as C.A. No. PC 12-3169 and C.A. No. PC 12-3579 for trial.<sup>3</sup> The Plaintiffs in the cases docketed as C.A. No. PC 14-4343 and C.A. No. PC 14-4768 have filed an objection to the State Defendants' Motion to Consolidate all cases.<sup>4</sup> The Plaintiffs in the case docketed as C.A. No. 12-3166 have filed an objection to both the State Defendants' and the municipal Defendants' Motions to Consolidate.<sup>5</sup> The Plaintiffs in the case docketed as

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<sup>1</sup> The named State Defendants in these actions are Lincoln D. Chafee, in his capacity as Governor of the State of Rhode Island; Gina M. 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 M. Raimondo, in her capacity as Chairperson of the Retirement Board and Frank J. Karpinski, in his capacity as Secretary of the Retirement Board (collectively, the State Defendants).

<sup>2</sup> These municipal Defendants all have collective bargaining agreements (CBA) with one or more of the Plaintiffs and were added as indispensable parties to these various actions.

<sup>3</sup> Plaintiffs in C.A. No. PC 12-3169 consist of a number of local affiliates of the International Brotherhood of Police Officers representing municipal police officers. Plaintiffs in C.A. No. PC 12-3579 consist of a number of local affiliates of the International Association of Firefighters (IAFF) representing municipal firefighters.

<sup>4</sup> These two actions are separate lawsuits brought by the Cranston Police (in the case docketed as C.A. No. PC 14-4768) and the Cranston Firefighters (in the case docketed as C.A. No. PC 14-4343) challenging the constitutionality of the Rhode Island Retirement Security Act of 2011 (RIRSA).

<sup>5</sup> The Plaintiffs in C.A. No. PC 12-3166 (the Retiree case) consist of associations of retired state employees, retired public school teachers and retired municipal employees, as well as individual retirees.

C.A. No. KC 14-0345 (the Clifford case) have also filed an objection to both the State Defendants' and the municipal Defendants' Motions to Consolidate.<sup>6</sup>

The underlying actions in these cases, collectively known as the pension cases, concern Plaintiffs' constitutional challenges to the RIRSA of 2011, as well as other changes enacted previously to the pension system, in which Plaintiffs sought, *inter alia*, declaratory judgments holding that the RIRSA is unconstitutional under the Contract Clause, Takings Clause, and Due Process Clause of the Rhode Island Constitution. Shortly after the 2012 cases were filed, these pension cases were consolidated for discovery purposes only. The instant Motions seek to consolidate these cases in various groupings for purposes of trial, which is scheduled to begin on April 20, 2015.

This Court incorporates by reference its recounting of the facts in its prior decisions with regard to these pension cases. *See, e.g., R.I. Council 94 v. Carcieri*, 2011 WL 4198506 (R.I. Super. Sept. 13, 2011) (denying the defendants' motion for summary judgment and finding that the plaintiff state and local employees were parties to an implied contract with the state) (Pension I); *R.I. Council 94 v. Chafee*, 2014 WL 1743149 (R.I. Super. Apr. 25, 2014) (denying the defendants' motion for a more definite statement and motion to dismiss for failure to state a claim).

This Court, sitting in Newport County, heard oral argument on the Motions to Consolidate on February 20, 2015 and now issues its Decision.

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<sup>6</sup> The Plaintiffs in the Clifford case consist of some 200 individual retired state or municipal employees who are not otherwise affiliated with the retiree associations in the Retiree case, C.A. No. PC 12-3166.

## I

### Analysis

Rule 42(a) of the Superior Court Rules of Civil Procedure provides that

“[w]hen actions involving a common question of law or fact are pending before the court, in the same county or different counties, [the court] may order a joint hearing or trial of any or all the matters in issue in the actions . . . as may tend to avoid unnecessary costs or delay.”

