STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: January 25, 2021)

GLEN HEBERT, et al.,	:	
Plaintiffs,	:	
	:	
v.	:	**C.A. No. PC-2013-3287**
	:	
THE CITY OF WOONSOCKET, et al.,	:	
Defendants.	:	

DECISION

LANPHEAR, J. Before this Court is a motion for injunctive relief made by a group of retired Woonsocket police officers (Plaintiffs) alleging violation of the Rhode Island Constitution's Contract Clause by the City of Woonsocket and the Woonsocket Budget Commission (WBC) (collectively, City). This matter is before the Court on remand from the Supreme Court of Rhode Island, with instructions to "implement a 'less deference' standard where the City is required to prove that the substantial impairment to plaintiffs' contractual rights was nonetheless reasonable and necessary to fulfill an important public purpose." *Hebert v. City of Woonsocket by and through Baldelli-Hunt*, 213 A.3d 1065, 1088 (R.I. 2019), *as corrected* (Sept. 6, 2019), *reargument denied* (Sept. 10, 2019). Jurisdiction is pursuant to G.L. 1956 § 9-30-1.

I

Facts and Travel[1]

In the early 2000s, the City of Woonsocket addressed its unfunded pension obligations with municipal bonds that conditioned issuance on the City's subsequent elimination of its

[1] The relevant facts and travel are drawn from the prior decisions in this case. *See Hebert v. City of Woonsocket by and through Baldelli-Hunt*, 213 A.3d 1065 (R.I. 2019); *Hebert v. City of Woonsocket*, No. PC-2013-3287, 2016 WL 493215 (R.I. Super. Feb. 4, 2016).

shortfalls—and then the Great Recession struck. *See Hebert*, 213 A.3d at 1069-70. These prior budgetary issues were aggravated by the loss of state aid when Rhode Island imposed its own budget cuts. *See id.* at 1070. The City made multiple efforts to curtail its fiscal spiral in the years from 2007 to 2010: raising taxes, imposing a trash collection fee, closing a school, and abandoning infrastructure improvement plans. *See id.* at 1070-71. After these changes failed to eliminate the budgetary deficit, the City began negotiating with its collective bargaining units to reduce its overhead with regard to personnel. *See id.* at 1071. Even then, the deficit remained, and Moody's Investor Service downgraded the City's bond rating to "junk bond status" in April of 2010. *See id.* Despite the resultant high interest rates from this change in rating, in July 2010 the City resorted to issuing $11.5 million in deficit reduction bonds in an attempt to continue its operations. *See id.* One of its pension funds then fell into "critical status." *Id.* at 1072.

In May of 2012, pursuant to the Rhode Island Fiscal Stability Act (the FSA), G.L. 1956 §§ 45-9-1, *et seq.*, the City requested the appointment of a budget commission to help resolve its extreme financial distress. *See id.* The WBC, when appointed, enacted a five-year plan to resolve the City's budgetary issues, in accordance with the FSA. *See id.* The five-year plan increased taxes, reduced homestead exemptions, reduced staffing, reorganized municipal departments, and reformed the City's health benefit plans, opting for a single uniform plan for all city employees and retirees. *See id.* at 1072-73. As part of this larger process, the City enacted resolutions on March 19, 2013, effective July 1, 2013, that imposed on retirees a mandatory monthly co-share payment, a yearly deductible, and copayments for medical services (Retiree Resolutions). *See id.* at 1074; *Hebert*, 2016 WL 493215, at *3. The prior year, the City had required that all retirees who were eligible to apply for Medicare do so. *See Hebert*, 2016 WL 493215, at *4.

A group of retired Woonsocket police officers filed a request for a preliminary injunction with this Court in October of 2013, seeking to restrain the City from altering their health insurance benefits. *See id.* at *1. They argued that the Retiree Resolutions violated the Contract Clause of the Rhode Island Constitution. *See id.* at *6. At the evidentiary hearings held in late 2013 and early 2014, the Director of the Rhode Island Department of Revenue testified that those changes had been implemented for an "indefinite" period of time. *See id.* at *9. After seven months of evidentiary hearings, the parties submitted their memoranda and this Court found in favor of the Plaintiffs, granting their request for a preliminary injunction. *See id.* at *1, *15.

The City appealed to the Rhode Island Supreme Court. *See Hebert*, 213 A.3d at 1077. In the intervening time, the co-share requirement expired, effective July 1, 2017. *See id.* at 1074. The Supreme Court agreed that Plaintiffs' contractual rights to their health insurance benefits had vested and did not contest this Court's finding that the modifications to those rights were substantial. *See id.* at 1082, 1087 n.24. However, the Supreme Court vacated this Court's judgment and remanded for consideration of whether the substantial impairment was nevertheless reasonable and necessary to fulfill an important public purpose, under a "less deference" standard of review. *See id.* at 1088. The Supreme Court also stated that, even should this Court determine on remand that the City's actions did not violate the Contract Clause, "the requirement that plaintiffs pay deductibles on their health insurance should be of a finite and reasonable duration." *Id.*

II

Standard of Review

The Court's Declaratory & Equitable Powers

The Superior Court is empowered to grant declaratory relief pursuant to the Uniform Declaratory Judgments Act (UDJA) and to grant equitable relief, including injunctions, as a court

of general equitable jurisdiction. G.L. 1956 § 9-30-1; G.L. 1956 § 8-2-13; *see Rhode Island Republican Party v. Daluz*, 961 A.2d 287, 295 (R.I. 2008). Furthermore, "'a decision to grant or deny declaratory or injunctive relief is addressed to the sound discretion of the [hearing] justice[.]'" *K & W Automotive, LLC v. Town of Barrington*, 224 A.3d 833, 836 (R.I. 2020) (quoting *La Gondola, Inc. v. City of Providence*, 210 A.3d 1205, 1213 (R.I. 2019) (further citations omitted)).

