STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(Filed: February 4, 2016)

GLEN HEBERT, ET AL., in their individual capacities and on behalf of all others similarly situated,	:	
Plaintiffs and Counterclaim-Defendants,	:	
VS.	:	
THE CITY OF WOONSOCKET, by and through its Mayor, Lisa Baldelli-Hunt, and the WOONSOCKET BUDGET COMMISSION,	:	**C.A. No. PC 2013-3287**
Defendants and Counterclaim-Plaintiffs,	:	
VS.	:	
MICHAEL L. A. HOULE, RONALD PENNINGTON, in their individual Capacities and on behalf of all others similarly situated,	:	
Counterclaim-Defendants.	:	

DECISION

LANPHEAR, J. One of the most basic principles of a just and civilized society is that a person will stand behind a promise that he or she has made. Perhaps the earliest provision of our system of laws, therefore, is that such a commitment will be enforced by the courts.[1] This is particularly so where the contract is in writing and clear, where it has been bargained by both

[1] "When a man makes an agreement which he does not fulfil … the other party may go to law with him in the courts of the tribes, for not having completed his agreement . . ." Plato, Laws, Book 11, § 23.

parties fairly and in good faith, and when both parties rely on the contract and the promises contained therein.

Of course, people are not always pleased about keeping their promises—particularly when contracts are costly and long-lasting, parties may attempt to avoid the obligations that they have made. Avoiding the obligations of a contract after having received all of the benefits of the contract is obviously unfair. The founders of our government recognized that state governments (powerful creations in our federal system) should be prohibited from voiding the obligations of contracts. Here, the government is seeking to void a contract to improve its own financial status. It seeks to do so unilaterally—without permission from or compensation to the Plaintiffs. It fails to even note that the Plaintiffs have already fulfilled all of their contractual obligations.

This case is before the Court on Plaintiffs' motion for preliminary injunction.

I

Procedural Background

In October of 2013, Plaintiffs, former employees of the Woonsocket Police Department, filed a request for a preliminary injunction seeking to restrain the City of Woonsocket from terminating health insurance benefits and modifying the terms of their ongoing health insurance. Specifically, they request the Court to issue an Order "restraining and enjoining the City of Woonsocket and the Woonsocket Budget Commission from [increasing] . . . the 'co-share' payment from the plaintiffs as a requirement for [continued] health care coverage . . . ." (Am. Compl. 6, ¶ 5.) The Court conducted an extensive evidentiary hearing from August 13, 2013 through March 11, 2014 over thirteen days, submitting eighty-seven full exhibits. The parties agreed to submit the deposition transcript of Mr. Robert Knowles in lieu of additional testimony. Memoranda were then submitted in support of their respective positions.

II

Factual Background

This case involves the alteration of health insurance benefits for retired municipal police officers of the City of Woonsocket. The Plaintiffs allege that through serial collective bargaining agreements (CBAs) with the City, the City contracted to provide lifetime health insurance benefits similar to the plans in place at the time of their retirement. (Am. Compl. 3, ¶¶ 4, 5.) Plaintiffs, all retired police officers, further allege that their health and welfare will be negatively impacted by the alterations to their health insurance benefits. [2]

For many years, the collective bargaining agreement between the City of Woonsocket and its police officers contained generous health insurance benefits. One provision reads:

> **"SECTION IV: BLUE CROSS AND PHYSICIANS' SERVICE**
>
> "4.2 The City **shall pay the entire cost** of Major medical, plus student rider coverage, and $2 Co-Pay Drug Program, for all members of the IBPO Local 404 on active service in City employment and including those members **placed on disability or retirement pension after July 1, 1981.**
>
> * * *
>
> "4.5 **The City shall pay the entire cost, including family coverage**, applicable where an employee has a family within Blue Cross definition, for an employee, covered by this Agreement, **placed on disability or retirement pension list after July 1, 1981** and the semi-private plan of the Rhode Island Hospital Service Corporation (Blue Cross) and also the Rhode Island Medical Society Physicians, Service Plan 100 in accordance with the rules and regulations of such corporation. **The City shall pay the cost of Major Medical for said retirees.** Said coverage may be temporarily suspended by the City in avoidance of dual coverage if equal or greater benefits are provided through any other means to

[2] Not all retired officers are plaintiffs. The retirees are in different financial circumstances. While some are employed at new positions, others are infirm and possibly in residential care. The disparate circumstances, and the failure of all officers to belong to a unified association (such as a labor union), was a major impediment in reaching a settlement accord, though the Court appreciates the efforts of all counsel to attempt to resolve this dispute.

> said retiree." (Pls.' Ex. 10 at 5, ¶ 4.5, Collective Bargaining Agreement between City of Woonsocket and International Brotherhood of Police Officers Local 404, July 1, 2002 through June 30, 2005, emphasis added.)

Similar broad-based health insurance benefits were agreed to by the City of Woonsocket for many years. In the 1996-1999 CBA, health insurance coverage was provided to police retirees. Coverage was continued for retirees in the 1999-2002 CBA, and thereafter as indicated above. The parties could not agree on a contract for the following years. In April 2007, interest arbitrators modified health coverage plans and explicitly noted the increasing costs of health insurance for a one year contract. Pls.' Ex. 11 at 11. In 2007, interest arbitration was necessary to resolve an impasse, but there is no indication that the health insurance benefits for retirees were diminished or even discussed. Interest arbitrations in 2009 required a copayment of health insurance for active employees, presumably not in retired employees' benefits. (Pls.' Ex. 14 at 2; Ex. 15.) For the 2010-2012 CBA, some costs were added for retiree health insurance but only for persons hired after 2010.

