STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

[FILED: June 9, 2015]

RHODE ISLAND PUBLIC EMPLOYEES RETIREE COALITION, ET ALS.	:	
V.	:	**C.A. No. PC 2015-1468**
GINA RAIMONDO, IN HER CAPACITY AS GOVERNOR OF THE STATE OF RHODE ISLAND, ET ALS.	:	

DECISION

TAFT-CARTER, J. Pursuant to Super. R. Civ. P. 23(e), the Court is assigned the duty to either approve or reject the class action settlement agreement reached in this class action and in the underlying pension cases. This 2015 Settlement Agreement was vetted at a Fairness Hearing that began on May 20, 2015. The underlying purpose of the Fairness Hearing was to "protect unnamed members of the class from unjust or unfair settlements affecting their rights." In re Syncor ERISA Litig., 516 F.3d 1095, 1100 (9th Cir. 2008).[1] The role of a judge in this regard has been described as serving as a guardian of the absent class members who will be bound by the settlement. See Barbosa v. Cargill Meat Solutions Corp., 297 F.R.D. 431, 445 (E.D. Cal. 2013).

A court must independently determine whether the proposed settlement agreement is "fundamentally fair, adequate, and reasonable" before granting approval. In re Heritage Bond Litig., 546 F.3d 667, 674-75 (9th Cir. 2008); see also Staton v. Boeing Co., 327 F.3d 938, 959

[1] In the absence of Rhode Island case law applying Super. R. Civ. P. 23 in the context of class action settlements, this Court will look to interpretations of Federal Rule 23 from federal courts. See DeCesare v. Lincoln Benefit Life Co., 852 A.2d 474, 488-89 (R.I. 2004); see also Ciunci, Inc. v. Logan, 652 A.2d 961, 962 (R.I. 1995).

(9th Cir. 2003). In other words, it must eschew any "rubber stamp" approval in favor of an independent review of the settlement. See City of Detroit v. Grinnell Corp., 495 F.2d 448, 462 (2d Cir. 1974) (overruled on other grounds in Goldberger v. Integrated Resources, Inc., 209 F.3d 43 (2d Cir. 2000)). In doing so, courts are "restrained by the clear policy in favor of encouraging settlements" to facilitate resolution of controversies and promote judicial economy. Durrett v. Hous. Auth. of City of Providence, 896 F.2d 600, 600-04 (1st Cir. 1990) (citing Metro. Hous. Dev. Corp. v. Village of Arlington Heights, 616 F.2d 1006, 1014 (7th Cir. 1980)). A court "determines a settlement's fairness by looking at both the settlement's terms and the negotiating process leading to the settlement." Wal–Mart Stores, Inc. v. Visa U.S.A., Inc., 396 F.3d 96, 116 (2d Cir. 2005).

In making such a determination of fairness, there "is a strong judicial policy [favoring] settlement [that underlies a court's review], particularly where complex class action litigation is concerned." In re Syncor ERISA Litig., 516 F.3d at 1101 (citing Class Plaintiffs v. City of Seattle, 955 F.2d 1268, 1276 (9th Cir. 1992)). The Court's intrusion into what is otherwise a private consensual agreement is limited to the extent necessary to reach a reasoned judgment that the settlement, taken as a whole, is fair, reasonable, and adequate to all concerned. See Officers for Justice v. Civil Service Comm'n of City and Cnty. of San Francisco, 688 F.2d 615, 625 (9th Cir. 1982); see also Clark Equip. Co. v. Int'l Union, Allied Indus. Workers of America, AFL-CIO, 803 F.2d 878, 880 (6th Cir. 1986). The Court remains mindful that "[s]ettlements are private contracts reflecting negotiated compromises." In re Baby Products Antitrust Litig., 708 F.3d 163, 173 (3d Cir. 2013). Accordingly, the Court's role "is not to determine whether the settlement is the fairest possible resolution . . . [but to] determine whether the compromises reflected in the settlement . . . are fair, reasonable, and adequate when considered from the

perspective of the class as a whole." Id. at 173-74. An agreement is not properly reviewed by either hypothetical or speculative measures. Officers for Justice, 688 F.2d at 625. In such an evaluation, the Court "'ought not try the case in the settlement hearings,' and . . . must keep in mind that 'compromise is the essence of a settlement.'" Knight v. Alabama, 469 F. Supp. 2d 1016, 1032 (N.D. Ala. 2006) (quoting Cotton v. Hinton, 559 F.2d 1326, 1330 (5th Cir. 1977)). Now, after careful consideration of the proposed 2015 Settlement Agreement, the testimony, and a review of the objections raised by the Class Members, the Court here issues its decision.

I

Facts and Travel

The procedural backstory of the pension cases has been well documented in many decisions over the past five years. The final chapter culminated with the filing of this class action in April 2015 by Plaintiffs Rhode Island Public Employees' Retiree Coalition (RIPERC); Rhode Island American Federation of Teachers/Retirees, Local 8037 (AFT/R); Roger Boudreau; Michael Connolly; Kevin Schnell; Rhode Island Council 94, AFSCME, AFL-CIO; National Education Association-Rhode Island (NEARI); John Lavery; Michael McDonald; Jason Kane; Amy Mullen; Susan Verdon; Rhode Island State Association of Firefighters; Raymond Furtado; and James Richards (collectively Plaintiffs) against Gina M. Raimondo, in her capacity as Governor of the State of Rhode Island; Seth Magaziner, in his capacity as General Treasurer of the State of Rhode Island; and the Employees Retirement System of Rhode Island (ERSRI), by and through the Retirement Board, by and through Seth Magaziner, in his capacity as Chairperson of the Retirement Board and Frank J. Karpinski, in his capacity as Secretary of the

Retirement Board (collectively the State Defendants) and the Towns of Barrington, Middletown, and South Kingstown (the Towns).[2]

The class action complaint, filed for settlement purposes only, challenges the constitutionality of 2009 Legislation, 2010 Legislation, and the Rhode Island Retirement Security Act of 2011 (RIRSA) (collectively Enactments). Specifically, the complaint alleges violations of the Contract Clause, Due Process Clause, and Takings Clauses of the Rhode Island Constitution. The Plaintiffs seek relief that includes a declaration that the Enactments are unconstitutional, as well as other equitable relief including injunctive relief.

A

The Challenged Enactments

In 2009, the General Assembly passed the first of a trilogy of enactments that modified the statutes governing the retirement system. The passage of the legislation was an attempt to provide more security to the retirement system. Each of these Enactments was separately challenged as being in violation of the Rhode Island Constitution. The first Enactment modified the retirement benefits and rules governing eligibility for retirement for active state employees and teachers not yet eligible to retire. See P.L. 2009, ch. 68, art. 7 (the 2009 Act) (Hr'g Ex. 1). In 2010, the General Assembly passed the second Enactment that reduced the cost of living adjustment (COLA) benefits for active state employees and teachers who were not yet eligible to retire as of June 12, 2010. See P.L. 2010, ch. 23, art. 16 (the 2010 Act) (Hr'g Ex. 2).

The final Enactment, the Rhode Island Retirement Security Act of 2011, P.L. 2011, ch. 408 and 409 (RIRSA), resulted in major changes to the pension system and the retirement benefits for state employees, school teachers, and municipal employees who were not yet eligible

[2] Collectively, the Plaintiffs, State Defendants, and the Towns are referred to herein as the Class Action Parties.

to retire as of July 1, 2012. (Hr'g Ex. 3.) For state employees who were eligible to retire but had not yet retired as of July 1, 2012, RIRSA changed the formula by which their retirement allowance would be calculated. For correctional officers, RIRSA also altered the rules governing retirement eligibility and changed the formula for their retirement allowance. For teachers who were not eligible to retire as of July 1, 2012, RIRSA increased the retirement age, changed the formula for calculating the retirement allowance, and changed the employee contribution rate. RIRSA also made changes to the retirement benefits for municipal employees who were members of the Municipal Employees Retirement System (MERS), which is also part of the ERSRI. For all members receiving retirement benefits under the ERSRI, including those employees who had already retired as of June 30, 2012, RIRSA reduced the amount of the annual COLA benefit, limited the COLA to apply only to the first $25,000 of a member's retirement benefit, and suspended the annual COLA making it payable once every five years until the various pension plans were at least 80% funded. In addition, RIRSA changed the structure of the retirement program from a traditional defined benefit plan to a "hybrid plan" with a smaller defined benefit plan and a supplemental defined contribution plan. For active Police and Firefighters, RIRSA made a number of other changes including increasing the minimum service requirement and adding a minimum retirement age of 55 years.

B

The History of the Pension Cases

After the historic reformation of the laws governing the retirement system, a number of unions filed lawsuits challenging the constitutionality of the Enactments. The first lawsuit, challenging the 2009 Enactment, was amended to include a challenge to the 2010 Enactment. In that case, the Defendants filed a Motion for Summary Judgment arguing that the ERSRI, as a

statutory creation, does not create a contractual relationship between the State and members of the ERSRI. A Decision was rendered on September 13, 2011, denying the motion for summary judgment and concluding that the ERSRI created an implied unilateral contract between the State and ERSRI members. See Rhode Island Council 94 v. Carcieri, 2011 WL 4198506 (R.I. Super. Sept. 13, 2011) (Pension I).

Further litigation emerged after RIRSA was enacted. In 2012, five lawsuits were filed by retired or active state employees, public school teachers, and municipal employees challenging the constitutionality of RIRSA.[3] These actions, along with the 2010 action, came to be known as the pension cases. Like the 2010 case, the 2012 cases sought a declaratory judgment—that RIRSA violated the Contract Clause, Takings Clause, and Due Process Clause of the Rhode Island Constitution—as well as injunctive relief. The Defendants in the 2012 cases filed motions to dismiss or, in the alternative, motions for a more definite statement in all of the 2012 cases in August 2012. These cases were consolidated for discovery purposes by the Court.