Under the UDJA, the Superior Court possesses the "power to declare rights, status, and other legal relations whether or not further relief is or could be claimed." Section 9-30-1; *see also P.J.C. Realty, Inc. v. Barry*, 811 A.2d 1202, 1207 (R.I. 2002) (quoting § 9-30-1). Section 9-30-2 of the UDJA provides as follows:

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

"'A party seeking injunctive relief 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.'" *Hebert*, 213 A.3d at 1077 (quoting *Nye v. Brousseau*, 992 A.2d 1002, 1010 (R.I. 2010)) (further citation omitted). "'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.'" *Id.* (quoting *Nye*, 992 A.2d at 1010). "A party seeking an injunction must also demonstrate likely success on the merits and show that the public-interest equities weigh in favor of the injunction." *National Lumber & Building Materials Co. v. Langevin*, 798 A.2d 429, 434 (R.I. 2002).

On remand, the Supreme Court treated this Court's grant of a preliminary injunction as the granting of a permanent injunction, to facilitate its own review. *Hebert*, 213 A.3d at 1076 n.11 ("By treating the trial justice's decision as the granting of a permanent injunction, we may now 'resolve the underlying substantive issues' as we normally would 'after the imposition of a permanent injunction.'") (quoting *Gianfrancesco v. A.R. Bilodeau, Inc.*, 112 A.3d 703, 708 (R.I. 2015) (further citation omitted). Consequently, the standard under the "likelihood of success" prong on remand is whether the Plaintiffs have achieved actual success on the merits. *Coit v. Celico*, No. KB-2013-1156, 2016 WL 1134797, at *4 (R.I. Super. Mar. 18, 2016) ("The standard for a permanent injunction is . . . that the plaintiff must prove its actual success on the merits rather than the likelihood of success on the merits.") (citing *Amoco Production Co. v. Village of Gambell, Alaska*, 480 U.S. 531, 546 n.12 (1987)).

The Contract Clause

Article I, section 12 of the Rhode Island Constitution states that "[n]o ex post facto law, or law impairing the obligation of contracts, shall be passed." R.I. Const. art 1, § 12. The Rhode Island Supreme Court has adopted the United States Supreme Court's three-part analysis for Contract Clause claims. *See Hebert*, 213 A.3d at 1085. Thus, to establish a violation of the Rhode Island Constitution's Contract Clause, a plaintiff must show three things. First, a plaintiff must show that a contract exists. Second, a plaintiff must show that the contested modification results in a substantial impairment of that contract. Third, a plaintiff must show that the impairment is not reasonable and necessary to fulfill an important public purpose. *Id*.

The burden of persuasion in proving a violation of the Rhode Island Constitution's Contract Clause always remains with the plaintiffs. *Id.* at 1086 (citing *Cranston Police Retirees Action Committee v. City of Cranston*, 208 A.3d 557, 573 (R.I. 2019)). However, although the plaintiff

also has the burden of production for the first two prongs of the Contract Clause test, it shifts to the defendant for the third prong. *See Cranston Police Retirees*, 208 A.3d at 573. At that point, a defendant must produce evidence that the impairment was reasonable and necessary to fulfill an important public purpose. *See Andrews v. Lombardi*, 231 A.3d 1108, 1123 (R.I. 2020).

Should a defendant meet its burden under the third prong, the burden of production then shifts back to the plaintiff, who still carries the burden of persuasion. *See id.* A plaintiff must then rebut the defendant's evidence, through a showing, beyond a reasonable doubt,[2] that the defendant's actions were *not* reasonable and necessary to fulfill a legitimate and significant purpose. *See id.* at 1123-24.

III

Analysis

The Supreme Court upheld this Court's prior findings that Plaintiffs had made the requisite showing under the first two prongs of the Contract Clause test. *See Hebert*, 213 A.3d at 1087 n.24 ("[W]e discern no error in the trial justice's determination that contracts existed between plaintiffs and the City that created the rights to free health care benefits, and that there was a substantial impairment of that vested right when the WBC adopted the Retiree Resolutions.").

Therefore, in order for Plaintiffs "to actually succeed on the merits" here, one of two things must happen. The City must fail to meet its burden of production on the third prong, effectively

[2] The Court notes that this heightened burden of proof is a difficult one for Plaintiffs to meet, which is counterintuitive under circumstances where they are arguing for the retention of their constitutionally protected contractual rights. After all, the entire justification of the less deference standard is that state actors are entitled to *less* deference when they impair their own contractual obligations, due to their evident self-interest. *See Andrews*, 231 A.3d at 1123; *Hebert*, 213 A.3d at 1086-88; *Cranston Police Retirees*, 208 A.3d at 574 (citing *United States Trust Company of New York v. New Jersey*, 431 U.S. 1, 25-26 (1977); *Baltimore Teachers Union, American Federation of Teachers Local 340, AFL-CIO v. Mayor and City Council of Baltimore*, 6 F.3d 1012, 1019 (4th Cir. 1993)). *But see Andrews v. Lombardi*, 233 A.3d 1027, 1037 n.7 (R.I. 2020).

failing to show, by credible evidence, that the substantial impairment was reasonable and necessary to support an important public purpose. *See Andrews*, 231 A.3d at 1123. Alternatively, Plaintiffs must rebut the City's successful showing, proving beyond a reasonable doubt that the City's actions were not reasonable and necessary. *See id.* at 1124.