In 2010, the Rhode Island General Assembly enacted into law the "Fiscal Stability Act," G.L. 1956 §§ 45-9-1, et seq. (Act). The Act establishes a three-tiered procedure in an effort to prevent municipalities from initiating receivership or bankruptcy proceedings without state intervention, consequently threatening the economic integrity of the state.[3] Pursuant to the

[3] In considering the purpose of the Act, our Supreme Court has stated:

> "As a result of the petition for judicial receivership, the already precarious credit rating of Central Falls was reduced to 'junk-bond' status. Even more ominously, state officials were informed by financial rating agencies that, as a result of Central Falls' receivership, capital markets would view debt financing to Rhode Island cities and towns as extremely risky, and that as a consequence, such financing would become more expensive for Rhode Island municipalities. Faced with that scenario, the General Assembly determined that judicial receiverships, initiated solely at

statutory procedure, if a local government is projecting a deficit or meets other criteria, it may request the appointment of a "fiscal overseer" by the state. Sec. 45-9-3. If the appointed fiscal overseer cannot achieve financial security, he or she may request the appointment of a "budget commission" by the state with even broader powers. Sec. 45-9-5. Finally, if the budget commission "concludes that its powers are insufficient to restore fiscal stability," a "receiver" is appointed. Sec. 45-9-7.[4] In May 2012, the Woonsocket City Council and Mayor requested the appointment of a fiscal overseer who, unable to achieve fiscal stability, requested the appointment of a Budget Commission. (Defs.' Ex. O.)

Pursuant to the Act, the Director of the Rhode Island Department of Revenue appointed the Woonsocket Budget Commission in May of 2012. The Plaintiffs allege that effective July 1, 2013, the Budget Commission unilaterally modified the terms of their retirement benefits. Prior to July 1, 2013, retirees were not required to pay yearly deductibles or substantial copayments for health care (Defs.' Ex. B). The City enacted resolutions effective July 1, 2013 that unilaterally imposed a mandatory coshare payment of approximately $267 per month, and imposed increasing deductibles as a condition of continued health care coverage. (Defs.' Ex. DD.) Copayments for medical services were also imposed. Ms. Booth Gallogly, the Director of the Rhode Island Department of Revenue who appointed and worked with the Budget

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> the discretion of a municipality, were not in the best interest of the citizens of Central Falls or the state, and that municipally initiated judicial receiverships threatened the financial well-being of all the state's cities and towns, and of the state itself. The General Assembly moved with alacrity, revising chapter 9 of title 45 (Budget Commissions) for the purpose of creating a more effective mechanism to identify and respond to dire financial adversity confronting municipalities. On June 11, 2010, a major revision was signed into law." Moreau v. Flanders, 15 A.3d 565, 571 (R.I. 2011).

[4] As the Budget Commission in this action acted on behalf of the City, references to "the City" hereinafter include action by the City and the Budget Commission acting as the city government.

Commission, testified that those changes were implemented for "indefinite" periods of time. No end date was established and the changes remain in effect. (Defs.' Mem. 67). Exhibits YY1 and EEE display the substantial increases in costs of health insurance. While the documents were offered to reflect the savings to the City, they also reflect the significant impact on the retirees.

At the time of the hearing, Woonsocket had been in financial distress for many years. Defendants' Exhibit C demonstrates the scope and extent of the City's financial decline. The City is designated as a distressed community pursuant to § 45-13-12. It has suffered a steady population loss since 2002. Since 2009, its foreclosure rate has been higher than the state's foreclosure rate, and its unemployment rate has exceeded the state's unemployment rate since at least 2000. From 2007 through 2011, the City lost over 13 million dollars in state financial aid, a decline of 22.3%. Each fiscal year, the loss of state aid increased. Moreover, the City's infrastructure is decaying.

Mayor Leo T. Fontaine, who held office from December 2009 through 2013 (after the CBAs were signed and the 2009 arbitrations completed), recognized the obligation of the City to enact a balanced budget. He noted in his testimony on November 21 and 22, 2013 that the City could not knowingly incur a deficit and that its budget must be balanced. Nevertheless, when he took office, he inherited a cumulative deficit of $6.9 million. (Defs.' Ex. K.)

When it downgraded the City of Woonsocket's rating in April of 2010, Moody's Investors Service stated:

> "The downgrade reflects the deterioration of the city's financial position over [the] last several fiscal years resulting in a sizeable accumulated deficit which is expected to increase at the end of fiscal 2010. The rating also factors the city's lack of liquidity and increasing reliance on cash flow borrowing . . . ACCUMULATED DEFICIT CONTINUES TO GROW; SCHOOL DEPARTMENT OVERSPENDING PERSISTS; NEW MANAGEMENT TEAM EXPLORING ISSUANCE OF DEFICIT REDUCTION BONDS.

> Woonsocket's financial position is expected to continue to narrow in fiscal 2010 from an already weak position. Six years of consecutive operating deficits in the General Fund and School Unrestricted Fund have increased the city's accumulated deficit to a negative $6.9 million or – 6.2% of revenues at the end of fiscal 2009." (Defs.' Ex. K.)

The same Moody's report discussed how the City's finances had deteriorated significantly since 2006. Defendants presented extensive testimony and documentary evidence which established the City's worsening financial condition. Exhibit C provides an overview of fiscal issues, though extensive testimony and evidence was also provided.

Although the City of Woonsocket experienced increased financial pressures, through the negotiation and agreement of several subsequent CBAs with the police officers, it made minimal changes to postretirement benefits. The 1996-1999 contract provided generous postretirement benefits to police officers. In the 1999-2002 contract, those benefits remained intact. The same broad benefits for retirees remained substantially unchanged when the contract was again negotiated for 2002-2005 (Pls.' Ex. 10). Ultimately, in September 2010, the City of Woonsocket negotiated and ratified a contract for 2010-2012 which limited retiree health insurance benefits for police officers hired after August 15, 2010.[5] (Pls.' Ex. 12.)

In April of 2012, the Woonsocket Personnel Director sent a memorandum to all city employees and to all retirees who were receiving United Healthcare health insurance coverage. It indicated that all active and retired members under the plan would be "transferred" to Blue Cross/Blue Shield, as the City decided not to contract with United Healthcare for its municipal health benefits. The differences in coverage were striking. The new plan mandated substantial yearly deductibles, copayments for particular services, and new out-of-pocket costs for retirees

[5] This change reflects that the City was aware of the expense of retiree benefits, but agreed to limit the changes to new hires only.

and active members. (Compare Exs. 3 and 4). The City also required that all retirees who were eligible for Medicare must apply for Medicare.