In January 2013, the Court directed the parties to mediation facilitated by the Federal Mediation and Conciliation Service (FMCS). (Hr'g Joint Mem. 16, Stip. Facts.) For a period of 13 months, the parties participated in mediation. The parties and their counsel attended

[3] The Plaintiffs in the case docketed as C.A. No. 10-2859 consist of a number of Associations representing current State employees and public school teachers who had already performed ten years of contributory service and thus became vested in the ERSRI. The Plaintiffs in the case designated as C.A. No. 12-3166 consist of a number of Associations representing retired state and municipal employees and individual plaintiffs who are all retired public sector employees or were married to public sector employees who are current beneficiaries of the Retirement System. Plaintiffs in the case designated C.A. No. 12-3167 consist of a number of local affiliates of the AFSCME, Council 94, representing general municipal employees. Plaintiffs in C.A. No. 12-3168 consist of a number of local labor organizations representing state employees and public school teachers and/or employees. Plaintiffs in C.A. No. 12-3169 consist of a number of local affiliates of the International Brotherhood of Police Officers (IBPO), representing municipal police officers. Plaintiffs in C.A. No. 12-3579 consist of a number of local affiliates of the International Association of Firefighters (IAFF), representing municipal firefighters.

numerous mediation sessions that resulted in a proposed settlement (the 2014 Settlement Agreement) (Hr'g Ex. 4). Prior to the settlement, the parties and their expert witnesses, including actuaries, studied and scrutinized the proposals and counter-proposals. (Hr'g Joint Mem. 17, Stip. Facts.) The 2014 Settlement Agreement required approval from Plaintiff members prior to the proposal being submitted to the Court. (Hr'g Ex. 4; Hr'g Joint Mem. 17, Stip. Facts.) As such, it contained detailed voting procedures that were followed by the Plaintiffs through their authorized representatives. (Hr'g Ex. 4; Hr'g Joint Mem. 17-18, Stip. Facts.) They conducted informational hearings regarding the 2014 Settlement Agreement and distributed mail-in ballots to the members of the Plaintiff unions. (Hr'g Joint Mem. 17-18, Stip. Facts.) The end result, after votes were calculated, was a failed settlement. (Hr'g Joint Mem. 19, Stip. Facts.) As a result, the parties returned to Court to continue the litigation. (Hr'g Joint Mem. 19, Stip. Facts.)

After the failed Settlement in 2014, three additional cases were commenced: one by the Cranston Firefighters, IAFF, Local 1363, AFL-CIO in a case docketed as PC 14-4343; another by the International Brotherhood of Police Officers, Local 301, AFL-CIO (Cranston Police) in a case docketed as PC 14-4768; and one by a group of individual retirees, in a case docketed as KC 14-345 (the Clifford case)[4]. Each case mounted challenges mirroring those of the Plaintiffs in the initial six lawsuits. All nine of these actions named as Defendants the Governor of the State of Rhode Island in his or her official capacity, the General Treasurer of the State of Rhode

[4] The Plaintiffs in the Clifford case consisted of some 200 individual retired state or municipal employees who are not otherwise affiliated with the retiree Associations in the Retiree case, C.A. No. 12-3166.

Island, and the ERSRI, by and through the Retirement Board, by and through the Chairperson of the Retirement Board and the Secretary of the Retirement Board (the State Defendants).[5]

From 2014 until the date the 2015 Settlement Agreement was announced, the parties engaged in extensive discovery and pre-trial motion practice. In April 2014, the Court issued Decisions denying the Defendants' motions to dismiss, or in the alternative, for a more definite statement in the five 2012 cases. See Bristol/Warren Regional School Employees, Local 581 v. Chafee, PC 12-3167, PC 12-3169, PC 12-3579, 2014 WL 1743142 (R.I. Super. Apr. 25, 2014); R.I. Council 94 v. Chafee, PC 12-3168, 2014 WL 1743149 (R.I. Super. Apr. 25, 2014); Rhode Island Public Employees' Retiree Coalition v. Chafee, PC 12-3166, 2014 WL 1577496 (R.I. Super. Apr. 16, 2014). In addition, a number of municipal entities who have collective bargaining agreements (CBA) with the Plaintiff employees were joined as defendants and indispensable parties to the various suits (Municipal Defendants). (Hr'g Joint Mem. 20, Stip. Facts.) On December 2, 2014, the Defendants' motion for a jury trial was granted. (Hr'g Joint Mem. 20, Stip. Facts.) The pension cases were eventually consolidated for trial, and a trial date was set for April 20, 2015.

In anticipation of trial, the parties have completed extensive discovery through interrogatories, document requests, and requests for admissions, as well as retained and engaged expert witnesses. The Defendants alone have produced more than 700 gigabytes of electronic

[5] In accordance with Super. R. Civ. P. 25(d), each officially-named State Defendant has been automatically substituted to reflect the succession of the office. Consequently, the named State Defendants in all nine of the underlying pension cases are currently Gina Raimondo, in her capacity as Governor of the State of Rhode Island; Seth Magaziner, in his capacity as General Treasurer; and the ERSRI, by and through the Retirement Board, by and through Seth Magaziner, in his capacity as Chairperson of the Retirement Board; and Frank J. Karpinski, in his capacity as Secretary of the Retirement Board. The cases brought by the Cranston Police and Cranston Firefighters, PC 2014-4343 and PC 2014-4768, also include the City of Cranston, by and through its Finance Director, Robert F. Strom, and its Treasurer, David Capuano, as named Defendants.

documents, consisting of more than 6.5 million emails and more than 325,000 other electronic documents and produced over 4 million pages of documents. (Hr'g Joint Mem. 8.)

As discovery proceeded, so did motion practice. The Court, on March 18, 2015, issued its Decision on the Plaintiffs' Consolidated Motion in Limine as to the Burden of Proof on their Contract Clause Claims and the Defendants' Motion in Limine as to the Burden of Proof for Contract Clause Claims. See In re Pension Cases, 2015 WL 1288188 (R.I. Super. Mar. 18, 2015). In the Decision, the Court followed the well-settled precedents established by the Rhode Island Supreme Court that legislative enactments are presumed to be constitutional and that any party challenging the constitutional validity of a statute has the burden of proving beyond a reasonable doubt that the legislation is unconstitutional. See id. at *2. It was concluded that Contract Clause jurisprudence required that once the State had produced evidence to show that the legislation was reasonable and necessary for an important public purpose, the ultimate burden remained on the Plaintiffs to establish beyond a reasonable doubt that the legislation was not reasonable and necessary. See id. at *5. Dispositive motions were then filed by the parties. (Hr'g Joint Mem. 23, Stip. Facts.) The motions were argued on March 26, 2015 and April 2, 2015. (Hr'g Joint Mem. 23, Stip. Facts.) The State Defendants' motion for summary judgment on the Plaintiffs' conversion claim in the Clifford case was granted. (Hr'g Joint Mem. 23, Stip. Facts.) Decisions on the other motions and cross-motions for summary judgment remain pending. (Hr'g Joint Mem. 23, Stip. Facts.)

As the trial date grew closer and discovery issues remained, a Special Master was appointed to assist the parties in resolving any discovery issues and narrowing or resolving issues for trial. (In re Pension Cases Order Amending Pretrial Order and Appointing a Master, Mar. 9, 2015.) Pursuant to the Order, discovery deadlines and submission of pretrial memoranda were

also addressed. The parties met with the Special Master to narrow or resolve disputed issues. The meeting resurrected the settlement discussions. As a result of this, negotiations began, and an agreement was reached. (Hr'g Joint Mem. 24, Stip. Facts.) The 2015 Settlement Agreement was presented to the Plaintiffs' respective governing bodies to determine whether or not to accept the agreement. (Hr'g Joint Mem. 25, Stip. Facts.) Each Plaintiff union and organization participating in the pension cases conducted its own internal review and authorization of the proposed settlement. (Hr'g Joint Mem. 25, Stip. Facts.) Initially, the leadership of each settling union and organization considered the proposed settlement and determined to support it. (Hr'g Joint Mem. 25, Stip. Facts.) Many of the Plaintiff unions and organizations chose to conduct a vote of the proposed settlement by their membership. (Hr'g Joint Mem. 25, Stip. Facts.) Accordingly, the Plaintiff unions and organizations sent out written materials and/or organized informational meetings on the proposed settlement, which took place between March 19 and March 26, 2015. (Hr'g Joint Mem. 25; Stip. Facts.) A majority of the constituents of the unions and organizations participating in the pension cases who were polled supported the new proposed settlement. (Hr'g Joint Mem. 25, Stip. Facts.) A substantial majority of the constituents in the Plaintiff unions in the 2010 case, the 2012 state employees and teachers' case (docketed as PC 12-3168), the 2012 general municipal MERS case (docketed as PC 12-3167), and the 2012 MERS firefighters' case (docketed as PC 12-3579) supported the proposed settlement, as did a substantial majority of the individual Plaintiff retirees in the separate Clifford case (docketed as KC 14-345). (Hr'g Joint Mem. 25, Stip. Facts.) Ultimately, a majority of the constituents of the Plaintiff unions and organizations approved the proposed settlement, with the exception of the active police represented by the International Brotherhood of Police Officers

(IBPO), the Plaintiffs in the case docketed as PC 12-3169, the Cranston Police, and the Cranston Firefighters.

Consequently, on April 2, 2015, the Special Master submitted his report to the Court, announcing that the parties, with the exception of the Plaintiffs in the case docketed as PC 12-3169 (active police) and the Cranston Police and Firefighters, had reached a settlement which was approved by a majority of the members of the organizations represented in the pension cases. Accordingly, this Court allowed the parties a forty-five-day implementation period. (Hr'g Joint Mem. 26, Stip. Facts.)

C

The Instant Class Action Lawsuit

This action was commenced on April 13, 2015. Shortly after its commencement, the Plaintiffs filed a Motion for Class Certification and Appointment of Class Representatives and Class Counsel. In addition, a Joint Motion for Preliminary Approval of the Proposed Settlement and Notice Procedures was filed.

The motion to certify the Plaintiff Class and the Defendant Class under Super. R. Civ. P. 23(b)(2) was granted on April 16, 2015. Also on April 16, 2015, the Court granted the Joint Motion for Preliminary Approval of the 2015 Settlement Agreement. In doing so, the Court found that the proposed settlement merited an initial presumption of fairness and was within the range of reasonableness for a fair, adequate, and reasonable settlement.

On that date, the Court entered an order directing the parties to provide notice of the class certification and proposed settlement to the Class Members (the Notice). The Notice stated that all written objections must be submitted by May 15, 2015. The Notice was mailed to all the Plaintiff and Defendant Class Members as of April 20, 2015, using the most recent address

provided to the ERSRI by plan participants. (Hr'g Exs. 6, 7.) In total, approximately 61,000 notices were mailed, of which approximately 1500 were returned for an incorrect mailing address. (Hr'g Joint Mem. 30, Stip. Facts.) In addition, the Notice was published in the Providence Journal on April 27, 2015. (Hr'g Ex. 9.) Additional information concerning the proposed settlement was also made available on a website, http://content.ersri.org/settlement (the Settlement Website), which was listed in the Notice.