A

The Purpose of the Modification

As a preliminary matter, by virtue of this Court's order, entered on December 17, 2019, and at the City's request, the evidence in this matter was limited to the existing record. *See* Order (Dec. 17, 2019) (Lanphear, J.). The parties were asked to file memoranda analyzing the evidence they contend is relevant. *Id.* In its memorandum, the City argues that, in prior hearings, it produced credible evidence that it had a significant and legitimate purpose to remedy a fiscal emergency, minimize the impact of state aid reductions, and avert bankruptcy. (City's Mem. 7-12.) The City notes the evidence in the record regarding the "devastating economic and social consequences of the Great Recession on the City," citing to the Supreme Court's decision above. City's Mem. 10; *see Hebert*, 213 A.3d at 1070. The City then echoes the Supreme Court's statement that the reduction in state aid between 2007 and 2011 also contributed to its dire economic situation. (City's Mem. 10.) The City also argues that because its adoption of the Retiree Resolutions was under the FSA, its purpose was also to avoid receivership and/or bankruptcy. *Id.* at 11-12.

Under Contract Clause jurisprudence from multiple jurisdictions, a significant and legitimate public purpose is defined as "one 'aimed at remedying an important general social or economic problem rather than providing a benefit to special interests.'" *Buffalo Teachers Federation v. Tobe*, 464 F.3d 362, 368 (2d Cir. 2006) (quoting *Sanitation and Recycling Industry, Inc. v. City of New York*, 107 F.3d 985, 993 (2d Cir. 1997)). A purpose "for the mere advantage of

particular individuals" would not qualify, for example. *Home Building & Loan Association v. Blaisdell*, 290 U.S. 398, 445 (1934). Additionally, while "the purpose may not be simply the financial benefit of the sovereign[,]" there is no doubt that "addressing a fiscal emergency is a legitimate public interest." *Buffalo Teachers Federation*, 464 F.3d at 368, 369.

The Supreme Court of Rhode Island, in its opinion above, described the Great Recession as follows:

> "The Great Recession occurred during the mid to late 2000s. It began when the United States housing market crashed and large amounts of mortgage-backed securities and derivatives lost significant value. *See In re Fannie Mae 2008 Securities Litigation*, 742 F. Supp. 2d 382, 391 (S.D.N.Y. 2010). The housing market crash spiraled into a global phenomenon, drastically affecting countless markets and was considered to be the worst economic downturn since the Great Depression. *See Federal Housing Finance Agency v. Nomura Holding America, Inc.*, 104 F. Supp. 3d 441, 538-39 (S.D.N.Y. 2015); *City of Roseville Employees' Retirement System v. Sterling Financial Corporation*, 963 F. Supp. 2d 1092, 1101 (E.D. Wash. 2013)." *Hebert*, 213 A.3d at 1070 n.1.

This description of the Great Recession makes it clear that it was a "general economic problem" that affected the entire nation. *Buffalo Teachers Federation*, 464 F.3d at 368 (noting that a significant and legitimate public purpose should be "aimed at remedying an important general social or economic problem") (quotation omitted). The Supreme Court's statement defining the Great Recession was in the context of its factual discussion of how that event contributed to the City's fiscal spiral in multiple ways. *See Hebert*, 213 A.3d at 1070 (acknowledging that "when the Great Recession struck, the [City's] pension fund value again declined" and that "[t]he Great Recession also caused the state to impose budget cuts in municipal aid, which had a direct and disastrous impact on the City's finances").

Furthermore, in *Cranston Police Retirees*, cited *supra*, the Supreme Court found the effects of the Great Recession to be evidence of a significant and legitimate purpose under comparable

circumstances. *See Cranston Police Retirees*, 208 A.3d at 576 (finding that the ordinances in question "were designed to address the City's serious fiscal crisis, one that was brought about by several factors, many not within the City's control[,]" including "a severe and historic recession in the years just prior to the passage of the ordinances"). Other courts have made similar determinations. *See, e.g., Donohue v. New York*, 347 F. Supp. 3d 110, 133 (N.D.N.Y. 2018) ("The law was enacted in an effort to close a multi-billion dollar budget gap caused by the Great Recession. . . . Therefore, it is beyond dispute that the Legislature's public purpose in enacting the law was legitimate.").

Additionally, the State of Rhode Island's Legislature acknowledged the seriousness of the financial crisis in the years following the Great Recession when it enacted the FSA. *See Hebert*, 213 A.3d at 1082-83; *Moreau v. Flanders*, 15 A.3d 565, 581 (R.I. 2011) ("It is undisputed that '[t]he fiscal collapse of a [city or town] can affect the entire state's financial interests . . . .'") (quoting *Marran v. Baird*, 635 A.2d 1174, 1178-79 (R.I. 1994)). It was the FSA that allowed for the creation of the WBC, implicitly acknowledging the gravity and widespread nature of the economic problems faced by the City and other municipalities in the State of Rhode Island. *See Hebert*, 213 A.3d at 1072; § 45-9-1. Furthermore, as the City and the Supreme Court have pointed out, the FSA's purpose was to create a more effective means than bankruptcy for resolving municipal financial adversity. *See Hebert*, 213 A.3d at 1082-83; *Moreau*, 15 A.3d at 571.

