

STATE OF RHODE ISLAND

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: January 10, 2022)

RHODE ISLAND TROOPERS :
ASSOCIATION and RHODE ISLAND :
TROOPERS ASSOCIATION, ex rel. ERIK :
JENSEN, KEVIN M. GRACE and :
KRISTOPHER LAGOR :

Plaintiffs, :

v. :

C.A. No. PC-2014-4432

STATE OF RHODE ISLAND; EMPLOYEES' :
RETIREMENT SYSTEM OF THE STATE :
OF RHODE ISLAND; DANIEL J. MCKEE, in :
his official capacity as Governor and Chief :
Executive Officer of the State of Rhode Island; :
SETH MAGAZINER, in his official capacity as :
General Treasurer of the State of Rhode Island; :
JAMES E. THORSEN, in his official capacity as :
Director of the Department of Administration of :
the State of Rhode Island; and JOHN DOE, in :
his capacity as Trustee of the Trust referred to :
in R.I.G.L. § 42-28-22.1(b), :

Defendants. :

DECISION

MATOS, J. Before this Court are Defendants, State of Rhode Island and Employees' Retirement System of the State of Rhode Island's, motions to dismiss Plaintiffs' Amended Complaint. Jurisdiction is pursuant to G.L. 1956 chapter 30 of title 9, the Uniform Declaratory Judgments Act, at law under G.L. 1956 § 8-2-14, as the amount in controversy exceeds \$10,000, and equitable jurisdiction under § 8-2-13 and Rule 65 of the Superior Court Rules of Civil Procedure.

I

Facts and Travel

The Rhode Island State Police members (RISP) receive benefits provided by the State Police Retirement Program (SPRP). Am. Compl. ¶ 28. The mandatory contributions made by both the State Troopers (Troopers) and the State of Rhode Island (State) are maintained in a Trust for the sole benefit of the SPRP. *Id.* ¶ 29. The Troopers also receive separate benefits from the Employees' Retirement System of the State of Rhode Island (ERSRI), which is a governmental entity responsible for administering certain retirement benefits for state employees. *Id.* ¶¶ 10, 29. The SPRP has been amended since its enactment in 1937 to include retirement benefits such as the ability to receive a base salary upon retirement after twenty years of service and the ability to receive a percentage of the "whole salary," which includes holiday pay, clothing allowances, etc. *Id.* ¶¶ 35-41.

The Rhode Island Troopers Association (RITA)¹, the successor to Lodge 25, is the sole and exclusive bargaining agent for full-time sworn members of the RISP below the rank of lieutenant. *Id.* ¶¶ 42, 43. RITA collectively bargains with the State regarding the Troopers' salaries and conditions of employment and has secured enhancements to retirement benefits afforded by the SPRP for its members. *Id.* ¶¶ 45, 46, 47. From 2011 to 2020, the State and RITA entered a total of four successive Collective Bargaining Agreements (CBA). *Id.* ¶¶ 48-49. Each CBA contains a provision that states each member shall be entitled to the benefits as provided in the statutory language of the SPRP in G.L. 1956 § 42-28-22. *Id.*

¹ The RI Troopers Association is referred to as the Rhode Island State Troopers Association in the Amended Complaint. A Stipulated Consent Order was entered on November 9, 2021, which among other changes, including updating the identity of the named state officers and troopers, also corrected the name of the Troopers Association to Rhode Island Troopers Association. That correction is reflected herein.

The Rhode Island Retirement Security Act (RIRSA) was enacted in 2011. *Id.* ¶¶ 53, 54, 56. The enactment of RIRSA reduced the value of retirement benefits earned and achievable by the Troopers. *Id.* ¶ 55. The Plaintiffs’ Amended Complaint alleges that RIRSA enlarged the period of service required to retire and reduced the percentage of earnings that Troopers are allowed to receive upon retirement. *Id.* ¶¶ 58-62. RIRSA also changed the calculation of retirement benefits from “whole salary” to “average compensation.” *Id.* ¶¶ 63-65. Further, RIRSA affected the formula for the inclusion of overtime hours into the calculation of retirement benefits and the cost-of-living adjustment provisions. *Id.* ¶¶ 66, 70. RIRSA also changed the amount of mandatory contribution to the SPRP and reduced the pension benefits to RISP members and their families. *Id.* ¶¶ 75, 76.² RIRSA was again amended in 2015, which made further changes to the SPRP. *Id.* ¶ 79.

On September 8, 2014, RITA filed a Complaint on behalf of its members (Plaintiffs). An Amended Complaint followed which alleges various counts premised on breach of implied and express contract theories, as well as upon equitable relief theories. At its core, the Amended Complaint alleges that, prior to the enactment of RIRSA, the trust fund was well funded and the enactment of RIRSA and its Amendments lacked a legitimate purpose and constituted a breach of the Troopers’ expectations upon employment. *Id.* ¶¶ 82, 85. Furthermore, the Amended Complaint provides examples of individual troopers who have been affected by RIRSA. *Id.* ¶¶ 93, 95. Defendants, the State and ERSRI, filed separate motions to dismiss all counts, arguing that Plaintiffs lack standing to bring the action and have failed to state claims upon each and all of their theories of relief. The Plaintiffs object to Defendants’ motions to dismiss.

² Paragraph 78 of the Amended Complaint provides a summary of the amendments to the SPRP enacted by RIRSA.