D

The Terms of the 2015 Settlement Agreement

The 2015 Settlement Agreement (Hr'g Ex. 10) is intended to resolve all issues relating to the Plaintiffs' constitutional challenges to the changes to the retirement system made in 2009, 2010, and in 2011. The parties have agreed that the terms of the proposed settlement will be effectuated through the enactment of new legislation to amend RIRSA. The terms of the proposed settlement, which are to be effective July 1, 2015 pending legislative enactment, are summarized as follows:

1. One-time COLA: A one-time COLA payment of 2% applied to the first $25,000 of the pension benefit and that amount added to the base benefit will be paid to retirees (or their beneficiaries) who participate in a COLA program and who retired on or before June 30, 2012 as soon as administratively reasonable following the passage of the legislation based on the amount of benefit payable on the effective date of the legislation.

2. Annual COLAs: For funds that are not already 80% funded, the settlement shortens the time intervals between suspended COLA payments from once every five years to once every four years. The settlement also improves the COLA limitation for current retirees whose COLA is suspended. The settlement also requires a more favorable indexing of COLA Cap for all current and future retirees. The settlement also changes the COLA calculation to one more likely to produce a positive number and dictates that the COLA formula will be calculated annually, regardless of funding level, and when paid, the COLA will be compounded for all receiving a COLA.

3. Stipend: Current retirees (or their beneficiaries) who have or will have retired on or before June 30, 2015 will receive two payments: (1) a one-time $500 stipend (not added

to the COLA base) within sixty days of the enactment of the legislation approving the terms of the settlement; and (2) a one-time $500 stipend payable one year later.

4. For State Workers, Teachers, and General MERS, the settlement (1) adds another calculation to reduce the minimum retirement age; (2) improves the available accrual rate for employees with twenty years or more of service as of June 30, 2012; (3) requires increased contributions by the employer to the Defined Contribution Plan for employees with ten or more years of service (but less than twenty) as of June 30, 2012; (4) waives the administration fee for any employees participating in the Defined Contribution Plan who make $35,000 or less; and (5) adds another calculation designed to limit the impact of the "anti-spiking" rule imposed by the RIRSA on part-time employees.

5. For MERS Firefighters (excluding Cranston Firefighters), the settlement (1) lowers the age and service requirements for retirement; (2) increases the accrual rate for Firefighters who retire at age fifty-seven with thirty years of service.

6. For State Correctional Officers, the settlement increases the accrual rate for correctional officers with fewer than twenty-five years of service as of June 30, 2012.

7. The settlement reduces the impact of an early retirement.

8. The settlement allows Municipalities to "re-amortize"; that is, partially refinance, to be able to pay for the increased cost of the settlement.

Other than the proposed changes, the RIRSA shall remain the same.

E

The Written Objections to the Proposed Settlement

In accordance with the Notice, the Court received approximately 400 written objections to the 2015 Settlement Agreement from Class Members.[6] In addition, sixty-nine Class Members requested the opportunity to address the Court at the fairness hearing.

The Objectors raise a number of procedural and substantive objections to the 2015 Settlement Agreement. The Objections are briefly summarized and categorized below.[7]

[6] Several objections were untimely but were still reviewed and considered by the Court.

[7] This Decision will first address objections that apply across the subclasses generally, then address those objections raised by particular groups.

1

General Objections

a

Contract Rights to Pension Benefits

The majority of all Objectors argue that the 2015 Settlement Agreement is unfair because they have a contractual right to the retirement benefits promised by the State once they became "vested." In addition, these Objectors contend it was unfair for the State to require that a certain portion of their paycheck contribute to the pension system only for the State to unilaterally change the terms of their pension benefits after the Objectors had vested or retired. In essence, the Objectors reiterate many of the constitutional arguments put forth by the Plaintiffs in the underlying pension cases, including, inter alia, that the Enactments violate the Contract Clause. In support of their argument, some Objectors rely on recent cases from other jurisdictions, namely the Illinois Supreme Court decision in In re Pension Reform Litig., 2015 IL 118585 (Ill. 2015), and the Oregon Supreme Court Decision in Moro v. State, 2015 WL 1955591 (Or. Apr. 30, 2015).

b

Challenges to the Voting Process

Many challenge issues relating to the settlement negotiation and approval process. Specifically, these Objectors argue that the vote to approve the 2015 Settlement Agreement was inherently unfair since it was rushed, and some did not have the opportunity to vote. These Objectors also claim that the settlement negotiations were unfair because this Court's March 17, 2015 Confidentiality Order prevented them from knowing and considering the settlement terms

prior to the approval vote. Also, some Objectors claim that Retired Chief Justice Williams's role in negotiating the settlement was improper.

c

The Severity of the Pension Crisis

Another area of contention raised by the Objectors concerns the State's position regarding the severity of the State's financial distress following the Great Recession. In effect, these Objectors claim that the State's financial distress was not so great as to warrant such drastic changes to their promised benefits.

d

Disparate Impact

Some Objectors aver that the settlement negatively impacts certain groups disproportionately. For example, some Objectors reference the fact that while employees with twenty plus years of service will be returned to a defined benefit plan under the terms of the 2015 Settlement Agreement, the same benefit does not apply to those who are eligible to retire due to age but who did not reach the threshold of twenty years of service. Other groups that claim they are disproportionately impacted by the 2015 Settlement Agreement include: (1) those who retired close to the twenty years of service threshold; (2) those who already achieved their maximum accrual rate; (3) those that have been working in state service for over twenty years but who do not have twenty "years of service credit" due to the fact they took time off or worked part-time to care for family members. Finally, some retirees, including a group of East Greenwich retired police officers, challenge the fact that the 2015 Settlement Agreement includes all those who are receiving a retirement benefit under any MERS unit regardless of the individual community's ability to pay the promised benefits.

e

Due Process Concerns/ Desire to "Opt Out" of Class Action

Other Objectors take issue with the 2015 Settlement Agreement because they were not part of the underlying pension cases and/or did not have a seat at the settlement bargaining table. Specifically, nonunion employees and a group of Woonsocket Police Retirees contend that their interests were not adequately represented during the settlement negotiations. In this regard, these Objectors claim that their due process rights were not adequately protected. Accordingly, they have expressed their desire to "opt out" of the current Class Action to pursue their individual suits.

2

Specific Objections

a

Retiree Objections: Elimination of the COLA and the SSA Option

Numerous retiree Objectors claim that the 2015 Settlement Agreement should not be approved because the reduction of their COLA[8] has a devastating impact on their financial situation. These retiree Objectors contend that they have a constitutional right to the 3% COLA. As such, these Objectors claim that the settlement terms with respect to the COLA, in particular the payment of the $500 stipend, does not fairly or adequately address the devastating impact of the loss of the full three percent annual COLA. Many of these Objectors stress that the federal

[8] The intent of the COLA was to maintain the real value of a retiree's pension in light of changes to the cost of living occurring over the life of retirement. However, RIRSA suspended all COLAs until they are funded to eighty percent, which is estimated to take at least sixteen years. Under the statute, for all public employees with a suspended COLA, COLAs are to be calculated and awarded at five year intervals during the suspension period. G. L. 1956 §§ 16-16-40(e), 36-10-35(g), 45-21-52(c). Once COLAs benefits are reinstated after the eighty percent funding threshold is met, RIRSA would reduce the COLA from three percent compounded to an adjustable formula that applies only to the first $25,000 of a person's retirement allowance.

social security windfall elimination provision,[9] 42 U.S.C. § 415(a)(7), has also reduced their retirement benefits and compounded the negative impact of RIRSA.

The Objectors maintain that the reduction of the COLA has particularly interfered with the expectations of those who selected the so-called SSA Option upon retirement. Simply put, the SSA Option refers to a retirement plan offered to some employees whereby the employee would receive an increased pension payment until the age of sixty-two when these payments would be substantially reduced. See generally § 36-10-10.3.[10] According to many Objectors, they selected the SSA Option relying on the fact that the 3% COLA would ensure that the reduction in payments at age sixty-two would not be as drastic.

[9] "The Windfall Elimination Provision applies to retirees who are eligible for both Social Security old-age benefits and benefits under another pension plan. Congress wanted to prevent such retirees from receiving disproportionately high Social Security benefits." Newton v. Shalala, 874 F. Supp. 296, 298 (D. Or. 1994) aff'd sub nom. Newton v. Sec'y of Health & Human Servs., 70 F.3d 1114 (9th Cir. 1995).

[10] Section 36-10-10.3 reads as follows:

> "(a) In lieu of the lifetime service retirement allowance, a vested member who has completed at least ten (10) years of contributory service on or before July 1, 2005 who retires in accordance with §§ 16-16-12, 36-10-9 and 36-10-9.2 may choose an optional form of retirement benefit known as the social security supplemental option.
> "(b) This option provides for the payment of a larger benefit before the attainment of age sixty-two (62) and a reduced amount thereafter. The reduced amount shall be equal to the benefit before age sixty-two (62), including cost of living increases, minus the member's estimated social security benefit payable at age sixty-two (62). Under this option the benefits payable before and after the attainment of age sixty-two (62) will be actuarially determined to be equivalent to the lifetime service retirement allowance as determined in § 36-10-10.
> "(c) Election of this supplemental option shall be applicable only to those who elect the service retirement allowance determined in accordance with Schedule A as provided by § 36-10-10."

b

The Woonsocket Police Retirees

The Woonsocket Police Retirees argue that the settlement is unfair to them because active police members represented by their respective unions were excluded from the Class Action and are continuing to challenge the Enactments. The Woonsocket Police Retirees argue that if the active Woonsocket Police are successful, the general retirement fund will be diminished making it that much more difficult for the Woonsocket fund to reach the 80% funding threshold for the return of the COLA.

At the Fairness Hearing, the Woonsocket Police Retirees also specifically asked to "opt out" of the current settlement. This group is currently pursuing a separate suit against the City of Woonsocket regarding the changes to their healthcare benefits, in a case docketed as PC-2013-3287. They argue they should be able to litigate their challenges to the change in their COLA in that case as well. These Objectors also contend that their interests are not adequately represented because they had mistakenly believed their interests were being represented by the City of Woonsocket Police Union as one of the local affiliates of the IBPO, who are the Plaintiffs in the case docketed as PC 12-3169.

c

The Clifford Plaintiffs

The Clifford Plaintiffs assert that the State has failed to provide specific numbers as to how much the retirees stand to "lose" in benefits under the terms of the 2015 Settlement Agreement. In addition, they concur with other retirees that the financial burden placed on the retirees and their families under the 2015 Settlement Agreement is too great to warrant Court

approval. Finally, they argue that, by virtue of their retired status, they are unable to make up for the loss of benefits under the proposed settlement.