It seems clear that the purpose of instituting the various remedies, including the Retiree Resolutions, was not simply the financial benefit of the sovereign, but instead was "aimed at remedying an important general social or economic problem . . . ." *Buffalo Teachers Federation*, 464 F.3d at 368 (quotation omitted). Therefore, this Court finds that the City has established by credible evidence that it had a significant and legitimate public purpose, generally, to remedy its

fiscal emergency, minimize the consequences of state aid reductions, and avert bankruptcy. However, the question remains as to whether that purpose justified the specific modifications to Plaintiffs' vested contractual rights at issue herein.

B

The Reasonableness and Necessity of the Modifications

Despite the City's argument that its actions were reasonable and necessary given its purpose, *see* City's Mem. 12-48, Plaintiffs argue that the City failed to demonstrate that the substantial impairment of their contractual rights was necessary to fulfill that purpose, *see* Pls.' Mem. 2. The Court must find that the City has provided credible evidence to support its argument.

Similar modifications to the City of Providence's contractual obligations were addressed in *Andrews v. Lombardi*, No. KC-2013-1128, 2017 WL 532353 (R.I. Super. Feb. 2, 2017). In that case, the trial justice noted that the relevant analysis must ensure that such a modification be "specifically tailored to 'meet the societal ill it is supposedly designed to ameliorate.'"[3] *Andrews*, 2017 WL 532353, at *13 (quoting *Kent v. New York*, No. 1:11-CV-1533, 2012 WL 6024998, at *21 (N.D.N.Y. Dec. 4, 2012); *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 243 (1978)). Essentially, the Court's analysis is "'a form of intermediate scrutiny,'" and the determination of whether government modification of its contracts was 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.* (quoting Jack M. Beermann, *The Public Pension Crisis*, 70 Wash. & Lee L. Rev. 3, 48 (2013)).

[3] When the Rhode Island Supreme Court later reviewed the decision, this part of the analysis was not disturbed. *See Andrews*, 233 A.3d at 1036-37.

1

The City's Evidence

In evaluating a defendant's production of evidence under the third prong of the Contract Clause test, this Court must employ what the Rhode Island Supreme Court has deemed a "less deference standard," referring to the fact that complete deference to a state or municipal defendant's assessment of reasonableness and necessity is not appropriate when its self-interest is at stake. *See Andrews*, 231 A.3d at 1123; *Hebert*, 213 A.3d at 1086-88; *Cranston Police Retirees*, 208 A.3d at 574 (citing *United States Trust*, 431 U.S. at 25-26; *see also Baltimore Teachers Union*, 6 F.3d at 1019).

Consequently, the Court must ask whether the City has produced credible evidence that demonstrates that it did not consider impairing the contracts on par with other policy alternatives, impose a drastic impairment when an evident and more moderate course would have served its purpose equally well, or act unreasonably in light of the surrounding circumstances. *See Cranston Police Retirees*, 208 A.3d at 577.

i

Consideration on Par with Other Policy Alternatives[4]

The fiscal crisis that justified the City's actions on this record has been defined as the convergence of certain pre-existing financial difficulties with the direct and indirect effects of the Great Recession. Therefore, the Court must examine the evidence of what efforts were considered by the City from the beginning of that particular emergency. The Court finds evidence that the

[4] Post-remand, the City chose to reference the record primarily through its memorandum, rather than resubmitting its evidence as exhibits. *See* City's Mem. (filed on July 17, 2020). As mentioned above, the City requested that no new evidence be permitted, and this Court agreed. *See* Order (Dec. 17, 2019) (Lanphear, J.).

City made multiple efforts to resolve its financial crisis before seeking the appointment of a state budget commission.

Specifically, regarding taxation, the record contains evidence that the City increased taxes to the maximum it was allowed under Rhode Island law during this period. *See* City's Mem. 14. The City showed that it taxed at and above the 4% levy cap for every year during the Great Recession (i.e., 2008-2012). *See id.* In 2012, when the situation had not been alleviated by these taxation measures (and other efforts described herein), the City Council unsuccessfully attempted to seek authorization from the General Assembly to impose a $6.6 million supplemental tax. *See id.* at 18. Consequently, this Court finds ample evidence that the City exhausted its options as to taxation before the Retiree Resolutions were passed. *See Buffalo Teachers Federation*, 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 also provided evidence that showed it took other measures to attempt to resolve its financial crisis. There is evidence that the City imposed a trash collection fee and negotiated PILOT payments. *See* City's Mem. 14. The City's evidence showed that it reduced expenditures by reverting to a "pay go" approach to pension payments, closing a school, turning off streetlights, and abandoning infrastructure projects except in cases of emergency repairs. *See id.* at 15. After these measures failed to eliminate the budget deficit by 2010, the City sought concessions from its bargaining units, approving a budget for 2011 that would reduce salaries and benefits of municipal employees by $2.539 million in aggregate by including a line item for expected concessions. *See*

id. at 15-16. Concessions were made by the police union, the firefighter union, the municipal unions, and the Education Department unions. *See id.* at 16. Finally, in July of 2010, the City incurred new debt, issuing $11.5 million in deficit reduction bonds, despite the unfavorable interest rates due to the downgrading of the City's rating by Moody's Investment Service. *See id.* at 17.