II

Standard of Review

“‘The sole function of a motion to dismiss is to test the sufficiency of the complaint[.]’” *Palazzo v. Alves*, 944 A.2d 144, 149 (R.I. 2008) (quoting *Rhode Island Affiliate, ACLU, Inc. v. Bernasconi*, 557 A.2d 1232, 1232 (R.I. 1989)). In making its Rule 12(b)(6) determination, a court “‘assumes the allegations contained in the complaint to be true and views the facts in the light most favorable to the plaintiffs.’” *Giuliano v. Pastina*, 793 A.2d 1035, 1036 (R.I. 2002) (quoting *Martin v. Howard*, 784 A.2d 291, 297-98 (R.I. 2001)). Under Rhode Island’s notice pleading standard, “[a]ll that is required is that the complaint give the opposing party fair and adequate notice of the type of claim being asserted.” *Haley v. Town of Lincoln*, 611 A.2d 845, 848 (R.I. 1992). “‘When ruling on a Rule 12(b)(6) motion [to dismiss], the trial justice must look no further than the complaint, assume that all allegations in the complaint are true, and resolve any doubts in a plaintiff’s favor.’” *Pontarelli v. Rhode Island Department of Elementary and Secondary Education*, 176 A.3d 472, 476 (R.I. 2018) (quoting *Multi-State Restoration, Inc. v. DWS Properties, LLC*, 61 A.3d 414, 416 (R.I. 2013)); see also *Laurence v. Sollitto*, 788 A.2d 455, 456 (R.I. 2002). “[A] Rule 12(b)(6) motion to dismiss is appropriate ‘when it is clear beyond a reasonable doubt that the plaintiff would not be entitled to relief from the defendant under any set of facts that could be proven in support of the plaintiff’s claim.’” *Barrette v. Yakavonis*, 966 A.2d 1231, 1234 (R.I. 2009) (quoting *Palazzo*, 944 A.2d at 149-50).

III

Analysis

A

Standing

RITA has filed the present suit on its behalf as bargaining agent for its members and on behalf of individual members. Defendants challenge RITA's standing to bring suit on behalf of its members. In particular, Defendants contend that Plaintiffs do not have standing to pursue Counts I, II, III, IV, V, VIII, IX, X, and XI, asserting that each one of these counts requires individualized proof of damages and/or individual proof of factual circumstances to support certain claims.

The issue presents questions of whether RITA has direct standing to bring suit in its role as a bargaining representative and also whether it has organizational standing to pursue individual relief for its members.

1

Direct Standing – Express Contract Claims

General Laws 1956 § 28-8-1 confers direct standing upon unions to bring actions arising from the violation of a contract of employment by an employer as follows:

“Suits or actions at law for the violation by an employer of contracts of employment between the employer and his or her employees who are represented by a labor union as their legally constituted bargaining agent, and whose rights and duties as employees are set forth in a collective bargaining agreement between the employer and labor union, as the legal representative of the employees, *may be brought in the name of the union for the benefit of the employees.* This section applies to any previous violation or violation which may be made in the future by the employer; provided, that any action at law brought by the labor union for the benefit of the employees shall be subject to the provisions of §§ 9-1-15 – 9-1-24.” Section 28-8-1 (emphasis added).

Courts have recognized that associations have standing to bring actions on their own behalf to remedy injuries they have suffered themselves. *See, e.g., Babbitt v. United Farm Workers National Union*, 442 U.S. 289, 299 (1979). More specifically, “unions, as collective bargaining representatives for its members, have generally been recognized as possessing standing to sue on behalf of their members.” *Bristol/Warren Regional School Employees v. Chafee*, Nos. PC 12-3167, PC 12-3169, PC 12-3579, 2014 WL 1743142, at *5 (R.I. Super. Apr. 25, 2014) (citing *Arena v. City of Providence*, 919 A.2d 379, 388-89 (R.I. 2007)).

Count I is premised upon allegations of breach of an express contract, specifically the CBA. Plaintiffs allege the State contractually agreed to provide enhancements to the retirement benefits of members of RITA under the SPRP. The CBA is a contract between RITA and the State (administered by ERSRI), which Plaintiffs alleged was breached by the modifications that were effectuated by RIRSA’s passage.

Count IV (Violation of the Contracts Clause of the State Constitution), Count VIII (Improper Assessment of Pension Contributions), Count IX (Violation of Plaintiffs’ Vested Pension Rights), and Count X (Breach of Implied Covenant of Good Faith and Fair Dealing) are based upon theories of express and implied contract. The express contract theories are likewise based upon claims of breach of the CBAs, to which RITA is a party.

RITA is the sole and exclusive bargaining representative for the Troopers pursuant to G.L. 1956 § 28-9.5-5. As the bargaining representative, Plaintiffs have pled sufficient facts to establish direct standing to bring an express breach of contract claim under § 28-8-1. Accordingly, Defendants’ motions to dismiss Count I for lack of standing are denied. They are also denied to the extent that they seek to dismiss the claims for relief contained in Counts IV, VIII, IX, and X that are based upon express contract claims of breach of the CBAs.

Organizational Standing

Rhode Island’s liberal notice pleading standards require that a party seeking relief must show an injury in fact as a result of the challenged action. *See Rhode Island Ophthalmological Society v. Cannon*, 113 R.I. 16, 26, 317 A.2d 124, 129 (1974). When, as here, a plaintiff’s standing to pursue the action is challenged,

“the focal point shifts to the claimant, not the claim, and a court must determine if the plaintiff ‘whose standing is challenged is a proper party to request an adjudication of a particular issue and not whether the issue itself is justiciable’ or, indeed, whether or not it should be litigated.” *McKenna v. Williams*, 874 A.2d 217, 226 (R.I. 2005) (quoting *Flast v. Cohen*, 392 U.S. 83, 99-100 (1968)).