The Rhode Island Supreme Court has further stated that a trial court may, in its discretion, choose to consolidate pending cases “where they are of the same nature, arise from the same act or transaction, involve the same or like issues, [or] depend substantially upon the same evidence.” Sch. Comm. of Cranston v. Bergin-Andrews, 984 A.2d 629, 647 (R.I. 2009) (quoting Giguere v. Yellow Cab Co., 59 R.I. 248, 251, 195 A. 214, 216 (1937)). Our Supreme Court clarified that in considering a motion to consolidate, a trial court should act “only after a careful consideration of all the facts and circumstances, in order to ascertain . . . whether or not the ends of justice will best be served by such a consolidation for trial, while at the same time the substantial rights of all the parties involved are preserved.” Giguere, 59 R.I. at 251, 195 A. at 216. Finally, the burden is on the moving party to show cause why the cases should be consolidated. See Sciarra v. Hillelsohn, 87 R.I. 8, 10, 137 A.2d 417, 419 (1957).

Both the State and municipal Defendants (collectively, the Defendants) argue that consolidation is warranted in all these related pension cases because they involve common questions of law and fact and would depend on the same evidence. In addition, the Defendants assert that a failure to consolidate all the cases would prejudice them by requiring the State to present the same evidence and witness testimony multiple times. They also raise concerns for the possible preclusive effect of collateral estoppel on any subsequent trials after a final

judgment on the merits had entered as to the constitutionality of the RIRSA following the first trial. The Plaintiffs in the various cases object to the Defendants' Motions for Consolidation, basing their arguments on the resulting prejudice to the various Plaintiff groups if their differing claims and actions against the State are consolidated into one trial. The Plaintiffs assert that in order for their separate and distinct claims to be given a fair trial, the cases must be kept separate for trial purposes, preventing any jury confusion or dilution of the issues as a result of consolidation.

The Court agrees with the Defendants and finds that consolidation of these separate but related cases for trial purposes is justified. The Court is satisfied that all of these cases involve common questions of law and fact. All of these actions arise out of changes made to the State retirement system in 2009, 2010, and 2012 with the enactment of the RIRSA. All of the Plaintiffs are either retired or active public sector employees of either a municipality or the State, who are vested in either the Employees' Retirement System (ERS) or the Municipal Employees' Retirement System (MERS) and entitled to certain retirement benefits as a result of their membership in those systems. In addition, in all of these actions, the Plaintiffs have asked for a declaratory judgment holding the 2009 and 2010 Acts changing the retirement system, as well as the RIRSA, unconstitutional in violation of the Contracts Clause, Takings Clause, and Due Process Clause of the Rhode Island Constitution. The Plaintiffs also seek injunctive relief prohibiting the State from applying the provisions of the various Acts and thereby reducing the Plaintiffs' retirement benefits. The Plaintiffs' central claims against the State rest on their assertion that the RIRSA substantially impaired their contract rights and that the substantial impairment was not reasonable and necessary to achieve a legitimate public purpose. These claims rest largely on the same evidence related to the State's financial circumstances at the time

the RIRSA was enacted, the legislature's intent in making the challenged changes to the retirement system, as well as any alternatives which the State had to achieve the desired results. Holding multiple trials in these cases would result in duplicative testimony and evidence presentation, comprising a waste of time and resources for all of the parties and for the judicial system.

Additionally, the Court is concerned with the possibility of inconsistent verdicts arising out of separate trials of these cases. See Desjarlais v. USAA Ins. Co., 824 A.2d 1272, 1279 (R.I. 2003) (listing the danger of different juries returning inconsistent verdicts as among the harms to be prevented through joinder and consolidation of suits). If these cases were not consolidated and moved forward separately, it is possible that the different juries in these cases may reach differing factual conclusions, ultimately affecting the Court's decision on the constitutionality of the RIRSA on the merits. Any final judgment concerning the constitutionality of the RIRSA would necessarily affect the outcome of the other cases. For instance, great prejudice might result to the Plaintiffs if each group is not given an opportunity to be heard and to fully participate in a separate trial which would result in a declaration concerning the constitutionality of the RIRSA. If the cases were to go to trial separately, the Court is concerned with protecting the finality of any judgment on the merits from being attacked or otherwise called into question in subsequent cases. Cf. DeLuca v. DeLuca, 839 A.2d 1237, 1241 (R.I. 2004) (listing preserving the finality of judgments as one of the reasons to construe the concept of void judgments narrowly); Toscano v. Comm'r of Internal Revenue, 441 F.2d 930, 934 (9th Cir. 1971) (stating that preserving the finality of judgments is an important legal and social interest).