F

The Fairness Hearing

The Fairness Hearing began on May 20, 2015 and continued over the course of five days. Counsel were present along with several Class Members. The Hearing began with the parties summarizing their respective positions. Thereafter, the Court heard from six witnesses, all of whom were vigorously cross-examined by Class Members, either individually or through counsel.[11]

The Plaintiffs presented affidavits of the Class Representatives, who attested to their respective status and qualifications as a Class Member, the fact that the passage of the challenged Enactments negatively affected them as individuals, and their respective positions on the proposed settlement.[12] All testified that they believed that the 2015 Settlement Agreement is fair, reasonable, and adequate to resolve the Plaintiffs' claims.

Robert A. Walsh Jr., the Executive Director of the National Education Association of Rhode Island (NEARI), then testified in support of the 2015 Settlement Agreement. He believes that the 2015 Settlement Agreement is fair, adequate, and reasonable. The NEARI is a named Plaintiff in the instant action and a representational plaintiff in three of the underlying pension cases. The membership in NEARI includes 10,000 active employees and 2000 retirees. Mr.

[11] At the hearing, two different groups of Objectors were represented by counsel: the first, a number of the so-called Clifford Plaintiffs who were individual retirees who had been the Plaintiffs in the Clifford case docketed as KC 14-0345, and the second, the Woonsocket Police Retirees.

[12] The affidavits from Class Representatives Michael Connolly, Kevin Schnell, John Lavery, Amy Mullen, Susan Verdon, Raymond Furtado, and James Richards were admitted into evidence as full exhibits.

Walsh did not represent the retirees' interest in this suit. He reviewed the history of NEARI's involvement in the pension cases, the travel of the cases through the failed mediation in 2014, and the final negotiations resulting in the 2015 Settlement Agreement. He characterized the negotiation processes as highly contested. Mr. Walsh is very familiar with the terms of the Enactments and now recommends the 2015 Settlement Agreement for several reasons. These reasons include the immediate and certain benefits provided to the Plaintiff Class as opposed to the uncertainty of continuing litigation. He explained that the high burden of proof allocated to the Plaintiffs as well as the expected cost of litigation, estimated at $50,000-$100,000 per week for a trial, weighed heavily in favor of settlement. In addition, the unpredictability of juries was another significant factor considered. He and the leadership of the NEARI carefully considered the best interest of the parties. He believes that the terms of the 2015 Settlement Agreement constituted the best attainable result for the Plaintiffs, either through negotiation or further litigation. While acknowledging the concerns and the difficulties experienced by the members of the Plaintiff Class, he noted that the outcome could be "fair and heartbreaking at the same time."

Mr. Walsh was extensively cross-examined by counsel and Class Members concerning the fairness, adequacy, and reasonableness of the 2015 Settlement Agreement. He answered questions concerning discrete issues relating to the retirement issues of different subsets of employees. Mr. Walsh maintained that during negotiations, he had attempted to have all active employees with at least ten years of contributory service returned to the defined benefit plan. This position was unattainable. Mr. Walsh explained that only those twenty-year veterans of state service were able to remain in the defined benefit system because of the cost. This position, he explained, was further justified because the retirement system rewards longevity of service.

Next, Roger Boudreau testified in his capacity as a Class Representative and the President of the Rhode Island Public Employees' Retiree Coalition (RIPERC) and Rhode Island American Federation of Teachers/Retired Local 8037 (AFT/R), who are named Plaintiffs in the instant Class Action. Mr. Boudreau testified that he supports the 2015 Settlement Agreement and that it is fair, adequate, and reasonable. Mr. Boudreau testified that he is a member of the Retiree Sub-class. He gave a history of the RIPERC organization and its role in challenging RIRSA in the underlying retiree lawsuit, PC No. 12-3166. Mr. Boudreau explained that RIPERC was formed as a coalition of organizations representing retired state or municipal employees, including public safety, and retired public school teachers. Mr. Boudreau asserted that shortly after the commencement of the 2012 case challenging RIRSA, RIPERC had conducted outreach to every retired public employee to get involved by way of sending out mailings to all non-member retirees using information received from the Retirement Board and through the placement of ads in every local newspaper in December 2012.

Mr. Boudreau explained that the retirees' main concerns during the negotiation were the suspension of the COLA; the uncertainty over long-term litigation; retirees' financial situations as a result of the suspended COLA; and the new formula for calculating the COLA based on the performance of the various pension funds. Mr. Boudreau concluded that the 2015 Settlement Agreement would be beneficial to retirees because it reduced the COLA suspension period from five to four years and changed the formula for calculating the COLA from one based entirely on fund performance to one that was based half on fund performance and half on the inflation rate as measured by the CPI-U. In addition, he noted that the 2015 Settlement Agreement provided an immediate payment of a one-time 2% COLA on the first $25,000 of an individual retiree's pension benefit. Mr. Boudreau expounded upon the decision to recommend both the 2014

Settlement Agreement and the 2015 Settlement Agreement to RIPERC membership and the voting process for each settlement. Mr. Boudreau explained that due to time concerns, the voting on the 2015 Settlement Agreement could not be conducted through a mail-in ballot. RIPERC conducted a meeting for vote purposes which was attended by approximately 2500 members. Mr. Boudreau reported that the result of the in-meeting vote on the 2015 Settlement Agreement was that 75.3% of the members in attendance voted to approve the settlement and 24.7% voted to reject the settlement.

On cross-examination, Objectors' counsel and Class Members questioned Mr. Boudreau regarding the process and procedure by which the vote to approve the 2015 Settlement Agreement had been reached. The Objectors emphasized that the vote involved approximately 2500 retirees out of a Retiree Sub-class that included an estimated 27,000 members. In addition, the efficacy of the efforts made by RIPERC to reach retired non-members in December 2012 was called into question. Finally, some questioned whether RIPERC adequately represented the interests of all retirees during the negotiations to reach the instant 2015 Settlement Agreement.

The Defendants presented Joseph Newton as a witness.[13] Mr. Newton is an actuary with Gabriel Roeder Smith & Company.[14] Mr. Newton testified concerning his firm's actuarial analysis of the various pension systems leading to the enactment of RIRSA and of the actuarial analysis and cost estimates of the 2015 Settlement Agreement. Mr. Newton testified as to some of the actuarial methods and assumptions underlying his firm's actuarial analysis of the 2015 Settlement Agreement and confirmed that the additional cost of the settlement to the State is $30.8 million, but that the settlement should still preserve about 90% of the anticipated savings

[13] Mr. Newton's testimony was heard out of order as the first witness during the Hearing, due to a scheduling conflict, pursuant to an agreement between the Class Action Parties made with the Court's permission.

[14] Mr. Newton was accepted as an expert witness under R.I. R. Evid. 702.

from the passage of RIRSA. On cross-examination, Objectors' counsel and Class Members questioned Mr. Newton concerning the assumptions made to reach the conclusions in the actuarial analysis. In particular, Retiree Class Members expressed their concerns that with the average age of the State retiree estimated to be 72.9 years old, the vast majority of retirees will not survive to see the plans reach the 80% funding level required to reinstate the COLA. Mr. Newton acknowledged that he had not taken inflation into account in making his calculations and also that he could not be certain when the various pension funds would reach the 80% funding level.

Mark Dingley, Special Counsel for the Governor, was presented as the next witness.[15] Mr. Dingley, aided by a PowerPoint presentation, testified at great length, over the course of several days. Initially, he testified about the harsh economic circumstances Rhode Island has endured, resulting in the severe unfunded liability problem facing the various pension funds prior to the passage of RIRSA. He reviewed the history of the pension changes beginning in 2005, affecting non-vested employees. He further explained that the 2009 Enactment as well as the 2010 Enactment were unsuccessful in reducing the high unfunded liabilities of the pension funds. In addition to the 2009 and 2010 Enactments, Mr. Dingley noted that alternatives were considered by the Pension Advisory Committee and the General Assembly prior to the enactment of RIRSA. These alternatives resulted in the changes made by RIRSA. Mr. Dingley, a supporter of the 2015 Settlement Agreement, testified about the terms of the 2015 Settlement Agreement and its expected positive financial impact on the State and municipalities in the

[15] Mr. Dingley was designated by the State Defendants as a witness under Super. R. Civ. P. 30(b)(6), which permits a governmental organization to designate one or more persons to testify on its behalf on all matters known or reasonably available to the organization.

MERS system. He believes that the 2015 Settlement Agreement is fair, adequate, and reasonable.

Mr. Dingley was then subjected to rigorous and lengthy cross-examination addressing multiple issues over the course of several hours. Counsel, as well as Class Members, examined Mr. Dingley. Counsel for the Clifford Plaintiffs questioned some of the actuarial assumptions made in the studies relied upon by the General Assembly in enacting RIRSA. It was noted that the State should have had the information about the unfunded liability problem for years prior to the actual enactment of RIRSA.

Next, counsel for the Woonsocket Police Retirees examined Mr. Dingley, noting that most of the MERS plans are approximately 70% funded, unlike the plans for State employees and teachers. In particular, it was emphasized that the Woonsocket Police Retirees have historically been underpaid compared to their counterparts in other municipalities and that their benefits on retirement were bargained for with the understanding that COLAs would make up for the lower salaries while active as well as the promise of health benefits, which are the subject of another lawsuit pending in the Superior Court. Mr. Dingley asserted that during the negotiation process, they had heard from nearly every municipality through their respective elected representatives with their concerns about the 2015 Settlement Agreement and its effect on their contribution amounts. He explained that MERS was designed as a uniform system that would apply the same to all municipal employees. Several retired police officers expressed their objections to being included in the 2015 Settlement Agreement when the active police involved in one of the underlying pension cases, docketed as PC 12-3169, rejected the proposed settlement and are continuing forward in litigation. Accordingly, they questioned Mr. Dingley as to the potential impact of the outcome of the active police litigation on police retirees.

Several Class Members also questioned Mr. Dingley concerning the impact of the 2015 Settlement Agreement on those general municipal employees who achieved the maximum accrual rate but are nonetheless required to contribute into the pension system. Other Class Members questioned Mr. Dingley as to why long-time active employees who may be eligible to retire by reason of age but not by years of service were not permitted to transfer back to the defined benefit plan under the 2015 Settlement Agreement. Mr. Dingley explained that it was determined during the negotiations that moving those employees who had not yet achieved twenty years of contributory service back to the defined benefit plan would have been prohibitively expensive.