Plaintiffs have the burden to establish standing. *Blackstone Valley Chamber of Commerce v. Public Utilities Commission*, 452 A.2d 931, 934 (R.I. 1982) (“One who seeks review has the burden of setting the judicial machinery in motion by establishing that he is aggrieved and has a right to redress . . .”).

While the standing inquiry normally focuses on whether the plaintiffs suffered a particularized injury in fact, an organization has standing to bring suit on behalf of its members if the following elements are satisfied: (1) when the organization’s members would otherwise have standing to sue in their own right; (2) when the interests at stake are germane to the organization’s purpose; and (3) when neither the claim asserted nor the relief requested requires the participation of individual members. *See In re Town of New Shoreham Project*, 19 A.3d 1226, 1227 (R.I. 2011) (citing *Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167, 181 (2000)).

A preliminary question the Court must resolve is whether the claims asserted, or the relief requested, requires the participation of individual members in the suit. *See Hunt v. Washington*

State Apple Advertising Commission, 432 U.S. 333, 343 (1977). In *Hunt*, the Court stated that constitutional claims and requests for injunctive relief do not require individualized proof and may properly be resolved in a group context. *Id.*

a

Implied Contract Claims

Counts II and III seek relief on implied contract theories. As noted above, Counts IV, VIII, IX, and X are based upon both theories of breach of implied and express contract. In turn, the claims of breach of implied theories are premised upon allegations centering upon the Troopers' expectations or understanding of the terms of their employment. They are, hence, individualized claims and not the result of allegations focused upon the bargaining role of RITA.

Generally, organizational standing is limited to cases where the association seeks declaratory or injunctive relief, rather than damages. *See Warth v. Seldin*, 422 U.S. 490, 515 (1975). In *Warth*, the Court held that a plaintiff-organization did not have organizational standing to pursue breach of contract claims because proof of damages, rather than declaratory relief or injunctive relief, made the individual participation of injured parties indispensable to proper resolution. *Id.* The Court reiterated this position in *Hunt*, 432 U.S. at 343, again clarifying that constitutional claims and requests for injunctive relief do not require individualized proof and may be properly resolved in a group context.

Here, guided by *Warth*'s limitations on organizational standing, the Court allows the equitable claims to proceed and dismisses the claims for damages. The claims requesting "[j]udgment against the Defendants along with all compensatory damages, interest, costs and attorneys' fees"³ are damages claims on behalf of the members of RITA. Plaintiffs lack

³ Identical language repeated in the WHEREFORE clauses of Counts II, III, IV, VII, IX, and X.

organizational standing to assert these claims. *See Warth*, 422 U.S. at 511. The Plaintiffs’ request for damages requires an individualized inquiry into each member’s injury and their individualized participation to prove their requested damages. *See In re Town of New Shoreham Project*, 19 A.3d at 1227. Therefore, Defendants’ motions to dismiss Counts II, III, IV, VIII, IX, and X are granted, in part, to the extent they seek relief upon implied contract claims, for compensatory damages, interest, costs, and attorneys’ fees for their individual members, for failure to state adequate grounds of organizational standing. The remainder of the claims in each of those counts which seek equitable relief in relation to the implied contract claims are appropriate claims to be considered under organizational standing. These survive Defendants’ motions to dismiss upon challenge to standing.

b

Unjust Enrichment/Quantum Meruit

Defendants contend that Count V, alleging Unjust Enrichment/Quantum Meruit, must also be dismissed due to a lack of organizational standing. Specifically, Defendants argue that a claim of quantum meruit requires the Court to consider the individual circumstances of each RITA member, not the organization as a whole.

Unjust enrichment is defined as “[t]he retention of a benefit conferred by another, who offered no compensation, in circumstances where compensation is reasonably expected.” Black’s Law Dictionary 1771 (10th ed. 2014). “Instances of unjust enrichment typically arise . . . when a benefit is conferred deliberately but without a contract” *See Process Engineers & Constructors, Inc. v. DiGregorio, Inc.*, 93 A.3d 1047, 1052 (R.I. 2014). Such an action permits recovery of damages “in an amount considered reasonable to compensate a person who has rendered services in a quasi-contractual relationship.” *Id.* In comparing the two related claims, the

Court stated, “[w]hile unjust enrichment focuses on the propriety of a payee or beneficiary retaining funds or a benefit, quantum meruit’s primary focus is on the value of services rendered.” *Id.* (internal quotation omitted).

It is well settled that “[t]o recover for unjust enrichment [or quantum meruit⁴], a claimant must prove: (1) that he or she conferred a benefit upon the party from whom relief is sought; (2) that the recipient appreciated the benefit; and (3) that the recipient accepted the benefit under such circumstances that it would be inequitable for [the recipient] to retain the benefit without paying the value thereof.” *South County Post & Beam, Inc. v. McMahon*, 116 A.3d 204, 210-11 (R.I. 2015) (citation omitted). The crux of an unjust enrichment/quantum meruit claim is the benefit conferred by the individual. *See id.*

The Troopers allege that they were induced to provide their services to the State and to contribute to the Trust in exchange for retirement benefits. Am. Compl. ¶¶ 126-131. The Plaintiffs contend it would be inequitable for the State to retain, without fully paying back, the mandatory contributions made by the Troopers to the SPRP Trust. *Id.* ¶ 129. Plaintiffs list members of RITA to provide individual examples of Troopers allegedly relying on pre-RIRSA benefits. *Id.* ¶¶ 92-96. Presumably, each Trooper, who was admitted in a different class and has worked different hours than the next Trooper, would have unique damages and would have suffered a distinctive injury from their colleagues. *Id.* Here, the requisite showing of benefit conferred by the individual necessarily requires a showing of the contributions of individual members of RITA. *See McMahon*, 116 A.3d at 211.