Plaintiff, Glen Hebert, is a retired Woonsocket police officer. He is married, has two children and worked for the Police Department from 1984 through March 2005. He was a union official and at one time assisted in the negotiation of the CBAs, including the provisions regarding active and retiree health care benefits. As stated above, the CBA in effect at the time of Mr. Hebert's retirement stated that the City would "pay the entire cost, including family coverage, applicable where an employee has a family within Blue Cross definition, for an employee, covered by this Agreement, placed on disability or retirement pension list after July 1, 1981 . . . The City shall pay the cost of Major Medical for said retirees." (Pls.' Ex. 10, § 4.5.) Mr. Hebert testified, and the Court finds, that he retired with the understanding that the City would provide his health insurance benefits, without cost, during his lifetime.

Scott Strickland worked as a Woonsocket police officer from December 1998 through January 2010. He left the department on a disability pension at the age of thirty-seven. In December of 2007, he incurred a herniated disc as a result of a fall. He cannot sit or stand for long periods as he is in chronic pain and in need of vertigo medication. He retired with the understanding that he would receive fully paid health insurance benefits for the rest of his life, and the City "would take care of everything" related to the injury.[6] In February of 2014, Mr. Strickland was informed that his health care coverage with the City of Woonsocket had changed.

[6] When Mr. Strickland retired in 2010, two interest arbitration awards (Exs. 14, 15) had recently been ratified which extended all of the language of the 2002-2005 CBA § 4.5, except those regarding coordination of benefits (so coverage could be provided through other insurers or policies). Again, the pertinent CBA language is that the City would "pay the entire cost, including family coverage, applicable where an employee has a family within Blue Cross definition, for an employee, covered by this Agreement, placed on disability or retirement pension list after July 1, 1981 . . . The City shall pay the cost of Major Medical for said retirees." (Pls.' Ex. 10, § 4.5.)

Certain drugs were no longer being provided, and his coverage for one of the prescriptions was denied. Mr. Strickland is now required to pay approximately $140 per month for ongoing prescriptions, $260 for health insurance per month, and $20 to $30 per doctor's visit for copayments. (Pls.' Ex. 5.)

Ronald E. Tetreau worked as a Woonsocket police officer from August of 1991 through January of 2008. He received health care benefits through United Healthcare while working for the Woonsocket Police Department. When he retired, he expected to receive the same coverage for the rest of his life, and the same broad coverage was provided in the governing contract.[7] In July of 2012, his coverage was changed unilaterally by the City of Woonsocket to a Coast-to-Coast plan requiring him to pay copayments. Since his retirement, he has had two military deployments to Iraq and one military deployment to Afghanistan.

Daniel Turgeon worked for the Woonsocket Police Department from November of 1990 to December of 2011. He testified that in November of 2011, he heard rumors concerning Woonsocket's fiscal problems and decided to retire so that he would receive "locked in benefits." It was his understanding, pursuant to the CBA, that once he retired he would receive health care coverage at no cost until age sixty-five for himself and for his children. The CBA language that "The City shall pay the entire cost, including family coverage, applicable where an employee has a family within Blue Cross definition, for an employee, covered by this Agreement, placed on disability or retirement pension list . . ." was still in effect when Mr. Turgeon retired.[8]

[7] See footnote 6 for a reference to the language, the CBA, and the interest arbitration in effect.
[8] This language is from Pls.' Ex. 10, § 4.5. There were five different interest arbitration awards which continued the language of that section (except to provide for coordination of benefits), Exs. 11, 13, 14, 15, 16, but this language stayed in effect.

Steven M. Nowak retired from the Woonsocket Police Department in January of 2011 after 17 ½ years of service and 3 ½ years of military service. He testified that he was not required to retire. He opted to do so because he was concerned about any loss of health care coverage and as he believed his health care coverage would vest and be locked in at the time of his retirement. Therefore, he opted to retire before he was required to do so. The language for extensive health insurance for retirees was in effect when Mr. Nowak retired. (Pls.' Ex. 10, § 4.5.)

Earl P. Ledoux retired on January 5, 2009 as a Woonsocket police officer. During his retirement and until the City enacted the challenged modification, he received Blue Cross/Blue Shield coverage, Coast-to-Coast, with small copayments only for doctor visits and prescriptions. It was his understanding, at the time of retirement, he would receive the extensive health care benefits contained in the CBA at the time of his retirement and that such benefits would continue for the duration of his retirement. The language for extensive health insurance for retirees was in effect when Mr. Ledoux retired (Pls.' Ex. 10, § 4.5). He had four children on his plan, so it was important to him and his family to maintain his health insurance coverage and hence he retired. At the time of his retirement, he was not aware of the problems concerning the solvency of the state pension system, which later resulted in a decrease of his pension benefits.

III

Analysis – Legal Standard

In determining whether to grant injunctive relief, this Court must consider:

> "(1) whether the moving party established a reasonable likelihood of success on the merits; (2) whether the moving party will suffer irreparable harm without the requested injunctive relief; (3) whether the balance of the equities, including the public interest, weighed in favor of the moving party; and (4) whether the issuance

of a preliminary injunction served to preserve the status quo ante." Allaire v. Fease, 824 A.2d 454, 457 (R.I. 2003).

Likelihood of Success on the Merits

In demonstrating the likelihood of success on the merits, a party "is not required to prove his case in full at a preliminary-injunction hearing." Univ. of Texas v. Camenisch, 451 U.S. 390, 395 (1981). The Plaintiff-retirees assert they have demonstrated a likelihood of success on the merits as the Woonsocket Budget Commission may not unilaterally alter their vested rights to health care during retirement.