The evidence provided by the City shows that it considered and instituted a number of efforts before resorting to the appointment of a budget commission in 2012. The Retiree Resolutions that impaired the Plaintiffs' vested right to health benefits were first adopted by the WBC on March 19, 2013 and amended in June of 2013. *See Hebert*, 213 A.3d at 1074. Plaintiffs' argument that the City failed to introduce sufficient credible evidence to show that it had considered alternatives to the permanent, or indefinite, changes to their vested contractual rights to retirement health care is unavailing and does not rebut the City's evidence beyond a reasonable doubt. (Pls.' Mem. 8-9.)

The credible evidence before this Court shows that the Retiree Resolutions were only enacted in 2013, after five years of other attempts to alleviate the City's fiscal crisis proved insufficient. *See Hebert*, 213 A.3d at 1074; *Cranston Police Retirees*, 208 A.3d at 578 (upholding trial justice's determination that the City adequately considered other policy alternatives based on credible testimony of Mayor Fung as to that consideration). The fact that the City's modification of the retirees' contractual rights followed the imposition and consideration of many other alternative methods of revenue generation weighs in its favor here. *See Buffalo Teachers Federation*, 464 F.3d at 371 (finding the city's actions reasonable where it was imposed "only after other alternatives had been considered and tried"); *Baltimore Teachers Union*, 6 F.3d at 1020 ("The City's obvious reluctance to resort to the plan and its decision to do so only when it concluded that it had no better alternative . . . confirms that the City did not consider salary

reductions on a par with other policy choices[.]"). Therefore, the Court finds that the City has provided credible evidence demonstrating that it did not consider impairing Plaintiffs' contractual rights to their bargained-for health benefits on par with other policy alternatives.

ii

The Availability of a More Moderate Course

The City also provided extensive evidence to support its argument that it did not impose a drastic impairment when an evident and more moderate course would have served its purpose equally well. (City's Mem. 21-37.) The City points to the WBC's statutorily-mandated five-year plan as a detailed assessment of the budgetary crisis in 2012-2013, as well as what would be required to avert it by 2017. *Id.* The integrated reforms under the five-year plan included increased taxes, health benefit reform creating a Uniform Plan for employee health benefits through collective bargaining, reforming future retirees and former employees' health care in various ways, reorganization and reduced staffing, and pension reform that included both the suspension of COLA on pension benefits and a legislative amendment extending the amortization period. *See id.* at 23-32.

The City argued that the WBC never considered eliminating or diminishing health care coverage, which would have been more drastic. *See id.* at 30. The City also offered evidence that fifty percent of the annual cost savings realized from changes to retirees' health care benefits came from changes to police retirees' benefits. *See id.* As additional evidence, the City pointed to the expert testimony of Rosemary Booth Gallogly, Director of the Department of Revenue, who testified that there was no other way for the WBC to achieve the necessary savings. *See id.* at 34. The City offered evidence that it had reached its limit with educational cuts, as it was constrained by state and federal law, as well as having closed a school and forgone implementation of full-day

kindergarten. *See id.* at 49. The City also showed that, while it had limited ability to assess PILOTs, it had managed one by CVS in fiscal year 2014 and that it tried to (and eventually did) legislatively implement a supplemental tax. *See id.* at 50-51.

Plaintiffs argued that the City failed to introduce credible evidence that it could not have imposed a less drastic impairment to their vested rights than a permanent and indefinite one. (Pls.' Mem. 10-17.) They pointed out that the evidence presented by the City characterized the health plan design changes as permanent or indefinite duration, but that the evidence to justify that was the five-year plan, which projected either a balanced budget or a surplus by the end of fiscal year 2017. *See id.* at 12-13.

Overall, this Court finds the City's evidence here credible. With respect to the modifications to Plaintiffs' health benefits that were temporary or limited in duration, it seems clear that there was no more moderate course available to the City that would have allowed it to arrest its fiscal spiral. *See Baltimore Teachers Union*, 6 F.3d at 1020 (finding that the City did not choose a drastic impairment where "the city discontinued the plan immediately upon recognition that the budgetary shortfall would not be so great as anticipated"). The Court also agrees that the City was under no obligation to enact other, more drastic measures before enacting the Retiree Resolutions—it was simply required to enact more moderate measures if they would do as well. *See Buffalo Teachers Federation*, 464 F.3d 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.").

However, Plaintiffs are correct that the permanent and indefinite change to Plaintiffs' rights regarding deductibles constituted a drastic, not moderate, course of action and was thus unreasonable and unnecessary. *Compare Cranston Police Retirees*, 208 A.3d at 578 (finding City's

actions were "narrowly tailored to the problem and that the impairment was temporary and prospective in nature"), *with Andrews,* 231 A.3d at 1125-26 (weighing temporary nature of deprivation of contractual right under this second factor and holding that indefinite suspension of COLA benefits was unreasonable).

iii

Reasonableness Under Circumstances

Finally, the City argues that, given the surrounding circumstances following the Great Recession, it acted reasonably. (City's Mem. 38-48.) The City claims its actions were reasonable because they were driven or constrained by state law obligations, as well as deep cuts to municipal aid imposed by the state after the Great Recession. *See id.* at 39-41. The City also reiterated that it tried many other actions first, that it treated all stakeholders fairly and equitably, and that its impairment to Plaintiffs' health benefits was targeted, limited, and narrowly tailored. *See id.* at 41-48.