⁴ “[T]o recover on a claim for quantum meruit, a plaintiff must prove the same three elements as in a claim for unjust enrichment.” *South County Post & Beam, Inc. v. McMahon*, 116 A.3d 204, 211 (R.I. 2015) (citing *Dellagrotta v. Dellagrotta*, 873 A.2d 101, 113 (R.I. 2005)).

Thus, Count V is dismissed for lack of organizational standing because this claim requires the individual participation of each Trooper alleging an injury. *See Warth*, 422 U.S. at 511.

c

Promissory Estoppel

Defendants also seek the dismissal of Count XI, which is based upon a claim of promissory estoppel, for lack of standing. “Promissory estoppel generally is invoked when, for one reason or another, an agreement between two parties fails on an essential element of a contractual claim.” *Cote v. Aiello*, 148 A.3d 537, 547 (R.I. 2016). Promissory estoppel is an equitable claim based on fairness that courts extend to “situations in which the promisee’s reliance on the promise was induced, and injustice may be avoided only by enforcement of the promise.” *Id.* (internal quotation omitted). The Court stated its three-element approach to bringing an action for promissory estoppel: “1. [a] clear and unambiguous promise; 2. [r]easonable and justifiable reliance upon the promise; and 3. [d]etriment to the promise, caused by his or her reliance on the promise.” *Id.* (internal quotation omitted).

In *Cote*, the Court reviewed and affirmed the trial court’s three-element analysis of the individual proof required to successfully assert a claim for promissory estoppel. *Cote*, 148 A.3d at 547-48. First, the trial justice found that defendant did not make a clear and unambiguous promise that plaintiff could purchase the business, specifically examining the correspondence between the parties. *Id.* at 547. Second, the trial justice found that it was not justifiable to rely on defendant’s “vague statements, love, and affection,” *id.* at 543, when “the business world is built on written agreements.” *Id.* at 548. Third, the plaintiff could not prove a detriment because he still benefitted from his employment relationship through both experience and a salary. *Id.* at 544. This analysis is relevant here because it illustrates that individual evidence is required when bringing a claim of promissory estoppel. *See id.*

Similarly, in Count XI, a successful claim for promissory estoppel would depend upon the individual reliance by, and detriment to, each RITA member. *See id.* Plaintiffs seek to unify these interests by presenting different cases of ways in which RITA members were impacted by the changes. Am. Compl. ¶¶ 92-96. However, without the participation of all the individual members of RITA, Plaintiffs will be unable to prove detrimental reliance by all of their members. Accordingly, Count XI is dismissed because individual proof is required to properly bring such a claim. *See In re Town of New Shoreham Project*, 19 A.3d at 1227; *Cote*, 148 A.3d at 547-48.

B

Count IV: ERSRI Motion to Dismiss

ERSRI argues that, as a threshold matter, the Court should dismiss Count IV which states that the enactment of the amendments to the SPRP violated the Contracts Clause. ERSRI argues that this count, as pled against ERSRI, cannot stand because ERSRI did not enact the challenged legislation nor could it have. ERSRI's Mot. to Dismiss 11.

The Contract Clause, article I, section 12 of the Rhode Island Constitution states, in relevant part, "[n]o ... law impairing the obligation of contracts, shall be passed." A prerequisite to any claim alleging violation of that Clause is that the challenged action be a law or legislative in nature. *Sullivan v. Nassau County Interim Finance Authority*, 959 F.3d 54, 61 (2d Cir. 2020) (citing *New Orleans Water-Works Co. v. Louisiana Sugar-Refining Co.*, 125 U.S. 18, 30-32 (1888)). This is because the Contract Clause "is aimed at the legislative power of the state, and not at the . . . acts of administrative or executive boards or officers" *New Orleans Water-Works Co.*, 125 U.S. at 30. In most Contract Clause cases, whether the challenged action is legislative in nature is obvious and so does not bear mentioning. *Sullivan*, 959 F.3d at 61. In a typical Contract

Clause case, a state passes a statute that allegedly impairs a plaintiff's contract, and the plaintiff attacks that statute directly. *Id.*

Plaintiffs' Contract Clause challenge is premised on SPRP's modifications through the enactment of RIRSA and the 2015 Amendments to RIRSA. The Rhode Island Constitution vests the legislative authority exclusively in the General Assembly, which has the power to enact, amend, and repeal statutes. R.I. CONST. art. VI, § 2.⁵ ERSRI does not have the power to and did not enact RIRSA or the 2015 Amendments. ERSRI maintained and administered the statutory changes but they did not enact the legislative changes. Accordingly, this Court dismisses Count IV of Plaintiffs' Amended Complaint as pled against ERSRI because ERSRI did not enact, nor is it alleged in the Amended Complaint that ERSRI enacted, the amendments to RIRSA that form the basis of Plaintiffs' Contract Clause Count. *See* Am. Compl. ¶¶ 53-91.

C

Contracts Clause: Constitutional Argument

Defendants contend that, to the extent that Plaintiffs' claims are based on an implied contract arising under statute, Plaintiffs are not entitled to relief because Plaintiffs do not have any contractual right to receipt of those pension benefits.⁶ The Defendants also move to dismiss Plaintiffs' claims grounded in express contract claiming that the expired CBAs do not create enforceable contract rights for future benefits.