Although broad powers are given to Budget Commissions under the Act, §§ 45-9-1, et seq., those rights are not limitless. The Budget Commission is specifically granted the power to approve any new CBA, but the Act specifies, "[t]his section shall not be construed to authorize a . . . budget commission . . . to reject or alter any existing collective bargaining agreement, unless by agreement, during the term of such collective bargaining agreement." Sec. 45-9-9. There was no specific power given in the broadly worded § 45-9-9 or § 45-9-6 to unilaterally alter existing contracts or to alter contract rights given to retired employees.[9]

"Purely contractual pension rights, such as employee contributions, vest immediately once the employment contract is signed and employment begins." Arena v. City of Providence, 919 A.2d 379, 392 (R.I. 2007); In re Almeida, 611 A.2d 1375, 1385 (R.I. 1992). As "pension benefits vest once an employee honorably and faithfully meets the applicable pension statute's requirements," it is logical to include that the vesting of other lifetime contract rights, such as extended health insurance coverage, vests when an employee has concluded honorable and faithful service (if not before) and relies upon the continued lifetime rights in continuing to be

[9] Section 45-9-9 presumes that collective bargaining agreements will continue to be negotiated as the commission or the receiver must participate in the negotiation.

employed or retiring. Arena, 919 A.2d at 393; Botelho v. Pawtucket School Department, P.C. No. 08-7136 (R.I. Super. Ct. Apr. 12, 2010). As described, several Plaintiffs testified that they retired in reliance upon terms negotiated and agreed to by the parties and in effect at the time of their retirements.

The Plaintiffs contend that the Budget Commission's resolutions impermissibly violate the Contract Clause of the Rhode Island Constitution. 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." This prohibition is similar to that found in Article I, Section 10 of the United States Constitution,[10] and should be read in concert with the first sentence of article I, section 16 of the Rhode Island Constitution: "Private property shall not be taken for public uses, without just compensation. . . ." The United States Supreme Court recognized the "high value" the Framers placed "on the protection of private contracts." Allied Structural Steel Co. v. Spannaus, 438 U.S. 234, 245 (1978).[11] Accordingly, "private contracts are not subject to unlimited modification under the police power." Id. at 244 n.15. Not all modifications are contrary to the Constitution, so it is incumbent upon a court of law to analyze whether a particular law '"operated as a

[10] Plaintiffs originally claimed that this was a violation of the United States Constitution as well. The case was then removed from the United States District Court and remanded after the Plaintiffs dismissed their federal constitutional claim. Nevertheless, this Court considers case precedents for federal constitutional law issues in weighing the application of similar state constitutional rights. "[T]his Court applies the traditional rule of construction that when words in the constitution are unambiguous, they must be given their plain, ordinary and generally accepted meaning. Every clause of the constitution must be given its due force, meaning, and effect, and no word or section can be assumed to have been unnecessarily used or needlessly added. This [C]ourt presumes that the language in a clause was carefully weighed and that the terms imply a definite meaning." Mosby v. Devine, 851 A.2d 1031, 1038 (R.I. 2004), citations deleted. Of course, this Court will not simply ignore federal constitutional infirmities.

[11] In In re Advisory Opinion to the Governor (DEPCO), 593 A.2d 943, 948 (R.I. 1991), our Supreme Court applied federal precedent for the federal Contract Clause to interpret Rhode Island's Contract Clause.

substantial impairment of a contractual relationship."' Energy Reserves Group v. Kansas Power & Light Co., 459 U.S. 400, 411 (1983) (quoting Spannaus, 438 U.S. at 244).

In the Spannaus case, the high court specifically held:

> "the first inquiry must be whether the state law has, in fact, operated as a substantial impairment of a contractual relationship. The severity of the impairment measures the height of the hurdle the state legislation must clear. Minimal alteration of contractual obligations may end the inquiry at its first stage. Severe impairment, on the other hand, will push the inquiry to a careful examination of the nature and purpose of the state legislation.
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> "The severity of an impairment of contractual obligations can be measured by the factors that reflect the high value the Framers placed on the protection of private contracts. Contracts enable individuals to order their personal and business affairs according to their particular needs and interests. Once arranged, those rights and obligations are binding under the law, and the parties are entitled to rely on them. 438 U.S. at 244-45 (footnotes omitted).

The analysis proceeds in two steps. The Court first determines "whether a change in state law has resulted in the substantial impairment of a contractual relationship." Parker v. Wakelin, 123 F.3d 1, 4-5 (1st Cir. 1997). If so, the Court next inquires whether the impairment nevertheless "is reasonable and necessary to serve an important public purpose." U.S. Trust Co. of New York v. New Jersey, 431 U.S. 1, 25 (1977).

The first inquiry itself "has three components: whether there is a contractual relationship, whether a change in law impairs that contractual relationship, and whether the impairment is substantial." General Motors Corp. v. Romein, 503 U.S. 181, 186 (1992).

A Contractual Relationship

There is no question that a series of binding, express contracts existed between the police officers and the City of Woonsocket. While the City claims that no CBA was in effect when the 2013 resolutions were enacted, that is not completely true. A written contract had not been

recently executed, but the parties had numerous CBAs over the years (see Ex. 10). Per the interest arbitration awards (Exs. 13, 14), the unamended language of the 2002-2005 CBA was extended into later awards and contracts. Interest arbitration awards were issued in April 2007 (Ex. 11), September 2008 (Ex. 16), April 2009 (Exs. 14, 15) and January 2013 (Ex. 17). Some of these were ratified by the City (see Ex. 12) while others were determined by arbitration (Ex. 11 at 1 references the statutory interest process set forth in G.L. 1956 § 28-9.2-7). The preexisting CBAs continued their standard, unamended language continuing all terms until a new agreement was reached. (See Ex. 26 at 36, ¶ XIII).

Further, during the 2009 arbitration, the City understood its fiscal problems but only focused on reducing staffing ("manning") to reduce expenses. Through all of the bargained agreements, the City covenanted that specified health insurance benefits would be provided. The benefits inured not only to the enlisted officers, but to each of the retired officers who stayed on with the City and eventually retired under the terms of the contracts. The City gained the benefit of retaining experienced officers, while the employees continued their employment and expected future remuneration in retirement. Many, particularly the named plaintiffs who testified at trial, retired based on the contracts' assurances of continued coverage. [12]

While it is difficult to surmise what occurred in closed bargaining sessions, those sessions were at arms-length and in good faith. It is likely that proposals were exchanged and considered

[12] Case precedents note that a party alleging that contractual rights arose from a statutory enactment faces a heavy burden: "absent some clear indication that the legislature intends to bind itself contractually, the presumption is that a 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." Maine Ass'n of Retirees v. Bd. of Trustees of Maine Public Emps. Ret. Sys., 758 F.3d 23, 29 (1st Cir. 2014); Nat'l R.R. Passenger Corp. v. Atchison, Topeka & Santa Fe Ry. Co., 470 U.S. 451, 465-66 (1985). In the case at bar, the contractual rights arose from numerous negotiated, voluntary accords, not a statutory enactment, though most of these contracts were confirmed by the Woonsocket City Council.

and in the end, the retiree health coverage contained in the CBA was agreed upon.[13] Perhaps the promise of future health coverage was offered in the place of pay raises, or another valuable request by the union. It is simply unfair that a bargained for contract is undone by the government (who here was a party to the very contract), in a piecemeal fashion, without any compensation to the employee, because compliance became difficult in light of the City's known and worsening financial condition. Exhibits 14 through 17 demonstrate that wages and health care benefits for active officers were subjects of arbitrations, but it does not appear that the City ever complained of (or sought to arbitrate) the significant health insurance benefits and other benefits provided for retirees.