To the extent that the Plaintiffs are situated differently with respect to the source of their contractual rights, the Court notes that the issue has already been decided. This Court has

already determined that Plaintiffs possess implied unilateral contract rights arising from the ERS or the MERS. See Pension I, 2011 WL 4198506, at \*18. It is undisputed that the various CBAs between certain of the Plaintiff groups and the municipalities give rise to contractual rights. All of the Plaintiffs have valid contractual rights to their retirement benefits which have given rise to the Plaintiffs' constitutional claims in these cases.

The Court is mindful of the various Plaintiffs' concerns that consolidating all the cases for trial might make it difficult for the Plaintiffs to focus on each group's distinct circumstances, whether it be as retirees or as police officers and firefighters or otherwise. The Court notes, however, that the Plaintiffs' respective situations and any special considerations which may be tied to their circumstances are matters which may be fairly and adequately addressed during arguments and through the presentation of evidence at a trial. The Court believes that a single, consolidated trial would provide the Plaintiffs with a full and fair opportunity to be heard and to present their arguments.

The Court notes that the Plaintiffs in the Retiree case and in the Clifford case, all of whom had already retired as of the enactment of the RIRSA, have a more limited claim against the State, focusing only on the issue of the suspension of the annual cost of living adjustments (COLA). The Court acknowledges that retirees are situated differently from active employees, as our Supreme Court has made clear. See Arena v. City of Providence, 919 A.2d 379 (R.I. 2007) (holding that retirees cannot be treated as current employees for the purposes of employment benefits and the Firefighters' Arbitration Act); see also Matter of Almeida, 611 A.2d 1375, 1386 (R.I. 1992) (holding that in Rhode Island, a pension is a form of deferred compensation that becomes fully vested and may not be subject to divestment upon retirement, absent some misconduct). The Court is mindful of the Retirees' concern that consolidation of all

the cases may prejudice the Retirees in particular by diluting their stronger claims against the State as former employees who have already fulfilled all the required years of faithful service and are already receiving retirement benefits. To the extent, however, that the retirees' claims and circumstances differ from those of the active employees, these differences center on questions of law, which may be resolved prior to trial. Moreover, the Retirees' claims, in common with those of the other Plaintiffs, nevertheless require a determination that the RIRSA was not reasonable and necessary to achieve a legitimate public purpose. While acknowledging the Retirees' concern over the possible loss of case control as a result of consolidation, the Court believes that the interests of judicial economy, efficiency, and the finality of judgments and avoidance of inconsistent verdicts outweigh these potential concerns.

## **II**

### **Conclusion**

The Court finds that all the above-captioned cases predominantly involve common questions of fact and law arising out of similar and related statutes enacting changes to the retirement system. The Court further finds that all of the Plaintiffs' constitutional claims largely depend on the same evidence and that a failure to consolidate these cases would result in duplicative and unnecessary additional trials. The Court is satisfied that the interests of all the parties may be fairly and adequately represented in a consolidated trial and that no party would be unduly prejudiced by consolidating these actions. Accordingly, the State Defendants' Motion to Consolidate all the above-captioned cases for trial purposes is granted as to the Plaintiffs' constitutional claims.



**RHODE ISLAND SUPERIOR COURT**  
*Decision Addendum Sheet*

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**TITLE OF CASE:**

**In re Pension Cases;**

**Clifford v. Lincoln Chafee, et al.;**

**Cranston Firefighters, IAFF Local 1343, AFL-CIO v. Gina M. Raimondo, et al.;**

**International Brotherhood of Police Officers, local 301, AFL-CIO v. Gina M. Raimondo, et al.**

**CASE NOS:**

**PC 10-2859; PC 12-3166; PC 12-3167; PC 12-3168; PC 12-3169; PC 12-3579; KC 14-0345; PC 14-4343; PC 14-4768**

**COURT:**

**Providence County Superior Court**

**DATE DECISION FILED:**

**February 26, 2015**

**JUSTICE/MAGISTRATE:**

**Taft-Carter, J.**

**ATTORNEYS:**

**For Plaintiff: See attached list.**

**For Defendant: See attached list.**

***In Re PENSION CASES***

*C.A. Nos.: PC 12-3166; PC 12-3167; PC 12-3168; PC 12-3169; PC 12-3579; PC 10-2859;  
KC 14-0345; PC 14-4343; PC 14-4768*

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