⁵ "The legislative power, under this Constitution, shall be vested in two houses, the one to be called the senate, the other the house of representatives; and both together the general assembly. The concurrence of the two houses shall be necessary to the enactment of laws." R.I. CONST. art. VI, § 2.

⁶ As discussed above in Section A on Standing, certain counts rely exclusively on theories of Implied or Express Contract. *See* Am. Compl. Count I (Express Contract), Counts II and III (Implied Contract). Other Counts seek relief upon theories of both Express and Implied Contract. *See e.g.* Am. Compl. Counts IV, IX, and X.

The existence of a contract between the parties, either express or implied, and the subsequent impairment of that contract are the cornerstones of this contractual challenge. The Contract Clause contained in article I, section 12 of the Rhode Island Constitution provides that: “No ex post facto law, or law impairing the obligation of contracts, shall be passed.” Our Supreme Court has stated, “[t]hough the Framers apparently had in mind only purely private contracts . . . the Clause routinely has been applied to contracts between states and private parties.” *Nonnenmacher v. City of Warwick*, 722 A.2d 1199, 1202 (R.I. 1999) (citations omitted).

It is well settled that in Rhode Island, alleged violations of the Contract Clause warrant a three-prong analysis. See *Rhode Island Depositors Economic Protection Corp. v. Brown*, 659 A.2d 95, 106 (R.I. 1995). A court must determine: “[f]irst, has the state law in fact substantially impaired a contractual relationship? . . . Second, if the law constitutes a substantial impairment, can the state show a legitimate public purpose behind the regulation, ‘such as the remedying of a broad and general social or economic problem’? . . . Third, is the legitimate public purpose sufficient to justify the impairment of the contractual rights?” *Id.* (citing *Energy Reserves Group, Inc. v. Kansas Power & Light Co.*, 459 U.S. 400, 411-12 (1983)). A prerequisite to finding a violation of the Contract Clause is, therefore, the existence of a contractual relationship. *Id.* If there is no contractual relationship, there cannot have been an unconstitutional impairment of a contract. *Id.* The Court will therefore examine the two potential avenues for contract creation in turn.

1

Implied Contract Theory

Defendants, citing the federal Unmistakability Doctrine, maintain that Plaintiffs’ Contract Clause claims, based on implied contract theories, fail as a matter of law because the pension statute does not create a contractual relationship. The Unmistakability Doctrine precludes finding

that a statute creates a binding contract for Contract Clause⁷ purposes absent a clear, unequivocal, and unmistakable indication that the legislature intends to bind itself in a contractual manner. *Cranston Firefighters, IAFF Local 1363, AFL-CIO v. Raimondo*, 880 F.3d 44, 48 (1st Cir. 2018)⁸; *National Education Association-Rhode Island ex rel. Scigulinsky v. Retirement Board of Rhode Island Employees' Retirement System (NEA II)*, 172 F.3d 22, 27 (1st Cir. 1999).⁹

Although the Rhode Island Supreme Court has not expressly referred to this principle as the Unmistakability Doctrine, it appears to have applied similar reasoning. *Brennan v. Kirby*, 529 A.2d 633, 638 (R.I. 1987). In analyzing the existence of statutory contracts in the context of employee benefits, the Court has stated:

“[A]bsent a clear indication by the Legislature that it intended to bind itself contractually by passing an enactment, the presumption pervades that [the] law is not intended to create private contractual or vested rights but merely declares a policy to be pursued until the legislature shall ordain otherwise.” *Id.* (internal quotation omitted).

⁷ The Contracts Clause referred to here is the U.S. Const. art. I, § 10, “[n]o State shall . . . pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts.” The Contracts Clause of the Rhode Island Constitution, article I, section 12, affords the same protection as its federal counterpart, stating, “[n]o ex post facto law, or law impairing the obligation of contracts, shall be passed.”

⁸ Comparable to the instant case, in *Cranston Firefighters*, the public employees brought a suit challenging RIRSA. *Cranston Firefighters, IAFF Local 1363, AFL-CIO*, 880 F.3d at 48. The statute at issue there was the 1996 Special Legislation, which provided the Cranston Police and Fire Departments with pensions. *Id.* at 47. Like the instant case, the plaintiffs alleged violations of the Contracts Clause, Due Process Clause, and Takings Clause of the U.S. Constitution. *Id.* The First Circuit, after finding no language in the statute that established contractual rights, and examining no attendant circumstances supporting intent by the Legislature to establish contractual rights in the legislation, ultimately ruled that the legislation did not constitute a constitutionally binding commitment that precluded Rhode Island from modifying pension plans with RIRSA. *Id.* at 50.

⁹ The RI. Supreme Court has noted in *Retired Adjunct Professors* that Superior Courts have relied on First Circuit decisions when determining if a statute creates an enforceable implied contract. *Retired Adjunct Professors*, 690 A.2d at 1347 (noting that the Superior Court in *Retired Adjunct Professors* relied upon U.S. District Court for D.R.I.’s analysis to determine if a statute gave rise to a contractual relationship).

A plaintiff who claims that a contractual relationship has been created by statute bears a heavy burden because “there is a strong presumption against interpreting statutes as contractual agreements.” *National Education Association-Rhode Island v. Retirement Board of Rhode Island Employees’ Retirement System (NEA)*, 890 F. Supp. 1143, 1151 (D.R.I. 1995). “[N]ormally state statutory enactments do not of their own force create a contract with those whom the statute benefits because the potential ‘constraint on subsequent legislatures’ is so significant.” *Rhode Island Council 94 v. Rhode Island*, 705 F. Supp. 2d 165, 178 (D.R.I. 2010) (internal quotation omitted).