Changes in the Law Provided the Basis for Impairing the Contractual Relationship

Having determined that contractual relationships clearly existed, the Court turns to whether a change in the law impaired the contractual relationship. The changes to the contracts came after some employees had already retired, and while the language of the CBA was still binding upon the parties. The amendments were not bargained, negotiated, or agreed upon. While the parties question whether the Plaintiffs were ever asked for input, there is no dispute that the Plaintiffs never consented to any modifications—the changes were made by the City alone, unilaterally.[14]

[13] Exhibits 11, 13, 14, 15, 16 and 17 are arbitrators' decisions from 2009 through 2012. While the increasing costs of health insurance is mentioned, the only proposal to curb the benefit for retirees is in coordinating coverage for those who have multiple policies and eliminating the coverage for those who start employment after August 15, 2010 (Ex. 12 at 2), which would not include these Plaintiffs. The City's proposals are often mentioned in these decisions but no proposal by the city to eliminate, reduce or modify the health coverage for retirees is mentioned.

[14] While the City offered to negotiate the changes, it was anxious to place all employees into similar benefit plans, even though benefits were varied from the outset. For the retired police officers substantial health benefits was one of their highest priorities. These polarized positions, the lack of an organized bargaining unit for the retirees, and the disparate needs and locations of

There are very few ways to legally avoid a legal debt or obligation. One way is to negotiate with the creditor to modify the obligation or its payment. The only other way is to become "judgment proof" so to speak. Here, the City is not going out of business or ceasing to exist, so the only other options are a federal bankruptcy, or perhaps a receivership. It claims that there is a power in recent state law to allow the budget commission to modify a contract on its own. While this Court finds that there is no such power in the Act, the City references the Act as the law which provides the basis for the City to unilaterally modify the postretirement benefits.

The City contends that modifications in the Act provide the City with another option of modifying its contract. If the Act provided such a power, then the Court must find that the purported modifications occurred because of a change in the law. While the City grounds its need to enact the changes on Woonsocket's financial downturn, it bases its authority to do so on the Act. The City (including all Defendants) contends that the changes in the statute granted broad powers to the commission. Defendants stake their claim clearly but broadly:

> "The WBC [Woonsocket Budget Commission] holds all the powers of the City's municipal government and the additional powers delegated to it by the Rhode Island General Assembly. Not only does it possess the authority to modify the health care benefits, but it is obligated to do so if that is reasonable and necessary to meet the WBC's statutory obligations to right the City's fiscal ship. Under R. I. Gen. Laws § 45-9-6(d), the WBC is tasked with exercising all powers available to municipalities during fiscal crises." Defs.' Mem. 50-51, May 30, 2014.

The City claims its powers emanate from the recently enacted Fiscal Security Act as ". . . R.I. Gen. Laws §§ 44-9-6(d) and 45-9-9 permit the Budget Commission to reject or alter the terms and conditions of employment of employees of the City of Woonsocket after the expiration of a collective bargaining agreement, without agreement by the union." Defs.' Mem. 51, May

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the retirees (some were already in skilled care facilities) diminished any hopes for a negotiated accord.

30, 2014. While the City claims that the CBAs had expired, the union continued as the exclusive bargaining agent, and the prior language of the CBAs had been extended via several ongoing arbitration agreements (Exs. 14, 15 and 17). The Budget Commission unilaterally revised the contracts. The City claims the Act is the change in the law which empowered the City to nullify the express terms of the City's contractual obligations.

There is no such authority (to unilaterally void parts of a contract) in the Act, express or implied. Instead, it is the passage of the resolution, by the Budget Commission (Exs. XX, et seq.), and any Ordinance by the City Council ratifying the resolutions) which constitute the change in the law which impaired the contractual relationship. The City, through the Budget Commission, modified the benefits to both active and retired police officers by enactment of the Resolution to Reform Pension and Post-Retirement Benefits on March 19, 2013. (Ex. WW.) The City asserts that this resolution effectively suspends the cost of living adjustments, requires those eligible to enroll in Medicare, establishes a uniform health insurance plan, and requires a 20% copayment for annual cost of health insurance.

Again, this Court does not find that the Act grants such a power to the City. If it does, however, these changes in the laws provided the basis for impairing the contractual relationship.

The Modifications to the Contract are Substantial

Finally, the Court considers whether the modifications imposed are substantial. The United States Supreme Court has held that "[i]f the state regulation constitutes a substantial impairment, the State, in justification, must have a significant and legitimate public purpose behind the regulation . . . [t]he requirement of a legitimate public purpose guarantees that the State is exercising its police power, rather than providing a benefit to special interests." Energy Reserves Group, 459 U.S. at 411-12.

This Court finds that the modification imposed by the Defendant Woonsocket Budget Commission constitutes "substantial impairment" to the existing contracts and vested rights of those retirees who were provided long-term health insurance benefits through the CBAs.[15] These were negotiated contract rights for health benefits. The retirees relied on the benefits to their detriment. While the Defendants argue that the changes may be temporary, testimony establishes that the changes are for an indefinite period and hence have remained in effect for over two years with no identified end date. The Court finds that the imposition of a substantial, mandatory deductible coupled with a monthly coshare contribution of over $250 per month, per retiree, constitutes severe and significant impairments to the contractual retiree health insurance benefits negotiated and executed by the parties. The testimony of Director Gallogly establishes that the duration of these changes is indefinite. These were not temporary changes which will revert in a specified time or when the City reaches a certain financial situation. They have remained in effect for over two years and no end date was proffered or identified.