Mr. Dingley was cross-examined about the fairness of retroactively changing the retirement benefits for retirees who had fully performed their service to the State or their respective municipal employers and noted that many retirees may not survive until the plans are expected to reach 80% funding. Mr. Dingley stressed that many of the benefits from the 2015 Settlement Agreement were front-loaded because of the concern over retirees' average life expectancy.

Following Mr. Dingley's testimony, Stephen Alfred, the Town Manager for the Town of South Kingstown and one of the Class Representatives for the Municipal Defendant Class, testified. Mr. Alfred spoke in favor of the 2015 Settlement Agreement. He stated his belief that the 2015 Settlement Agreement is fair, adequate, and reasonable. Mr. Alfred testified as to the typicality of the Town's claims and defenses compared to those of the other Municipal Defendants. He noted the concerns of the municipalities in the event RIRSA had not been enacted. Specifically, he projected the required contributions would have doubled over the course of the next few years. Moreover, he maintained that an increase in contributions would

have severely strained the financial resources of many, if not all, municipalities. In South Kingstown, for example, without RIRSA, a homeowner's real estate taxes would have increased by $400 to meet the required contribution level. The 2015 Settlement Agreement extinguished the potential for an adverse judgment in the underlying pension cases, which many of the Municipal Defendants would not have been able to pay, he explained, further noting that the pending litigation had the potential to affect the municipalities' bond ratings with credit agencies. Finally, Mr. Alfred asserted that not a single municipal entity has registered an objection to the 2015 Settlement Agreement.

The last witness who testified was Patrick Marr, the Chief Operating Officer and Deputy Treasurer from the Office of the General Treasurer. Mr. Marr testified that the ERSRI maintained records for all active employees, inactive employees, and retirees. The ERSRI used software to update and validate the address information if any member had, for example, filed a change of address form with the United States Postal Service in the last year. In total, Mr. Marr estimated that approximately 60,000 notices (Hr'g Ex. 6) were mailed to Plaintiff Class Members with approximately 1800 returned as undeliverable. In order to reach the Municipal Class members, notices (Hr'g Ex. 7) were mailed to 575 individuals identified through the ERSRI as being Finance Officers for the cities and towns. Mr. Marr also testified that in addition to mailing the notice, it was published in the Providence Journal. (Hr'g Ex. 9.) Finally, ERSRI made changes to its website to ensure additional notice. This included a pop-up notice concerning the settlement for any visitors to the website; Mr. Marr estimated that approximately 2000 individual visitors went to the settlement website.

At the close of testimony, Class Members who had timely filed a notice of their request to speak addressed the Court.[16] The Class Members who addressed the Court included several Woonsocket Police Retiree Objectors who testified that that they had been informed by their local union representative from the IBPO that police retiree interests were also being represented by the IBPO in the underlying case docketed as PC 12-3169, and did not realize until recently that the IBPO in that case only represented active police. The Woonsocket Police Retirees also testified that it was the usual practice for the local union to assist retired police officers with any concerns and issues they had concerning their benefits after their retirement. On cross-examination, the Woonsocket Police Retirees acknowledged that upon retirement, they no longer paid dues to the IBPO and that they had not made any effort to contact the IBPO's attorney directly regarding whether the IBPO was representing retirees as well as active police.

Next, a group of the Clifford Plaintiff retirees individually expressed their concerns about the impact the loss of the COLA would have on their individual financial situations. Many noted that it appeared retirees are being asked to bear the brunt of the financial burden for the State's underfunding of its pension systems. Others also expressed their objections to the 2015 Settlement Agreement's voting process, which did not give the vast majority of the Class Members any opportunity to vote. These Objectors also contested the fact that they were being "forced" into the Plaintiff Class against their will since they had no opportunity to opt out. Other

[16] The Court received timely notice of a request to address the Court from sixty-nine Class Members, but only thirty-five Class Members took the opportunity to express their concerns. These Class Members' individual opportunity to address the Court took place over the course of two days. The individual Class Members who addressed the Court were Mary Auclair, Francesca Bedell, William Bilotti, John Breguet, Elizabeth DelPadre, Marilyn DiStefano, Joanne Fonseca, Laurence Hall, William Higgins, Janet Keller, Brian Kennedy, John Kingston, William Korab, Roy Hiltermann, Thomas O'Connell, Donna Lico, Charlene Lima, Howard Lisnoff, Christopher Lyman, Genevieve Martin, Carol Mayhew, Kenneth O'Grady, Clifton Peasley, Geoffrey Rinn, Ann Quinn, Jane Roche, William Shallcross, Ramona Skelly, Richard Swanson, Marisa White, Tracylee Colvin, David DesJarlais, Lee Grassi, Thomas Hynes, and Paul Kulpa.

Class Members cited to court decisions from other states protecting the contractual rights of public employees in their pensions and expressing the opinion that the State should honor the promises it had made to its retirees. A few active employee Class Members also spoke, expressing their objections to being forced into the Plaintiff Class without an opportunity to vote on the settlement and the fact that they had made life choices based on their understanding of the benefits that would be provided to them upon retirement. One Class Member expressed the view that the small number of objections received by the Court had more to do with the lack of information regarding the settlement, and the representation of the union leaders that the settlement was necessary and a "done deal" where objections would be futile. Another Class Member also objected on behalf of the non-union employees who make up more than half of the Plaintiff Class, who were not given prior notice of the litigation or a chance to vote and were, moreover, not officially represented at the negotiations leading to the proposed settlement.

Following the conclusion of the individual Objectors' presentation, the Court heard closing arguments from Objectors' counsel and from counsel for the Plaintiffs and Defendants and reserved decision.

II

Analysis

A

Class Certification

Many Objectors have challenged the propriety of the Class Certification particularly as it relates to the issue of the adequacy of class representation. A discussion of this issue is critical because the Class Certification occurred after the 2015 Settlement Agreement was negotiated and this Class Action was filed for settlement purposes only. While filing a Class Action for

settlement purposes only is not "inherently wrong," the Court must "'pay undiluted, even heightened'" attention to the class certification in this settlement context. Hanlon v. Chrysler Corp., 150 F.3d 1011, 1019 (9th Cir. 1998) (quoting Amchem Products, Inc. v. Windsor, 521 U.S. 591, 620 (1997)). Notwithstanding this heightened discussion, this Court will initially observe that the settlement Class Members are so numerous that joinder is impractical and that there are questions of law and fact common to the Class and Sub-classes.

The crux of the Objectors' argument is that their rights were violated because they were not represented or part of the underlying settlement negotiations, and/or did not have the option to "opt out" of the current Class Action suit.[17] Class actions, by their very nature, assume that there are absent class members. See 3 William B. Rubenstein, Newberg on Class Actions § 9:1 at 364 (5th ed. 2013) ("A class action lawsuit, however, is a form of representative litigation."); see also Phillips Petroleum Co. v. Shutts, 472 U.S. 797, 810 (1985) ("Unlike a defendant in a normal civil suit, an absent class-action plaintiff is not required to do anything. He may sit back and allow the litigation to run its course, content in knowing that there are safeguards provided for his protection."). Although "[o]rdinarily, such vicarious representation would violate . . . due process . . . the class action serves as an exception to this maxim so long as the procedural rules regulating class actions afford absent class members sufficient protection." 1 William B. Rubenstein, Newberg on Class Actions § 1:1 at 2 (5th ed. 2013).

Thus, to those who argue that their rights were violated because they were not represented at the negotiation table, the class action procedures ensure that the due process rights of class members are protected. Specifically, "Rule 23(a)(4) requires that 'representative parties

[17] To the extent that the Objectors argue that they were entitled to a "seat at the negotiation table," the Court finds no merit in that argument as those individuals were not parties to the underlying litigation. To the extent the argument raises issues of due process in class actions, the Court will address them.

will fairly and adequately protect the interests of the class' . . . This requirement protects the due-process interests of unnamed class members, who are bound by any judgment in the action." Lowery v. City of Albuquerque, 273 F.R.D. 668, 680 (D.N.M. 2011); see also Lile v. Simmons, 143 F. Supp. 2d 1267, 1277 (D. Kan. 2001) ("Due process requires that the Court 'stringently' apply the competent representation requirement because class members are bound by the judgment (unless they opt out), even though they may not actually be aware of the proceedings."). Accordingly, "there has been a failure of due process only in those cases where it cannot be said that the procedure adopted fairly insures the protection of the interests of absent parties who are to be bound by it." Hansberry v. Lee, 311 U.S. 32, 42 (1940).

Additionally, the Class was certified pursuant to Rule 23(b)(2) and "'members of a class certified under Rule 23(b)(1) or (2) cannot opt out of the action, while members of a class certified under Rule 23(b)(3) are entitled to opt out and pursue individual suits.'" DeCesare, 852 A.2d at 490 (quoting Borcherding-Dittloff v. Transworld Sys., Inc., 185 F.R.D. 558, 562 (W.D. Wis. 1999)). The propriety of certification pursuant to 23(b)(2) was addressed in the Court's April 16, 2015 Decision, and the Court reaffirms its conclusions here. In general, courts prefer to certify classes under either Rule 23(b)(1) or (b)(2), rather than under Rule 23(b)(3), "so as to avoid unnecessary inconsistencies and compromises in future litigation." DeBoer v. Mellon Mortg. Co., 64 F.3d 1171, 1175 (8th Cir. 1995). Moreover, due process does not require that the Objectors be given the opportunity to "opt out" of a Rule 23(b)(2) class action settlement:

> "'The due process clause of the Constitution is satisfied when a Rule 23(b)(2) class action is settled without providing objectors a means of opting out because the objectors are (1) adequately represented by the named plaintiffs, (2) represented by an attorney who is qualified, (3) provided with notice of the proposed settlement, (4) given an opportunity to object to the settlement, and (5) assured that the settlement will not take effect unless the trial judge-after analyzing the facts and law of the case and considering

> all objections to the proposed settlement-determines it to be fair, adequate, and reasonable.'" Kincade v. Gen. Tire & Rubber Co., 635 F.2d 501, 507-08 (5th Cir. 1981) aff'd without opinion, 893 F.2d 347 (11th Cir. 1989).