The presumption is that a law is not intended to create a private contractual or vested right but merely declares a policy to be pursued until the Legislature shall ordain otherwise. *Nonnenmacher*, 722 A.2d at 1202. “A claim that a state statute creates a contract that binds future legislatures confronts a tropical-force headwind in the form of the ‘unmistakability doctrine.’” *Cranston Firefighters*, 880 F.3d at 48 (quoting *Parker v. Wakelin*, 123 F.3d 1, 5 (1st Cir. 1997)). “However, that presumption can be overcome if the language of the statute and other indicia show that the legislature intended to bind itself contractually.” *NEA*, 890 F. Supp. at 1151. As a limiting principle, it is well established that the government may not utilize these doctrines simply “as a means to escape from contracts that it subsequently concluded were unwise.” *Connor Brothers Construction Co., Inc. v. Geren*, 550 F.3d 1368, 1374 (Fed. Cir. 2008).

When determining whether legislation creates a contractual relationship, courts consider both the language of the statute and the circumstances of the enactment prior to repeal or amendment. See *United States Trust Co. of New York v. New Jersey*, 431 U.S. 1, 17 n.14 (1977). When courts have reviewed the circumstances surrounding a law’s enactment in the course of determining whether the statute creates a contractual entitlement, reference to such circumstances

have served to reinforce a conclusion already made clear by the statute's express language. *Id.* at 9-10. For example, in *United States Trust*, the circumstances surrounding the bondholder-protection statute, including a legislative committee's recommendation for text referencing Contract Clause protections, reinforced the unmistakable, straightforward text which spoke plainly about the state's intent to "covenant and agree." *Id.* at 9.

However, it is debatable whether the State may be contractually bound under an implied contract. *See Retired Adjunct Professors*, 690 A.2d at 1346. An implied contract "arises where the intention of the parties is not expressed, but an agreement in fact, creating an obligation, is implied or presumed from their acts, or . . . where there are circumstances which . . . show a mutual intent to contract." *Bailey v. West*, 105 R.I. 61, 64, 249 A.2d 414, 416 (1969). An implied contract is a form of express contract wherein the elements of the contract are found in, and determined from the relations of, the communications between the parties. *Cote*, 148 A.3d at 545. The difference between an express contract and an implied contract is the manner by which the parties express their mutual assent. *Id.* The parties' actions and conduct are considered. *Id.* Every contract must be formed through "[M]utual [A]ssent," which is the "meeting of the minds" or the intention to be bound through offer and acceptance. *Id.* at 547. *See Filippi v. Filippi*, 818 A.2d 608, 623-24 (R.I. 2003). In addition to mutual assent, "mutuality of obligation" is achieved when both parties are bound legally by the making of reciprocal promises, which fulfills the consideration requirement of contracts. *See id.* at 624.

Turning to the statute at issue, the language of SPRP contained in §§ 42-28-22, 42-28-22.1, 42-28-22.2, and 42-28-22.3 does not reflect an intent to create a binding contract. Plaintiffs argue that certain phrases in the statute, such as "shall be paid to him . . . during life" and "shall be

entitled to a retirement allowance of fifty percent . . . ,”¹⁰ are evidence of the Legislature’s intent to create a contractual right. However, Plaintiffs’ citations to the statutory language fall short of establishing a clear intent on the part of the General Assembly to create a contract. The statutory language here, which mentions neither “contracts” nor “contractual obligations,” does not support an intent to be contractually bound. The statutes do not “‘clearly and unequivocally’ [contract] for future benefits . . . [n]owhere does the statute call the pension plan a ‘contract’ or contain an ‘anti-retroactivity clause’ as to future changes.”” *Rhode Island Council 94*, 705 F. Supp. 2d at 178 (quoting *NEA II*, 172 F.3d at 28).

In addition, the circumstances as best can be gleaned from the legislation do not support the Troopers’ reading of the SPRP. Rhode Island does not record legislative history; hence, that can be of no assistance. *See Parker*, 123 F.3d at 9. There is, therefore, nowhere else to look, beyond the express language of the statutes that would provide clear and unequivocal evidence of intent. *See Cranston Firefighters, IAFF Local 1363, AFL-CIO*, 880 F.3d at 50. The statutes, likewise, do not contain any other terms that could be interpreted as creating a contract, such as covenant, promise, or guarantee. *See, e.g.*, Rhode Island P.L. 2011, ch. 409. Because legislatures must clearly and unequivocally indicate that it intends to be contractually bound, *Brennan*, 529 A.2d at 638, an implied contract theory is unavailing.

The Amended Complaint insists throughout that the Troopers “reasonably relied” upon certain promises or were “induced” to enter into employment with the State. *See, e.g.*, Am. Compl. ¶¶ 30, 31, 34. However, the relevant statutes do not contain language that implies that the State intended to be irrevocably bound by their terms. The circumstances surrounding any legislative

¹⁰ *See* Pls.’ Mem. Supp. of Obj. to Defs.’ Mot. to Dismiss 26-30 for additional statutory language that Plaintiffs claim gives rise to implied contract rights.

enactment show that legislatures continually amend and repeal statutory enactments. The SPRP itself has been subject to a number of amendments over the years. *See, e.g.*, Am. Compl. ¶¶ 36, 46, 47. Hence, the SPRP's provisions were not "fossilized in legislative amber." *Retired Adjunct Professors*, 690 A.2d at 1345. Defendants' statutory offer of pension benefits and Plaintiffs' provision of service as Troopers therefore lacks the necessary mutual assent between parties to bind each other to an implied contract. *See Filippi*, 818 A.2d at 623-24.