This Court finds that the modification imposed by the City and the Woonsocket Budget Commission constituted a "substantial impairment" to the existing contracts and vested rights negotiated and executed by the parties.

A Significant and Legitimate Public Purpose

Having determined that the impairment is substantial, the Court must next consider whether or not the State has provided a "significant and legitimate public purpose" for its unilateral modification to or abrogation of the contract (Energy Resesrves Group, 459 U.S. at 412) and, if so, the Court must determine whether "[the adjustment of] the rights and

[15] Perhaps to leave no issue undisputed, the City claims through its brief that the unilateral deprivation of health care benefits did not substantially impair the contract. (See, i.e., Defs.' Mem. 77, Sec. IV(B)(2)(iii.)

responsibilities of contracting parties [were based] upon reasonable conditions and [is] of a character appropriate to the public purpose justifying [the legislation's] adoption." Spannaus, 438 U.S. at 245.

However, the high court also noted that

> "complete deference to a legislative assessment of reasonableness and necessity is not appropriate because the State's self-interest is at stake. A governmental entity can always find a use for extra money, especially when taxes do not have to be raised. If a State could reduce its financial obligations whenever it wanted to spend the money for what it regarded as an important public purpose, the Contract Clause would provide no protection at all." U.S. Trust Co. of New York, 431 U.S. at 26.

Accordingly, the impairment of a contract is not "necessary" if "a less drastic modification would have permitted" the contract to remain in place. Id. at 29-30.

> "[A] State is not completely free to consider impairing the obligations of its own contracts on a par with other policy alternatives. Similarly, a State is not free to impose a drastic impairment when an evident and more moderate course would serve its purposes equally well." Id. at 30-31.

Finally, "a State cannot refuse to meet its legitimate financial obligations simply because it would prefer to spend the money to promote the public good rather than the private welfare of its creditors." Id. at 29.

The City demonstrated that it was in a precarious financial condition at the time the Budget Commission modified the contract provisions—but the situation was not necessarily dire. The City could not demonstrate that it was on the verge of bankruptcy. A receiver had not been appointed. Rather, remedial efforts had already been enacted by the Budget Commission, the Mayor and the City Council, with ongoing assistance from the state Director of Revenue, which displayed great progress in resolving the City's fiscal issues. The City asserts that avoiding bankruptcy, limiting ongoing expenses, and decreasing liabilities are legitimate public purposes

which justify the contract modifications. Of course, such goals are important in any enterprise— public or private— but they do not always justify reneging on a contract.

Here, the ongoing and future costs of retiree health care were contained in the negotiated CBAs of 1996, 1999 and 2002 (Exs. 8, 9 and 10). There is no evidence that the City expressed any concern about the future costs during these years. Multiple arbitrations occurred between 2005 and 2012 (Exs. 11 through 17). While the benefit was removed for new hires, there is no evidence that the City expressed any concern to arbitrators about the expenses for Plaintiffs. Clearly, the City has failed to demonstrate that the contractual rights of the Plaintiffs make the difference between bankruptcy and survival, were unanticipated, or will cause a loss which cannot be covered elsewhere. The Court declines to find that the unilateral adjustments of the rights and responsibilities of the contracting parties are of a character appropriate to the public purpose proffered by the City. The deprivations to the retirees were too broad and too deep to render them of a character appropriate to the public purpose.[16]

For the reasons stated, this Court finds that the Plaintiffs have demonstrated a likelihood of success on the merits as to their Contract Clause claim in regard to those Plaintiffs whose rights have vested and who derive health care benefits from the collective bargaining agreements negotiated and executed by the parties. [17]

[16] As the retirees were not independently unionized (Defs.' Mem. 33) in various financial circumstances and unable to negotiate (as described in Footnote 1) the tone of the City's brief connotes a grudge against them, ignoring the plain language of the contracts. Perhaps it is because some of the retirees are financially stable, perhaps because they had negotiated such significant postretirement benefits at the bargaining table, or perhaps because the Plaintiffs flatly refused to bargain away their vested benefits without any compensation in return. While the changes to the police retirees may "pale by comparison" (Defs.' Mem. 84) to changes that other employees agreed to, that does not justify a unilateral change without anything in return.

[17] James Madison's analysis of the purpose of the Contract Clause in the Federal Papers is particularly striking, given the present controversy ". . . laws impairing the obligation of contracts, are contrary to the first principles of the social compact, and to every principle of

Irreparable Harm

The Plaintiffs claim that they will suffer irreparable harm because of the deprivation of their constitutional rights and because of their potential loss of access to health insurance benefits and the quality of health treatment. While Plaintiffs do not allege complete loss of all medical treatment, they specifically claim that health insurance costs require them to choose between the cost of health care, the cost of basic living necessities, and the payment of their mortgages. Mr. Strickland established an inability to pay for some of the medical prescriptions for his permanent disability. Mr. Ledoux noted that his benefits were decreasing at the same time that his State pension benefits were being modified unilaterally by the State. He recounts medical emergencies that he had with his children over the summer which required him to pay increased costs for medical treatment. Mr. Ledoux, who retired in 2009 and has since been laid off from another job, will see his health care expenses increase by $500 per month. These expenses were unanticipated. The Plaintiffs testified repeatedly that they relied on the express language of the

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sound legislation . . . Our own experience has taught us, nevertheless, that additional fences against these dangers ought not to be omitted. Very properly, therefore, have the convention added this constitutional bulwark in favor of personal security and private rights; and I am much deceived if they have not, in so doing, as faithfully consulted the genuine sentiments as the undoubted interests of their constituents. The sober people of America are weary of the fluctuating policy which has directed the public councils. They have seen with regret and indignation that sudden changes and legislative interferences, in cases affecting personal rights, become jobs in the hands of enterprising and influential speculators, and snares to the more-industrious and less-informed part of the community. They have seen, too, that one legislative interference is but the first link of a long chain of repetitions, every subsequent interference being naturally produced by the effects of the preceding. They very rightly infer, therefore, that some thorough reform is wanting, which will banish speculations on public measures, inspire a general prudence and industry, and give a regular course to the business of society. The Federalist Papers, No. 44.