Since, as explained infra, all the above protections are present in the instant case, the Objectors have not been deprived of their due process rights. The Settlement Classes satisfy the prerequisites of Rule 23(b)(2). The Enactments, as well as the relief sought by the Plaintiffs in the underlying actions, apply to the Class and Sub-classes as a whole. Finally, the enhancements produced by the 2015 Settlement Agreement do not justify converting this action to one governed by Rule 23(b)(3). Non-union employees were affected by the Enactments in the same way as the union members; therefore, their interests were adequately represented at the negotiation table, even if they did not have a direct representative present. In addition, individual non-union employees had the opportunity to challenge the constitutionality of the Enactments but chose not to do so.

The Court therefore confirms the certification of the Plaintiff and Defendant Settlement Classes pursuant to Rule 23(b)(2). The designation of the classes has been amended to accurately reflect the Class Action Parties' Settlement Agreement as follows.

The Plaintiff Class, as certified, is defined as:

> "All persons (and/or their beneficiaries) who, on or before July 1, 2015, are receiving benefits or are participating in the State Employees, Teachers, or Municipal Employees' retirement plans administered by ERSRI and all future employees, excepting only those individuals who on July 1, 2015 are participating in a municipal retirement system administered by ERSRI for municipal police officers in any municipality and/or for fire personnel of the City of Cranston."

Also certified are the Plaintiff Sub-classes:

1. State Employees and Teachers: Participants in the Teachers and State Employees Retirement System (ERS) who are employed on or before July 1, 2015, but who have not retired as of June 30, 2015, and all future employees;

2. Participants in the Municipal Employees Retirement System (MERS), other than police or fire units: Participants in MERS, other than police or fire units, employed on or before July 1, 2015, but who have not retired as of June 30, 2015, and all future employees;

3. Participants in all fire MERS units, except for fire personnel of Cranston: Participants in all fire MERS units, except for fire personnel of Cranston, employed on or before July 1, 2015 but who have not retired as of June 30, 2015, and all future employees;

4. Retirees: All retired members and beneficiaries of retired members who retired on or before June 30, 2015, who are receiving a retirement benefit under ERS or any MERS unit.

In addition, the Court certifies the following Defendant Class: all municipal entities that participate in MERS and all municipal entities that employ teachers who participate in the State employees and teachers' ERS.

With respect to the requirement of adequate protection for absent class members, the Objectors also stress the fact that the 2015 Settlement Agreement was negotiated prior to the formal Class Certification. Indeed, as the Seventh Circuit has noted, "where notice of the class action is, again as in this case, sent simultaneously with the notice of the settlement itself, the class members are presented with what looks like a fait accompli." Mars Steel Corp. v. Cont'l Illinois Nat'l Bank & Trust Co. of Chicago, 834 F.2d 677, 680-81 (7th Cir. 1987). Accordingly, "[s]everal circuits have held that settlement approval that takes place prior to formal class certification requires a higher standard of fairness." Hanlon v. Chrysler Corp., 150 F.3d 1011, 1026 (9th Cir. 1998); see also Weinberger v. Kendrick, 698 F.2d 61, 73 (2d Cir. 1982). Yet, while courts have recognized the need for greater scrutiny for settlements reached prior to formal class certification, courts that have addressed this issue have held "that the absence of class

certification prior to the notice of the settlement is not an absolute bar to approval. . . ." Weinberger, 698 F.2d at 73; see also Mars Steel Corp., 834 F.2d at 681 ("[E]very court that has addressed the question, including our own, has declined to hold that the procedure is a per se violation of Rule 23 and therefore requires that the settlement automatically be disapproved.").

Moreover, the present case is distinguishable from cases that typically apply this more searching scrutiny to such settlements. Specifically, "[t]he dangers of collusion between class counsel and the defendant, as well as the need for additional protections when the settlement is not negotiated by a court-designated class representative, weigh in favor of a more probing inquiry than may normally be required under Rule 23(e)." Hanlon, 150 F.3d at 1026; see also Manual for Complex Litigation, § 21.612 (4th ed. 2004) By contrast, in the present suit, the relative merits of the parties' cases have been thoroughly vetted through the adversarial process. From February 2014 to March 2015, the parties exchanged millions of documents in discovery, and a Special Master was appointed to assist the parties in navigating this complex and voluminous discovery process. Additionally, the Court has considered and ruled on a number of issues relative to the underlying pension cases, including motions to dismiss. The appropriate standard of review has been determined as has the issue of consolidation of the pension cases. In addition, the parties have briefed and argued a number of dispositive motions pertaining to the constitutional challenges to the pension reform laws. This Court is mindful that "the absence of any indication of collusion, the protracted settlement negotiations, the ability and experience of plaintiffs' counsel, the extensive discovery preceding settlement and the fact that counsel for all parties . . . had access to materials produced in discovery . . . are important indicia of the propriety of settlement negotiations." See Weinberger, 698 F.2d at 74; see also In re PaineWebber Ltd. P'ships Litig., 171 F.R.D. 104, 125 (S.D.N.Y. 1997) aff'd sub nom. In re

PaineWebber Inc. Ltd. P'ships Litig., 117 F.3d 721 (2d Cir. 1997) ("So long as the integrity of the arm's length negotiation process is preserved, however, a strong initial presumption of fairness attaches to the proposed settlement. . . .").

In addition, while the present settlement was negotiated before the formal class certification, it represents a second attempt of the parties to resolve the current dispute. In 2013, the litigants entered into court-ordered mediation with the FMCS. In February 2014, after thirteen months of mediation with FMCS, the parties reached an agreement. While the 2014 Settlement Agreement failed because it was not approved by one group, the 2015 Settlement Agreement evolved out of the 2014 settlement discussions. Thus, the parties had the opportunity to carefully consider the strengths of their respective positions and the terms of the settlement. See Wal-Mart Stores, Inc. v. Visa U.S.A., Inc., 396 F.3d 96, 116 (2d Cir. 2005) ("A 'presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery.'" (quoting Manual for Complex Litigation, Third, § 30.42 (1995))); 7B C. Wright & A. Miller, Federal Practice and Procedure, § 1797.1 (3d ed. 2005) ("The court may look at several factors to assure itself as to the adequacy of representation. These include things such as how well informed the plaintiffs' counsel were who negotiated the settlement and whether the settlement negotiations were conducted at arm's length.") (footnotes omitted).

Although the present suit is factually distinguishable from many cases that typically apply heightened scrutiny to settlement negotiations prior to formal class certification, the two primary factors relevant to adequacy of representation will be addressed: (1) whether the Associations' attorneys are qualified and experienced, and (2) whether conflicts of interest exist between the named representatives and the class members. See Gen. Tel. Co. of the SW. v.

Falcon, 457 U.S. 147 (1982). The Court will observe that all counsel were accomplished trial attorneys. Individually and collectively, they are among the elite. In addition to the select group of attorneys licensed in this state, this case included attorneys from highly-regarded national firms. Notwithstanding counsel's qualifications, some Objectors specifically contest the adequacy of Attorneys Carly Iafrate and Maame Gyamfi as Class Counsel for the Retiree Subclass. Attorney Iafrate has been a member of the Rhode Island Bar for fifteen years and has extensive expertise in the areas of labor law and constitutional law. She has appeared before this Court numerous times over the past several years in many cases. This Court has personally witnessed her ability to argue and analyze complex legal issues. This Court concludes without hesitation that her experience and aptitude are superior. In addition, Attorney Gyamfi, admitted pro hac vice, has experience in the area of labor law. The adequacy of counsel element of class certification is "easily met [] with members of the bar in good standing typically deemed qualified and competent to represent a class absent evidence to the contrary." William B. Rubenstein, Newberg on Class Actions § 3:72 (5th ed. 2013). Given the Attorneys' expertise, good standing, and their familiarity with the underlying pension cases, this Court is satisfied that their representation of the Retiree Subclass has been adequate. Therefore, the appointment of Lynette Labinger, Esq.; Thomas Landry, Esq.; Douglas Steele, Esq.; Joseph F. Penza, Esq.; Carly Iafrate, Esq.; Maame Gyamfi, Esq. is confirmed. In addition, the appointment of Marc DeSisto, Esq. and Gerald Petros, Esq. as counsel for the Municipal Defendant Class is confirmed.

Next, the Court finds no conflict of interest between the named Class Representatives and the Class Members. While some retiree Objectors contest the fact that the retirement packages of their representatives were not identical to their own, "'only a conflict that goes to the very

subject matter of the litigation will defeat a party's claim of representative status.'" Lowery v. City of Albuquerque, 273 F.R.D. 668, 680 (D.N.M. 2011) (quoting 7A C. Wright, A. Miller & M. Kane, Fed. Prac. & Proc. § 1768, at 389–93 (3d ed. 2005)). Accordingly, "'not every potential disagreement between a class representative and the class members will stand in the way of a class suit.'" Id. (quoting 1 A. Conte & H. Newberg, Newberg on Class Actions § 3:26, at 433–34 (4th ed. 2002)).

Here, the individual Plaintiff Class Representatives, like all Class Members, are typical of those in their respective Class or Subclass. Specifically, they are either current or former state employees, public school teachers, or municipal employees who either are members in the ERS or MERS or who are currently receiving pension benefits from their memberships in the ERS or MERS. See Int'l Union, United Auto., Aerospace, & Agr. Implement Workers of Am. v. Gen. Motors Corp., 497 F.3d 615, 626 (6th Cir. 2007) ("Class representatives are adequate when it appear[s] that [they] will vigorously prosecute the interests of the class through qualified counsel . . . which usually will be the case if the representatives are part of the class and possess the same interest and suffer the same injury as the class members . . . .") (internal citation and quotation marks omitted). Each Class Representative either for the Plaintiff Class or for the Municipal Defendant Class has the same interest as other Class Members and has suffered the same injury as Class Members as a result of the changes made to his or her retirement benefits. Notably, while many Objectors contest the settlement due to their selection of the SSA Option upon retirement, two of the Plaintiff Class Representatives, Michael Connolly and Roger Boudreau, chose this option. (Connolly Aff., ¶ 7; Boudreau Test.). As such, the Court is satisfied that the Class Representatives have adequately represented the interests of the Class Members. The

Court confirms the appointment of the Class Representatives as appointed for the Plaintiff Class and Subclass:

- Retirees: Roger Boudreau, Michael Connolly, and Kevin Schnell;
- Teachers/State Employees: John Lavery, Michael McDonald, Jason Kane, and Amy Mullen;
- Municipal Employees: Susan Verdon;
- Firefighters: Raymond Furtado and James Richards.

The Court also confirms the Towns of Barrington, Middletown, and South Kingstown as the Municipal Class Representatives.