In sum, based on the relevant statutes' language and the lack of any surrounding circumstances to the contrary, the Court finds that no implied contract formed between Plaintiffs and Defendants as a result of the SPRP statute. *See Brennan*, 529 A.2d at 637-38. Accordingly, those claims based in implied contract are dismissed because Plaintiffs have not sufficiently pled an implied contract in their Amended Complaint. Defendants' motions to dismiss Counts II and III, which are based entirely on the existence of an implied contract, are granted. Further, Defendants' motions to dismiss are granted in part for Counts IV, IX, and X to the extent those counts are based in implied contract theories.

2

Express Contract Theory

Plaintiffs' express breach of contract claims are premised upon allegations of breach of the CBAs. Plaintiffs argue for the existence of an express contract based on the incorporation of the SPRP in Article XIII, Section 13.1 of the 2010-13 CBA, which was in place at the time of the enactment of RIRSA. Am. Compl. ¶ 98. The CBAs referenced in the Amended Complaint contained expiration dates but were allegedly followed by successive agreements and apply to the Troopers who retired within each relevant timeframe. *Id.* ¶¶ 48-49. Plaintiffs allege that successive CBAs contain consistent retirement provisions that are the subject of their breach allegations. *Id.*

¶¶ 98, 99.¹¹ Plaintiffs allege that the relevant language has survived into each subsequent CBA, and the breach of that contract continues to impact the express contract rights of the Troopers eligible under each successor CBA. Mot. to Dismiss Hr’g Tr. 33:14-19. Defendants move to dismiss those claims, claiming that the now expired CBAs did not create enforceable contract rights for future benefits.

The crux of the Counts that rely on the existence of an express contract is that the 2010-13 CBA and its successors contractually obligated the State to provide the Troopers with the benefits promised by the SPRP, along with certain enhancements. Amend Compl. ¶¶ 98, 99. The 2010-13 CBA was then breached by the subsequent passage of RIRSA which impacted Troopers’ retirement benefits moving forward. *Id.* ¶¶ 101, 102. Unlike the contract claims that are premised on alleged statutory promises, the Plaintiffs have actually pled the existence of an express contract based on the 2010-13 CBA and its successor CBAs.

CBAs are subject to long-established rules of contract interpretation. *Rhode Island Council on Postsecondary Education v. American Association of University Professors*, 176 A.3d 1101, 1108 (R.I. 2018). In Rhode Island, forming a valid contract requires “competent parties, subject matter, a legal consideration, mutuality of agreement, and mutuality of obligation.” *DeAngelis v. DeAngelis*, 923 A.2d 1274, 1279 (R.I. 2007) (internal quotation omitted). The Rhode Island Supreme Court has established that “for parties to form a valid contract, each must have the intent to be bound by the terms of the agreement.” *Weaver v. American Power Conversion Corp.*, 863 A.2d 193, 198 (R.I. 2004). “In an expressed contract the terms and conditions of the contract are

¹¹ Plaintiffs have also submitted certain CBAs as exhibits to their Opposition to the Motions to Dismiss. The Court has not considered any extra-Complaint evidence in its analysis. *Pontarelli*, 176 A.3d at 476.

assented to orally or in writing by the parties.” *J. Koury Steel Erectors, Inc. of Massachusetts v. San-Vel Concrete Corp.*, 120 R.I. 360, 365, 387 A.2d 694, 697 (1978).

Assuming the allegations in the Amended Complaint are true and in viewing the facts in the light most favorable to the Plaintiffs, the existence of an express contract, based in the 2010-13 CBA and its successors, is sufficient for motion to dismiss purposes. *See Giuliano*, 793 A.2d at 1036-37.

Defendant State of Rhode Island cites to *M & G Polymers USA, LLC v. Tackett*, 135 S. Ct. 926, 930 (2015), for the proposition that expired CBAs do not create enforceable contract rights. However, that case was decided after summary judgment and a bench trial and a thorough examination of the contracts at issue. Indeed, the Court found that “when a contract is silent as to the duration of retiree benefits, a court may not infer that the parties intended those benefits to vest for life.” *Id.* at 937. This matter is before the Court upon motions to dismiss, which, at this stage, precludes a thorough examination of the contracts and its “successors” as alleged. Accordingly, Plaintiffs’ claims based in express contract are sufficient to survive Defendants’ motions.

Count I is based entirely upon allegations of breach of express contract -- the CBA. Therefore, Defendants’ motions to dismiss Count I are denied. Counts IV, IX, and X are partially based on the existence of an express contract, which Plaintiffs have sufficiently pled for Rhode Island’s notice pleading standard. *See id.* Accordingly, Defendants’ motions to dismiss Counts IV, IX, and X are denied, in part, to the extent those claims are founded in express contract.

D

Constitutional Due Process and Takings Claims

Plaintiffs bring Constitutional Claims in Count VI for violation of the Due Process Clause, as well as the Takings Clause in Count VII under the Rhode Island Constitution. Am. Compl. ¶¶ 132-37.

The Due Process clause provides “[n]o person shall be deprived of life, liberty or property without due process of law[.]” U.S. CONST. Amend. XIV; R.I. CONST. art. I, § 2. Rhode Island’s Due Process clause contains the same protections of the United States Constitution’s Due Process Clause. *L.A. Ray Realty v. Town Council of Town of Cumberland*, 698 A.2d 202, 218 (R.I. 1997).