contracts, conveying clear continued health care benefits, in deciding to seek employment with the City and in deciding when to retire.[18]

Plaintiffs are correct that, under certain circumstances, the loss or impairment of health insurance is sufficient to find irreparable harm. As Justice Breyer once reasoned when he authored an opinion on the First Circuit Court of Appeals:

> "[Neither employer] has paid medical insurance premiums for approximately 200 retired Waterbury Division workers. Suppose we take this specific, undisputed, fact and add general facts that either are commonly believed or which courts have specifically held sufficient to show irreparable harm; such general facts as (1) most retired union members are not rich, (2) most live on fixed incomes, (3) many will get sick and need medical care, (4) medical care is expensive, (5) medical insurance is, therefore, a necessity, and (6) some retired workers may find it difficult to obtain medical insurance on their own while others can pay for it only out of money that they need for other necessities of life . . . We should then conclude that retired workers would likely suffer emotional distress, concerns about potential financial disaster, and possibly deprivation of life's necessities (in order to keep up in insurance payments). In short, taken together, these facts would show harm that, in this sort of case, is irreparable." United Steelworkers of America, AFL-CIO v. Textron, Inc., 836 F.2d 6, 8 (1st Cir. 1987).

Here, the retirees testified that they may have to forego medically necessary treatment or basic necessities as a result of the Defendants' actions. As Plaintiffs have demonstrated that their access to necessary health care is threatened by Defendants' modification of their health care benefits, then the Plaintiffs have established that they will suffer irreparable harm absent the grant of a preliminary injunction.

[18] While the witnesses who appeared are not necessarily on the verge of poverty, several testified that they retired early in reliance upon the lifetime retirement benefits. Some household incomes declined as retirees elected to be assured of ongoing health protection and some continued benefits for their children. While some of the younger retirees have taken new employment and are healthy, they have not yet come to rely on the full measure of their contractual benefits, which are more probable to be a benefit to them as they become older.

Balancing of the Equities

The Court next considers whether the balancing of the equities, accounting for the public interest, favors the granting of injunctive relief. This Court should always be guarded when exercising its equitable powers, particularly when one party is attempting to use the coercive power of the Court to compel its adversary to act or refrain from acting, or where monetary damages would suffice. Here, the City of Woonsocket experienced a long and substantial financial decline. While the City had a legitimate public purpose in balancing its budget, a number of overriding factors discourage the Court from determining that financial need alone is a sufficient basis for denying injunctive relief.

Complete deference to the City's assessment of reasonableness and necessity is not appropriate as the City has self-interest. As in the high Court's reasoning in U.S. Trust Co. of New York, 431 U.S. at 29, if the city could reduce its financial obligation whenever it wanted to spend the money for what it deems an important public purpose, the Contract Clause would provide no protection whatsoever. ("Thus a State cannot refuse to meet its legitimate financial obligations simply because it would prefer to spend the money to promote the public good rather than pay the private welfare of its creditors."). Id. [19]

Many of the financial woes of the City of Woonsocket were self-created. Prior to 2002,[20] the City financed its pension on a "pay go" basis. In 2002, a bond was approved to finance $90 million in pension obligations, after special concessions with the General Assembly. If the assets of the pension fund declined, the money would need to be paid in five years. In 2008, the funded

[19] The same case also notes that a State's impairment of its own contracts should be particularly scrutinized. Unless the state's police powers are involved, "the Court has regularly held that the States are bound by their debt contracts." U.S. Trust, 431 U.S. at 24, footnotes deleted.

[20] According to the City, when the 2002-2005 CBA took effect, pension plans were fully funded (Ex. EEE at 11, 15) and continued to be significantly funded through 2007.

ratio of the plan declined and the City failed to make a $2.4 million payment. Exs. C, D. Of course, the bond rating fell thereafter. State aid also declined, beginning in 2007. As the Moody's Investors Service indicated in their report, the financial conditions have been poor since at least 2005. (Exs. UU, III and JJJ.) Moody's describes Woonsocket as having "a history of structural imbalance." (Ex. JJJ at 4.)

The City of Woonsocket continued to see its tax rate increasing, its state aid decreasing and its unemployment increasing, without making appropriate modifications to its finances. Each year, the City of Woonsocket stood by while its accumulated deficit continued to grow. In 2002, the state made major concessions to the City by allowing the pension obligations to be financed by a state pension obligation bond, but as soon as 2008, the City failed to make sufficient benefits as agreed. (Ex. C at 22, 23). There is no evidence that it sought to negotiate the postretirement benefits with the police or any union prior to 2010. While the City stood by, more and more employees retired in reliance that they would be provided with the negotiated and agreed retiree health benefits. Others continued to work in reasonable reliance that the benefits detailed in their CBA would be provided.

During this downward financial spiral, the City of Woonsocket continued to negotiate and consent to CBAs with its police officers which bound the City to significant future liabilities. As the testimony of Mr. Hebert and Mr. Ryan established at hearing, the generous retiree health benefits were agreed to at the negotiating table: Police officers and the City of Woonsocket agreed to moderate salary increases in return for the promise of future health care benefits. By consenting to these CBAs again and again,[21] the City knowingly increased its future liabilities to

[21] As indicated previously in this Decision, such postretirement benefits appeared in the police officers CBAs since 1996, if not before. During the 2009 arbitration, the City must have understood its financial predicament but focused on reducing staffing ("manning") to reduce

more and more employees and their families with knowledge that its financial condition was in peril.

The City now asks this Court for relief—not to approve a negotiated modification, but claiming it may reduce vested employee benefits, in derogation of the contract, unilaterally under state law because of a financial crisis. The City does not request an amendment to a contract, or a temporary cessation of some benefits[22] in an ongoing contract, but a deprivation of significant, valuable rights while ignoring the written, negotiated, and signed agreement. There was no compensation in exchange for this deprivation.