A municipality's actions are reasonable under this portion of the analysis where they are "circumscribed, temporary, prospective, and . . . necessitated by a fiscal emergency." *Andrews*, 2017 WL 532353, at *27 (citing *United States Trust*, 431 U.S. at 22 n.19, 27, 30-31; *Energy Reserves Group, Inc. v. Kansas Power & Light Co.*, 459 U.S. 400, 418-19 (1983); *Buffalo Teachers Federation*, 464 F.3d at 371-72.)

As described above, the Great Recession certainly constituted a fiscal emergency and the City has provided extensive evidence that its financial situation was impacted by that emergency in multiple ways. *See, e.g.*, City's Mem. 40-41. The Court also finds credible evidence from the City that its state and federal law obligations constrained its actions in addressing its fiscal crisis, particularly related to its unfunded pension liabilities and education obligations. *See id.* at 39-40;

G.L. 1956 § 45-65-4(3) (Retirement Security Act); P.L. 2002, ch. 10, § 1; G.L. 1956 § 16-7-23 (maintenance of effort); 20 U.S.C. §§ 6301 *et seq.* (The No Child Left Behind Act of 2001); 20 U.S.C. §§ 1400 *et seq.* (The Individuals with Disabilities Education Act). Furthermore, the WBC could not gain the approval of a supplemental tax unless it achieved a "realization of a total amount of no less than three million seven hundred fifty thousand dollars ($3,750,000) in savings resulting from municipal enactment or concessions from collective bargaining agreements with applicable Woonsocket unions and retirees." G.L. 1956 § 44-5-74.4(c).

There is also ample evidence in the record that the WBC had a statutory mandate to restore fiscal stability and that it largely did so through a wide-ranging plan involving multiple stakeholders, good faith negotiations with bargaining units, and efforts to create consensual long-term changes where possible. *See* City's Mem. 39, 42-43; §§ 45-9-6(d) and 45-12-22.3(a). In particular, this Court finds that the evidence presented regarding the creation and institution of the Uniform Plan among interested and willing stakeholders shows that the City's efforts under the five-year plan were generally reasonable under the circumstances. *See* City's Mem. 47 (noting that "several groups, including retired teachers . . . and retired municipal workers . . . , agreed in writing to the modifications to assist the WBC in resolving its financial crisis and avoiding bankruptcy"); *Hebert*, 213 A.3d at 1073 (describing WBC's institution of the Uniform Plan).

As described above, the modification to Plaintiffs' contracted-for retirement health benefits consisted of at least two hardships: the co-share contribution that was limited in duration and the deductible requirement that was not. *See Hebert*, 213 A.3d at 1074, 1088. The City pointed out that the co-share contributions lasted for only four years, ending in 2017. (City's Mem. 44.) The City then claimed the deductible requirement is also of finite duration, prospective, and reasonable because the jump from a $50 to a $500 individual or $1000 family deductible did not apply to

everyone, because the Plaintiffs still received comparatively costly benefits from the City, and because the deductible ends once an "Early Retiree" reaches age sixty-five and transitions to Medicare. *Id.* at 44-46. Plaintiffs argued that the City's evidence only supports the change in plan design for the five-year period contemplated by the five-year plan, or through July 1, 2017. (Pls.' Mem. 14.)

The Court is persuaded that the City has provided credible evidence supporting the reasonableness of its limited-duration modifications to its contracts *under the circumstances*. *See Baltimore Teachers Union*, 6 F.3d at 1021 (finding the City's plan reasonable under the circumstances where it was designed to deal with a broad, generalized economic or social problem, extended to all City employees rather than narrowly targeting a specific class of employees, affected an area already subject to regulation, and was temporary and limited in duration). However, this reflects more on the extremity of the demonstrated fiscal emergency than it does on the reasonableness of the modifications *per se*. In particular, the City has shown that its institution of the Retiree Resolutions was part of a larger plan to deal with a generalized economic problem that included many different stakeholders, and to that extent did not narrowly target a specific class of employees. *Id.* However, the evidence that demonstrates this cannot also support the imposition of an indefinite requirement that Plaintiffs pay a deductible, contrary to their bargained-for and vested contractual rights. *See Buffalo Teachers Federation*, 464 F.3d at 372 (holding that it was "the prospective and temporary quality of the wage freeze [that] convinces us of its reasonableness") (citing *Blaisdell*, 290 U.S. at 447) (further citations omitted). In fact, it is likely that some Plaintiffs have transitioned to Medicaid, rather than pay the higher deductible, with foreseeable effects on their quality of life. *See Arnold v. Lebel*, 941 A.2d 813, 816 (R.I. 2007) ("'Rhode Island's medical assistance program, commonly known as Medicaid, is designed to

assist low income persons with the cost of medical care.'") (quoting *Esposito v. O'Hair*, 886 A.2d 1197, 1201-02 (R.I. 2005)).