A preliminary requirement for a due process claim is a demonstration of “a constitutionally protected interest in life, liberty, or property.” *Aponte v. Calderon*, 284 F.3d 184, 191 (1st Cir. 2002). The Rhode Island Supreme Court further clarified, “[t]o have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it.” *Wilkinson v. State Crime Laboratory Commission*, 788 A.2d 1129, 1138 (R.I. 2002) (internal quotation omitted). As a general matter, the Due Process clause is not implicated in circumstances where a legislature has passed legislation through the normal legislative processes. *See Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 433 (1982). Democratically passed legislation, by its nature, conforms with constitutionally established procedures. *See, e.g., Atkins v. Parker*, 472 U.S. 115, 127 (1985) (finding no violation of due process where Congress made a system-wide change in methods for computing Food Stamp eligibility without affording a hearing).

“The Takings Clauses of the United States and Rhode Island Constitutions provide that a government may not take private property for public use ‘without just compensation.’” *Cranston*

Police Retirees Action Committee v. City of Cranston, by and through Strom, 208 A.3d 557, 581 (R.I. 2019) (quoting U.S. CONST. Amend. V; R.I. CONST., art. 1, § 16). “The first step in the analysis of a takings claim is to determine whether a recognizable property right is at stake.” *Id.* “Because the Constitution protects rather than creates property interests, the existence of a property interest is determined by reference to ‘existing rules or understandings that stem from an independent source such as state law.’” *Phillips v. Washington Legal Foundation*, 524 U.S. 156, 164 (1998) (internal quotation omitted). The Rhode Island Constitution, article I, section 16 protects valid contracts as property within the meaning of the Takings Clause, but no protection is afforded to “mere ‘unilateral expectation[s],’ even if they are entirely plausible expectations of economic benefit.” *NEA II*, 172 F.3d at 29 (internal quotation omitted).

Here, the Defendants assert that Counts VI and VII both fail without the existence of a contract. ERSRI’s Mot. to Dismiss 14; State’s Mot. to Dismiss 17. These claims refer to both express and implied contract rights. Am. Compl. ¶¶ 134, 137. As noted above, this Court has found that RIRSA has not created implied contract rights. Further, Plaintiffs do not allege that the General Assembly has passed RIRSA through unconstitutional procedures. Accordingly, this Court dismisses, in part, the portion of Counts VI and VII based in implied contract rights. However, as explained *supra*, an express contract may exist which may grant Plaintiffs rights under the 2010-13 CBA sufficient to survive Defendants’ motions to dismiss. Consequently, Defendants’ motions to dismiss the portions of Counts VI and VII that are based in the express contract claim are denied.

E

Failure to State a Recognized Cause of Action

In Count VIII, Plaintiffs assert an Improper Assessment of Pension Contributions claim premised on allegedly inaccurate actuarial assumptions surrounding the Troopers' retirement rates. Am. Compl. ¶ 139. Defendants respond that Improper Assessment of Pension Contributions is not a recognized cause of action in Rhode Island and should therefore be dismissed. ERSRI's Mot. to Dismiss 64; State's Mot. to Dismiss 23-24.

It is well settled that "[t]his Court is bound by the law and can provide justice only to the extent that the law allows." *State v. Lead Industries Association, Inc.*, 951 A.2d 428, 436 (R.I. 2008).

According to this principle, the Rhode Island Supreme Court "consistently [has] adhered to principles of judicial restraint [that] prevent [courts] from creating a cause of action for damages in all but the most extreme circumstances." *Id.* (internal quotation omitted). Accordingly, plaintiffs may not use the judiciary to "create a new cause of action in order to deal with a particular perceived wrong." *Cullen v. Lincoln Town Council*, 960 A.2d 246, 249 (R.I. 2008). It is well settled "that the creation of new causes of action is a legislative function." *Bandoni v. State*, 715 A.2d 580, 584 (R.I. 1998) (internal quotation omitted). As an example of this concept, in *Accent Store Design, Inc. v. Marathon House, Inc.*, 674 A.2d 1223, 1226 (R.I. 1996), the Court found that there was no private cause of action for a public authority's noncompliance with a public works statute because the General Assembly "could easily have exercised its power to create a cause of action ... but it chose not to do so." *Accent Store Design, Inc.*, 674 A.2d at 1226.

Here, Count VIII (Improper Assessment of Pension Contributions) alleges that flawed retirement rate data has been relied upon by the Defendants to justify the enactment of RIRSA.

Am. Compl. ¶¶ 138-42. This claim is seeking a declaratory judgment stating that the SPRP has been improperly administered in contravention of the laws and regulations applicable to ERSRI. *Id.* ¶ 144(A). Defendants move to dismiss because a claim for Improper Assessment of Pension Contributions is not recognized in this jurisdiction. The Court will not create a new cause of action for Improper Assessment of Pension Contributions to deal with the Plaintiffs' perceived wrong since such a claim is not a recognized cause of action under Rhode Island law. *See Cullen*, 960 A.2d at 249. Accordingly, Plaintiffs' Count VIII for Improper Assessment of Pension Contributions is dismissed.

IV

Conclusion

Having considered arguments by counsel, this Court holds that, for the foregoing reasons, the following counts survive the Defendants' motions to dismiss: Count I in full, Counts IV, VI, VII, IX, and X only to the extent they are based upon express contract claims. In addition, Count IV remains only against the State of Rhode Island. The remainder of the counts and claims for relief are dismissed.

In accordance with the above, Defendants' motions to dismiss are GRANTED in part and DENIED in part.

IT IS SO ORDERED.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: Rhode Island Troopers Association, et al. v. State of Rhode Island, et al.

CASE NO: PC-2014-4432

COURT: Providence County Superior Court

DATE DECISION FILED: January 10, 2022

JUSTICE/MAGISTRATE: Matos, J.

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