These unilateral modifications were accomplished by the Budget Commission. Through this method, the State avoided having the City of Woonsocket go into a state receivership. There is no showing on the record that the City of Woonsocket ever considered the option of a federal bankruptcy or receivership to empower the City to renegotiate its contracts. Instead, the Budget Commission operated as if it was the City of Woonsocket and decided which of its own bills and obligations to pay and which to ignore.

Defendants' primary argument is that they had no choice but to reduce retiree benefits or declare bankruptcy.[23] However, the record does not establish that bankruptcy was imminent, that

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expenses (Ex. 15 at 5). Health insurance costs were discussed, but only for active employees, and to coordinate benefits and limit the health benefits for employees who retired after July 2009. (Ex. 15 at 11).

[22] There was never any showing that this modification would be temporary or that the modification was done with consent. There was some discussion that the benefit could be restored at some point, but as this is a lifetime benefit, the Defendants seemed extremely concerned about their ongoing liability.

[23] While this may be the primary legal argument, the Defendants' argument also makes clear that they believe the retirees simply receive too much. The City emphasizes with particularity all raises the active police officers received from 1999 through 2013. The City (Defs.' Mem. 18, 81) publicly references the Plaintiffs' personal incomes (and family incomes) and suggests that because Plaintiffs are not below the federal poverty level, they have not demonstrated irreparable harm. (Defs.' Mem. 82). It is easy to make such a subjective claim over a decade after the

it was seriously discussed, or that the City actually contemplated the ramifications of a bankruptcy filing. According to § 45-9-7, only a receiver, not a budget commission, may file a petition in bankruptcy. The Budget Commission never concluded that "its powers were insufficient to restore fiscal stability" as required by § 45-9-7(a), so a receiver was not and could not be appointed.

While the Budget Commission could not petition for bankruptcy (and apparently never passed on the option) its statutory powers are numerous, broad and explicit. It could adopt a local budget, suspend rules, levy and assess taxes, hire and fire, eliminate the compensation of elected officials, and much more. Sec. 45-9-6. The Budget Commission may "Review and approve or disapprove all proposed contracts . . ." (§ 45-7-6 (d)(6)), but there is no authority empowering it to amend an existing contract unilaterally—nor can it terminate vested rights. This Court shall not infer such a broad authority in the carefully crafted and explicitly enumerated powers.

The Budget Commission's plan to resolve the financial problems was a multi-faceted attack of reducing fixed expenditures, paying off bonded indebtedness, and limiting employee compensation. The City asserted that the failure to reign in police retirees to comparable benefits was critical in bringing the other unions into negotiated resolutions. While the City showed significant long-term liability for police retiree benefits, it failed to demonstrate that other alternatives were reasonably considered—such as some protected health benefits in deference to those who had bargained for them.

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bargains were struck, and without knowing what else was negotiated at the bargaining table. Doing so with unorganized retirees, some of who are infirm and all of who are vested, is overly harsh. As a general matter, the wages of the Woonsocket police officers were recognized to be below those existing in similar comparables. See Ex. 11 at 5-6.

Section 45-9-9 expressly prohibits budget commissions from altering existing contracts or negating vested rights, even though they are provided with other broad powers.

Accordingly, this Court finds that a balancing of the equities, including the public interest, weighs in favor of granting a preliminary injunction to protect the Plaintiffs.

Whether the Issuance of a Preliminary Injunction Protects the Status Quo

Under valid CBAs, negotiated and entered into by the parties, retired police officers of the City were afforded health benefits, without cost, during their lifetime. The retirees reasonably relied upon these contractual benefits when they retired and planned their lives. They did so prior to this suit, before and after the Budget Commission for the City of Woonsocket threatened to reduce those benefits. The status quo ante would be a continuation of those health care and retirement benefits pursuant to the contract language. The granting of a preliminary injunction would preserve the status quo ante.[24]

IV

Conclusion

The Court recognizes that pensions and other long-term benefits to public employees are the subject of considerable scrutiny. They are often expensive and no longer common in the private sector. While cases of abuse seem to abound, there are other instances which are less evident: A public safety officer accepts a position in a poorer community with a high crime rate, a skilled craftsperson agrees to work for a government at a set compensation foregoing the lucrative compensation which such skill would warrant in the private sector, an educator teaches a classroom of earnest students at a reduced pay in a challenged environment. If those local

[24] Defendants' claim the issuance of an injunction would "disrupt irrevocably the implementation of health care changes." They argue that the changed benefits should be considered the norm. In considering the status quo, the Court considers the status prior to the changes first made by the defendant. (Defs.' Mem. 2, 49.)

governments knowingly promise postretirement benefits in return, shouldn't they be held to their word?

Many years and several administrations ago, the City agreed to compensate these police officers with the promise of health benefits after they retired. The retired police officers in this matter entered into an employment relationship partially based upon the promises the City made for retiree health benefits. These employees honorably performed their employment obligations before retiring. The City suggests that it should be excused from performing its part of the contract, and it should be allowed to amend it without the consent of the other party. While it may be understandable, at this juncture, for policymakers to question whether a prior negotiated benefit was reasonable at the time, or more than deserved, that is not the Court's role here. The function of the Court is to ensure that any contract modifications were legally appropriate. Where the modification was done by the unilateral dictate of the government, the changes must pass Constitutional muster. Here, the Act does not provide the authority for the Budget Commission or the City of Woonsocket to avoid these binding contractual obligations.

For the reasons stated herein, the Court grants Plaintiffs' request for a preliminary injunction. An injunction shall issue enjoining the City from modifying or cancelling the retiree health care benefits of the Plaintiffs. Specifically, the modifications to the Plaintiffs' health benefits by the Woonsocket Budget Commission and imposed after the date of Plaintiffs' retirements are not enforceable. To preserve the status quo ante, the postretirement health care benefits enumerated in the 2002-2005 Collective Bargaining Agreement are reinstated forthwith, except as may have been modified by the arbitration awards issued on or before June 30, 2012.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	Glen Hebert, et al. v. The City of Woonsocket, et al. v. Michael L.A. Houle, et al.
CASE NO:	PC 2013-3287
COURT:	Providence County Superior Court
DATE DECISION FILED:	February 4, 2016
JUSTICE/MAGISTRATE:	Lanphear, J.

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