B

Adequacy of Notice

In addition, the Court finds that the Class Members have received the best notice practicable under the circumstances. The Notice meets the adequacy requirement pursuant to Super. R. Civ. P. 23(e) which requires that notice of a proposed settlement be sent to all class members "in such manner as the court directs." Generally, the standard for the adequacy of a settlement notice in a class action under either the Due Process Clause or the Rules of Civil Procedure is reasonableness. See Wal-Mart Stores, 396 F.3d at 113. Accordingly, there are "no rigid rules to determine whether a settlement notice to the class satisfies constitutional or Rule 23(e) requirements[.]" Id. at 114. The settlement notice "should be 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" Int'l Union, United Auto, Aerospace, & Agr. Implement Workers of Am., 497 F.3d at 629 (quoting Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950)). Notice is "sufficient if it simply informs the class members of the nature of the pending action, the general terms of the settlement, that complete and detailed

information is available from the court files, and that any class member may appear and be heard at the hearing." Newberg on Class Actions, § 8:17 (5th ed. 2014).

In its April 16, 2015 Decision, the Court granted preliminary approval to the manner and method of notice proposed by the parties. The Court will, however, review the Notice that was sent out to ensure that the required standards for adequacy of notice were met. To begin with, the Court is satisfied that the manner of notice employed by the parties was more than adequate to reasonably reach all affected Class Members. There was testimony that the ERSRI keeps address information on file for all members of the retirement system, whether active, inactive, or retired, in order to send out information to its members. In addition, Mr. Marr testified to the efforts made by the parties to ensure that the address information on file was accurate through double-checking the database with the United States Postal Service for any change of address forms that may have been filed. Finally, the Court notes that of the approximately 60,000 notices sent out, only about 1800, or about 3%, were returned as undeliverable. The Court finds that the individually-mailed Notice, in combination with the published Notice in the Providence Journal (Hr'g Joint Ex. 9,) and the information posted on the ERSRI website, was reasonably calculated to reach all affected Class Members. The Court also notes that the underlying pension cases and the two proposed settlements have been the subject of much publicity in recent years.

Thus, the Court finds that the Notice sent out to the Plaintiff Class Members and to the Defendant Class Members (Hr'g Joint Exs. 6 and 7) was sufficient to inform the Class Members of the action, summarized the essential terms of the settlement, and clearly described the method by which Class Members may object to the settlement and be heard at the Fairness Hearing. See Hochstadt v. Boston Scientific Corp., 708 F.Supp.2d 95, 110 (D. Mass. 2010) (finding the proposed notice "to be appropriate because it clearly provides background information on the

[class action], accurately recites the legal rights and options of the Settlement Class and fully explains [the settlement terms].”). The Court emphasizes, in particular, that it has received approximately 400 written objections from those who followed the procedure as set out in the Notice. Of the many concerns raised by the Objectors, no one has protested that he or she was unable to understand either the terms of the 2015 Settlement Agreement or the impact which the 2015 Settlement Agreement would have on his or her legal rights going forward. Indeed, both the written objections and the concerns raised by the Class Members at the Fairness Hearing demonstrated a fairly sophisticated understanding of the underlying causes of action in these pension cases and of the terms of the settlement. Many of the objections specifically addressed particular terms of the 2015 Settlement Agreement in order to bring the fairness and adequacy of the Settlement into doubt. Consequently, the Court finds that the Notice was more than sufficient to satisfy the reasonableness standards of both Super. R. Civ. P. 23(e)(1) and the Due Process Clause.

C

Procedural Fairness of the Settlement

Before the Court can approve a settlement as being fair, adequate, and reasonable, the Court must initially look to the negotiation process that led to the settlement. A presumption of procedural fairness attaches to a proposed class settlement when that settlement is reached in arm’s-length negotiations between experienced, capable counsel after meaningful discovery. See Wal-Mart Stores, 396 F.3d at 116. “The [negotiation] process must be examined ‘in light of the experience of counsel, the vigor with which the case was prosecuted, and the coercion or collusion that may have marred the negotiations themselves.’” In re Holocaust Victim Assets

Litig., 105 F.Supp.2d 139, 145-46 (E.D.N.Y. 2000) (quoting Malchman v. Davis, 706 F.2d 426, 433 (2d Cir. 1983)).

Here, the Court finds that the initial presumption of fairness attaches to the 2015 Settlement Agreement. There has been no indication that the negotiation process was tainted by collusion or was anything other than arm's-length. It has been stated that "[t]he storm warnings indicative of collusion are a lack of significant discovery and an extremely expedited settlement of questionable value accompanied by an enormous legal fee." In re Lupron Mktg. and Sales Practices Litig., 228 F.R.D. 75, 94 (D. Mass. 2005) (internal quotation marks omitted). These factors are clearly not present here. Significantly, the 2015 Settlement Agreement is the result of two separate but related negotiations, the first for a period of more than thirteen months in the mediation sessions with FMCS resulting in the failed 2014 Settlement Agreement and more recently in the negotiations conducted with the assistance of the Court's Special Master. Mr. Walsh from the NEARI characterized both these negotiation sessions as having been highly contentious. The contentious atmosphere of the negotiation sessions was also confirmed by Mr. Dingley. All parties felt strongly about their respective positions. Throughout the months of mediation conducted under the auspices of the FMCS, the parties engaged in negotiation sessions that rivaled a marathon. Over the course of thirteen months, the parties and the attorneys participated in numerous mediation sessions. These sessions were held to formulate settlement positions, proposals and counter-proposals. The proposals and counter-proposals were analyzed by the actuaries. The parties attempted to find a solution to the issues and resolve their differences. The failed settlement process was a disappointment to the parties.

The 2015 Settlement Agreement is an extension of the 2014 Settlement and, as such, cannot be considered to have originated on the eve of trial. The Court is fully satisfied that the

mediations resulting in the 2014 Settlement Agreement as well as the more recent negotiations conducted with the assistance of the Special Master were hard-fought on both sides. In addition, it cannot be said that the 2015 Settlement Agreement is one of questionable value; the concessions made by the State to the Plaintiffs are significant, resulting in an increase in the unfunded liability of the pension system of an additional $30.8 million. The Court also notes that the 2015 Settlement Agreement includes a new formula for the calculation of the COLA percentage which is more favorable to the Plaintiffs and should ensure that the COLA percentage is never zero.

Prior to a settlement agreement, there was significant discovery conducted between the parties. Each party engaged expert witnesses. For example, the Plaintiffs' group engaged an actuarial firm as well as an economist. Defendants too retained an actuary. The 2015 Settlement Agreement was reached close to the trial date after more than a year of exchanges between the parties.

Moreover, based upon this Court's familiarity with Counsel for Class Action Parties, the Court is confident that the instant proposed settlement was reached as the result of well-informed and arm's-length negotiations by competent and dedicated counsel who provided loyal and effective representation to all parties. The uncontroverted evidence presented at the Fairness Hearing is that counsel participated vigorously in the lengthy, contentious, and grueling settlement discussion meetings. The Court also notes that the Plaintiff Class Members were represented at the bargaining table by the leadership of the respective plaintiff unions as the plaintiffs in the underlying pension cases and as union leaders. The evidence demonstrates that they are experienced in representing the interests of their members in negotiations. As the Court previously noted in its April 16, 2015 Decision certifying the Plaintiff and Defendant Classes

and appointing Class Counsel and earlier in this Decision, the Court is familiar with the experience in both labor law and constitutional law possessed by all counsel in this matter, as a group and individually.

The Court has also had the opportunity to observe the conduct of counsel through the course of the litigation in the underlying pension cases which have been pending for several years beginning in 2010 with the filing of the first lawsuit challenging the 2009 and 2010 Enactments. Counsel on all sides have been zealous and diligent advocates for their respective clients throughout the underlying pension cases and this case. None has spared any efforts on behalf of the interests of his or her clients. While these pension cases have been pending, counsel on all sides have filed and argued numerous pre-trial motions, including a motion for a jury trial, a motion in limine on the burden of proof on the Plaintiffs' Contract Clause claims, and a number of dispositive motions. As a result of the extensive pre-trial motion practice, all counsel have become knowledgeable about the specific facts and circumstances surrounding each of their respective clients' claims and defenses as well as the substantive law governing each of the Plaintiffs' claims. While the Court has independently evaluated the fairness of the settlement, it is noted that "great weight is accorded to the recommendations of counsel, who are most closely acquainted with the facts of the underlying litigation." In re NASDAQ Market-Makers Antitrust Litig., 187 F.R.D. 465, 474 (S.D.N.Y. 1998). Accordingly, the Court has no difficulty in finding that the 2015 Settlement Agreement is entitled to the presumption of fairness as a product of good faith, arm's-length negotiations.

D

Substantive Fairness of the Settlement

Rule 23(e) of the Federal Rules of Civil Procedure does not define the terms "fair, reasonable, and adequate" for the purposes of assessing whether a proposed class action settlement meets that standard. See F.R.C.P. 23(e)(2)[18]; Newberg on Class Actions § 13:48 (5th ed. 2014) (stating that the federal circuit courts have developed their own multifactor tests for courts to use in judging the fairness of a class action settlement which vary slightly by circuit). As the First Circuit Court of Appeals has noted,

> "Rule 23's reasonableness standard has been given substance by case law offering laundry lists of factors, most of them intuitively obvious and dependent largely on variables that are hard to quantify; usually, the ultimate decision by the judge involves balancing the advantages and disadvantages of the proposed settlement as against the consequences of going to trial or other possible but perhaps unattainable variations on the proffered settlement." National Ass'n of Chain Drug Stores v. New England Carpenters Health Benefits Fund, 582 F.3d 30, 44 (1st Cir. 2009).

District courts within the First Circuit have, consequently, followed a variation of the factors set forth by other circuit courts in approving a class action settlement. See, e.g., In re Tyco Int'l Ltd. Multidistrict Litig., 535 F.Supp.2d 249, 259 (D.N.H. 2007) (using a modified list of the factors as set forth by the Second Circuit Court of Appeals in City of Detroit v. Grinnell Corp., 495 F.2d 448, 463 (2d Cir. 1974)); In re Compact Disc Minimum Advertised Price Antitrust Litig., 216 F.R.D. 197, 206-07 (D. Me. 2003) (listing six factors to be considered). "The relative degree of importance to be attached to any particular factor will depend upon and be dictated by the nature

[18] Rhode Island's Super. R. Civ. P. 23(e) mandates only that a class action may not be dismissed or compromised without the approval of the court. Rule 23 of the Federal Rules of Civil Procedure, on which the Rhode Island Rules of Civil Procedure are largely based, states that a class action settlement may only be approved by the court on a finding that it is "fair, reasonable, and adequate."

of the claim(s) advanced, the type(s) of relief sought, and the unique facts and circumstances presented by each individual case." Officers for Justice v. Civil Serv. Comm'n of the City and Cnty. Of San Francisco, 688 F.2d 615, 625 (9th Cir. 1982).