In *Home Building & Loan Association v. Blaisdell*, cited *supra*, the United States Supreme Court first held that a state could constitutionally impair existing contracts through legislation under certain circumstances that implicated its police power "where vital public interests would otherwise suffer[.]" *Blaisdell*, 290 U.S. at 440. In so holding, the Supreme Court derived five criteria from its prior decisions, including the existence of an emergency, relief that was appropriately tailored to that emergency, and legislation that was "temporary in operation" and "limited to the exigency which called it forth." *Id.* at 444-47. The Supreme Court explicitly stated that "the operation of the statute itself could not validly outlast the emergency or be so extended as virtually to destroy the contracts." *Id.* at 447.

Later cases have held that "[t]he public purpose justifying an impairment of contract need not be 'an emergency or temporary situation,' although the existence of an emergency is of course relevant." *Baltimore Teachers Union*, 6 F.3d at 1020 n.11; *see, e.g.*, *Energy Reserves Group*, 459 U.S. at 412 ("[S]ince *Blaisdell*, the Court has indicated that the public purpose need not be addressed to an emergency or temporary situation."); *United States Trust*, 431 U.S. at 22 n.19 ("Undoubtedly 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, but they cannot be regarded as essential in every case.").

It seems clear that the duration of any impairment to a vested contractual right is relevant to the Court's determination of its reasonableness. As an initial matter, the Court cannot agree that the permanent alteration of Plaintiffs' vested rights can fairly be characterized as limited. *See* City's Mem. 44-46. Furthermore, the very arguments used by the City to justify the modifications

generally, and the evidence that supports them, belie their attempt to justify a permanent change to Plaintiffs' vested rights. If it is true that the modifications—otherwise impermissible—were only justified by a fiscal emergency, then the resolution of that particular fiscal emergency by way of the WBC's five-year plan must mark the end of that justification.

The City used the term "emergency" no less than fifteen times in its post-remand memorandum on reasonableness and necessity—either applied directly to its situation or indirectly through analogy to other cases. *See* City's Mem. 7, 8 (three times), 12 (twice), 15, 35, 36 (twice), 38, 42, 45 n.18, 52 (twice). The Supreme Court characterized the City's situation using terms like "disastrous[,]" "undeniable fiscal crisis[,]" "an already blazing fire," "a 'perfect storm of problems'[,]" and "a fiscal death spiral." *Hebert*, 213 A.3d at 1070, 1071, 1072. In emergency situations, the City has certain legal justifications for its actions, provided that at all times it acts reasonably. In fact, the WBC was granted its limited authority to enact modifications such as those at issue here *for the purposes of* relieving the City's fiscal emergency under Rhode Island law. *See* Rhode Island FSA, § 45-9-6(d) (stating that a budget commission "shall have the power to: . . . (9) Alter or eliminate the compensation and/or benefits of elected officials of the city, town, or fire district *to reflect the fiscal emergency*") (emphasis added).

An emergency[5] is characterized by its sudden, unforeseen onset and the need to act immediately to forestall further harm. *See* The American Heritage College Dictionary 449 (3d ed. 1997) (defining "emergency" as "[a] serious situation or occurrence that happens unexpectedly

[5] In *Blaisdell*, the United States Supreme Court stated that "the reservation of the reasonable exercise of the protective power of the state is read into all contracts[.]" *Blaisdell*, 290 U.S. at 444. The Rhode Island Supreme Court has stated that, when "contracts d[o] not supply a technical definition for [a] term, we will give the term its plain, ordinary, and usual meaning," noting that "this Court has used dictionaries, including Black's Law Dictionary, to aid in determining the plain and ordinary meaning of a word." *Garden City Treatment Center, Inc. v. Coordinated Health Partners, Inc.*, 852 A.2d 535, 542-43 (R.I. 2004).

and demands immediate action"); *see also* Black's Law Dictionary (11th ed. 2019) (defining "emergency" as "[a] sudden and serious event or an unforeseen change in circumstances that calls for immediate action to avert, control, or remedy harm"). However, at some point an emergency is no longer immediately emerging and loses its legal force as a justification. *See Moreau*, 15 A.3d at 578 (stating that "the absence of an explicit sunset provision in the statutory framework [of the FSA] is indeed a flaw" but finding "oversight by the director of the Department of Revenue must end within a reasonable time after the municipality regains financial stability in accordance with the guidelines set forth in the statute"). The City has not provided evidence or argued that its ongoing financial situation constitutes legal justification for a continuing or permanent breach of its contractual obligations. Instead, it has provided evidence related to an exceptional circumstance that no longer exists. *See Hebert*, 213 A.3d at 1088.

Of course, there are other legal actions open to the City to address its ongoing financial situation. Indeed, it has taken some of these actions already. For example, the City is explicitly authorized by statute to institute a requirement that its pensioners who are eligible for Medicare apply for its coverage, and it has done so. *See Andrews*, 2017 WL 532353, at *43 (outlining the process by which Providence sought state legislation to allow it to shift retirees to Medicare, and the subsequent passage of the Medicare Enrollment Statute); G.L. 1956 § 28-54-1.

Furthermore, the City is free to prospectively alter the benefits it offers its retirees, subject to its ability to bargain regarding these benefits successfully with its collective bargaining units. *See* Douglas W. Kmiec & John O. McGinnis, *The Contract Clause: A Return to the Original Understanding*, 14 Hastings Const. L.Q. 525, 527-28 (1987) ("The Contract Clause, like the Ex Post Facto Clause, is particularly concerned with the requirement of prospectivity. Prospectivity

is an essential requirement of the rule of law because only prospective laws allow citizens to plan their conduct so as to conform to the law.").

However, the Court concludes that any other permanent modification to Plaintiffs' vested rights, i.e., the indefinite requirement that Plaintiffs pay a deductible, is both too drastic and unreasonable under the circumstances. Thus, the permanent requirement that this group of retirees pay a deductible violates the Contract Clause.

2

A Reasonable Duration for the Modification

In two of its recent cases, the Rhode Island Supreme Court demonstrated that it wanted benefits like those at issue here restored promptly. The *Andrews* cases were brought by the same plaintiffs, challenging both an ordinance suspending cost-of-living adjustments (COLAs) for their pensions, *see Andrews*, 231 A.3d 1108, and a Medicare ordinance that purported to put retirees in a similar position as under their prior health care benefits through supplemental coverage that never materialized, *see Andrews*, 233 A.3d 1027. In the pension case, the Supreme Court stated that they "agree[d] with plaintiffs that 'the [2012] Pension Ordinance's lack of a definitive deadline by which COLAs will be reinstated necessarily undermines a finding that it is only 'temporary.'" *Andrews*, 231 A.3d at 1126. In the Medicare case, the Supreme Court held that it was "convinced . . . that the controversy ought to be resolved by awarding the plaintiffs the same remedies for health care as provided in the 2011 lawsuit's settlement agreement[.]" *Andrews*, 233 A.3d at 1039. The Supreme Court found this remedy appropriate because, contrary to the finding of the trial justice below, basic Medicare benefits were not "equivalent" to the health care coverage previously provided by the City of Providence under the collective bargaining agreement. *Id.* at 1038. The Supreme Court also stated that it was "mindful that [its] decision marks but another chapter in the

protracted dispute between" the parties in *Andrews*, stating that they saw "little to be gained by further litigation on the issue of health care benefits for these plaintiffs." *Id.* at 1039. That sentiment is equally applicable in this case.

Here, even if this Court had not found that the City's indefinite and continuing modification of Plaintiffs' vested rights violates the Contract Clause, the Supreme Court made clear that "the requirement that plaintiffs pay deductibles on their health insurance should be of a finite and reasonable duration." *Hebert*, 213 A.3d at 1088. This indicates—and the parties' filings show that they also understood it to indicate—that it is appropriate on remand to address how finite the modification should be in order to be defined as reasonable and necessary under the circumstances. *See* City's Mem. 46-47; Pls.' Mem. 5, 13. While the City argues that a ten-year requirement is reasonable, citing to *Cranston Police Retirees*, the Plaintiffs claim that the City's evidence only justifies imposing the additional, uncontracted-for burden for the five-year period contemplated in the WBC's five-year plan. *See* City's Mem. 47; Pls.' Mem. 14. Neither party has requested any further hearing on this matter.

For several reasons, the Plaintiffs' argument here prevails. First, the WBC's authority to institute the changes was of finite duration. *See* § 45-9-6(d)(9); *Moreau*, 15 A.3d at 578. Second, the five-year plan, if successful, would result in a balanced budget, eliminating the circumstances that justified the City's impairment of its contract. *See* Pls.' Ex. NNN (Woonsocket 5 Year Deficit Reduction Plan). Third, this period has now lapsed and, as the WBC's herculean efforts were successful, this Court's finding does not harm the City. *Hebert*, 213 A.3d at 1088 ("It has been represented to this Court, and the record supports, that the City, through the herculean efforts of the WBC and municipal officials, is now on the mend financially."). Finally, the City never showed

why it should continue to extend its modifications beyond this period. It is time to conclude the litigation and establish a clear date.

IV

Conclusion

Utilizing the "less deference standard" mandated by the Rhode Island Supreme Court, this Court finds that the City successfully demonstrated that its limited duration impairment to the Plaintiffs' contractual rights, i.e., the co-share requirement, was reasonable and necessary under the circumstances. However, the City failed to show that a permanent impairment to Plaintiffs' contractual rights, i.e., the deductible requirement, is reasonable or necessary to fulfill their articulated public purpose. *See Hebert*, 213 A.3d at 1088. Nor has the City limited the duration of this impairment on its own, despite the previous statements from both this Court and the Rhode Island Supreme Court that such limitation was necessary. Consequently, this Court finds that the City violated the Contract Clause of the Rhode Island Constitution with its ongoing requirement that Plaintiffs pay deductibles, contrary to their bargained-for and vested contractual rights.

Furthermore, the only reasonable duration of the City's modification to the Plaintiffs' contractual rights was the five-year period contemplated in the WBC's five-year plan. Therefore, Plaintiffs must be compensated for any deductible amounts they paid after July 1, 2017. *See* § 9-30-8. Additionally, other than the City's imposition of the statutorily sanctioned Medicare requirement, all contractual rights previously bargained for by Plaintiffs must be restored. The City may take comfort that the restoration of its contractual obligations will be of limited duration, "in that it end[s] once the Early Retiree[s] reach[] age sixty-five and transition[] to Medicare." *See* City's Mem. 45.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Glen Hebert v. City of Woonsocket**
CASE NO:	**PC-2013-3287**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**January 25, 2021**
JUSTICE/MAGISTRATE:	**Lanphear, J.**

ATTORNEYS:

For Plaintiff:	**Edward C. Roy, Jr., Esq.**
For Defendant:	**Matthew H. Parker, Esq.** **John J. Desimone, Esq.** **Sara Rapport, Esq.**