In determining whether a proposed settlement is fair, adequate, and reasonable, courts generally look to the following so-called Grinnell factors:

> "(1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation." In re Tyco Int'l, Ltd. Multidistrict Litig., 535 F.Supp.2d at 259 (quoting Grinnell Corp., 495 F.2d at 463).

One district court in the First Circuit has also considered a modified version of the Grinnell factors:

> "(1) comparison of the proposed settlement with the likely result of litigation; (2) reaction of the class to the settlement; (3) stage of the litigation and the amount of discovery completed; (4) quality of counsel; (5) conduct of the negotiations; and (6) prospects of the case, including risk, complexity, expense and duration." In re Compact Disc Minimum Advertised Price Antitrust Litig., 216 F.R.D. at 206 (Compact Disc)).

The Court finds that based on the issues raised by some of the Objectors, two factors from the Compact Disc case are relevant to this Court's analysis of the fairness of the settlement: (1) the quality of counsel, and (2) the conduct of the negotiations. However, the Court has already addressed the quality of class counsel and the conduct of the negotiations in the preceding section regarding the procedural fairness of the settlement. In that section, it was stated that it would be difficult to assemble a more competent and experienced group of attorneys in the

relevant areas of law from among the many lawyers in the State of Rhode Island. The Court also determined that the 2015 Settlement Agreement was the result of arm's length negotiations. As such, the Court relies on its analysis regarding the procedural fairness of the 2015 Settlement Agreement to address those two factors.

1

The Complexity, Expense, and Likely Duration of Litigation

A proposed settlement should be initially judged with reference to the strength of the plaintiffs' claims balanced against the ultimate settlement. Grinnell, 495 F.2d at 456. Here, the Plaintiffs' primary claim is a constitutional challenge. In most cases challenging the constitutionality of legislation that interferes with pension rights, a contract right violation is alleged. There is no uniformity in state court analyses as to whether the legislature's proposed purpose is justified. Whitney Cloud, State Pension Deficits, the Recession, and a Modern View of the Contracts Clause, 120 Yale L.J. 2199, 2204-2205 (June 2011).

The Court cannot overstate the complexity of the underlying pension cases. In total, there are nine consolidated lawsuits. The Plaintiffs' claims on the merits involve constitutional claims based on three different provisions of the Rhode Island Constitution. These constitutional issues raised by pension reform legislation have been litigated in other courts at different levels around the country without a clear resolution. The course of the litigation in the underlying pension cases has more than amply demonstrated the complexity and range of legal issues that are involved in these cases. This Court has addressed multiple issues ranging from the right to a jury trial to the question of the burden of proof to be applied to the Plaintiffs' Contract Clause claim. In addition, this case has required a thorough consideration of the unsettled Contract

Clause jurisprudence around the country, particularly in the area of public pensions.[19] The level of difficulty associated with the Plaintiffs' claims in the underlying cases is further supported by the fact that the first of the underlying cases has been pending for five years while the majority of the other actions have been pending for three years. In addition, the range of legal issues involved has been the subject of countless hours of discussion resulting in zealous advocacy through written briefs and oral arguments by what may be characterized as a small army of lawyers. Due to the complexity of the underlying cases, the cost of litigation is correspondingly high.

During the Fairness Hearing, Mr. Walsh testified that on the Plaintiffs' side alone, the cost of continuing to trial was estimated to be between $50,000 to $100,000 a week for a trial that was expected to last several weeks. This cost is in addition to the costs which have already been incurred by the parties throughout the course of this litigation. The parties had already engaged the services of expert witnesses for trial, adding to the significant costs to both sides if the cases had gone forward. It must also be noted that whatever the result at trial, the cases would undoubtedly have been appealed, which would have further increased the costs associated with the litigation and the time before these cases would have finally been resolved.

Accordingly, the Court is satisfied that the complexity, expense, and likely duration of going forward on the merits of these cases weighs in favor of approving the 2015 Settlement

[19] See generally Honor Moore, Note, The Public Pension Reform Problem, 22 Elder L.J. 249 (2014); Christopher D. Hu, Reforming Public Pensions in Rhode Island, 23 Stan. L. & Pol'y Rev. 523 (2012); Whitney Cloud, State Pension Deficits, the Recession, and a Modern View of the Contracts Clause, 120 Yale L.J. 2199 (2011); Thomas McDonell, Reevaluating the Seventh Circuit's Approach to Contract Clause Claims in an Age of Pension Reform, 2014 Wis. L. Rev. 659 (2014); Paul M. Secunda, Constitutional Contracts Clause Challenges in Public Pension Litigation, 28 Hofstra Lab. & Emp. L.J. 263 (2011); Stuart Buck, The Legal Ramifications of Public Pension Reform, 17 Tex. Rev. L. & Pol. 25 (2012); Kenneth Glenn Dau-Schmidt, Promises to Keep: Ensuring the Payment of Americans' Pension Benefits in the Wake of the Great Recession, 52 Washburn L.J. 393 (2013).

Agreement. Regardless of the outcome of a long, expensive trial on the merits, what would follow is an appeal that would likewise be expensive and complex.

2

Reaction of the Class

Next, this Court considers the objections and reaction of the class to the proposed settlement. "It is well settled that 'the reaction of the class to the settlement is perhaps the most significant factor to be weighed in considering its adequacy.'" In re Am. Bank Note Holographics, Inc., 127 F.Supp.2d 418, 425 (S.D.N.Y. 2001) (quoting Sala v. National R.R. Passenger Corp., 721 F.Supp. 80, 83 (E.D.Pa. 1989)). Here, while over 60,000 Notices were sent, the Court received approximately 400 written objections. Thus, the number of Objectors represents less than one percent of the Class Members. Notably, "the absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members." Dyer v. Wells Fargo Bank, N.A., 303 F.R.D. 326, 332 (N.D. Cal. 2014) (quoting In re Omnivision Techs., Inc., 559 F.Supp.2d 1036, 1043 (N.D. Cal. 2008)); see also 2 McLaughlin on Class Actions § 6:10 (11th ed.) ("Courts have generally assumed that silence constitutes tacit consent to the proposed settlement, so that the absence of objectors or receipt of a relatively small number of objections and opt-outs supports the conclusion that the settlement is adequate."). Moreover, even "majority opposition to a settlement cannot serve as an automatic bar to a settlement that a district judge, after weighing all the strengths and weaknesses of a case and the risks of litigation, determines to be manifestly reasonable." TBK Partners, Ltd. v. W. Union Corp., 675 F.2d 456, 462 (2d Cir. 1982).

However, it was suggested by one Objector that silence does not constitute consent to the 2015 Settlement Agreement. It was argued that the small number of objections is indicative of the fact that most of the Class Members were not properly educated about the reforms and the application of the reforms to their individual benefits. The 2015 Settlement Agreement is an enhancement to the terms in RIRSA. In addition, as discussed above, these individuals were adequately represented throughout the negotiation process. Finally, these individuals received Notice and were given ample opportunity to be heard, thus preserving their due process rights.

Although a small percentage of Objectors does weigh in favor of settlement approval, the Court believes that the Objectors have raised a number of significant issues that have been given serious attention and consideration throughout this Decision. Notably, one overarching theme was the Objectors' belief that they were treated unfairly by the State Defendants. While many of these Objectors admit that pension reform was necessary, they argue that their interests were not adequately or fairly considered by the State. They feel cheated by the State's unilateral actions. Many speak of having planned a future under the pension provisions prior to the passage of the challenged Enactments only to see it wiped away. Although the Court recognizes the Objectors' claims of unfair treatment, that specific issue is not before the Court. The Court's present role is solely to determine whether the 2015 Settlement Agreement is fair, adequate, and reasonable. With that purpose in mind, the Court now addresses the remaining objections.

a

Contract Rights to Pension Benefits

Many Objectors maintain that they had a contractual right to their retirement benefits which the State cannot unilaterally change. However, as explained above, the existence of a contract within the context of a Contract Clause constitutional challenge is but one element of

the Court's overall analysis of the statutes' constitutionality. Additionally, while there is always an element of uncertainty in litigation generally, the high standard of review and difficulty of crafting a remedy, even if the Plaintiffs were to succeed, place the Plaintiffs in a particularly difficult position.

b

COLA/Social Security Option

The same difficulties also apply to the retiree Objectors' contention that they have a constitutional right to a three percent COLA benefit. While many Class Members rely on the Rhode Island Supreme Court's decision in Arena v. City of Providence, 919 A.2d 379, 393 (R.I. 2007) to support their position, it is unclear whether the Rhode Island Supreme Court would expand the holding in Arena to apply to this particular case or limit Arena to the case's particular facts. Importantly, the difficulty of succeeding with this claim is compounded by the fact that many courts have found no constitutional right to a specific COLA formula. See, e.g., Maine Ass'n of Retirees v. Bd. of Trustees of Maine Pub. Emps. Ret. Sys., 954 F.Supp.2d 38, 54 (D. Me. 2013) aff'd, 758 F.3d 23 (1st Cir. 2014) ("[T]he Court concludes as a matter of law that [p]laintiffs cannot prove that the Maine Legislature unmistakably intended to contractually obligate the State to provide COLAs to any member of Plaintiff Class under the formula in place prior to the [challenged law]."); Puckett v. Lexington-Fayette Urban Cnty. Gov't, 2014 WL 5093420 at *3 (E.D. Ky. Oct. 8, 2014) ("Here, the plaintiffs have failed to plead sufficient facts to overcome the strong presumption that the Kentucky General Assembly did not intend to grant them a contractual right to COLA benefits at a rate of 2% to 5%."); Am. Fed'n of Teachers v. State, 111 A.3d 63, 73 (N.H. 2015) ("We are not persuaded that the statutory language established a contractual obligation to provide a COLA."); Justus v. State, 336 P.3d 202 (Co.

2014) ("We hold that the [retirement system statute] did not establish any contract between [the retirement system] and its members entitling them to the specific COLA formula in place on the date each became eligible for retirement . . ."); Bartlett v. Cameron, 316 P.3d 889, 896 (N.M. 2013) ("We hold, therefore, that in the absence of any contrary indication from our Legislature, any future cost-of-living adjustment to a retirement benefit is merely a year-to-year expectation that, until paid, does not create a property right under the Constitution."); Levine v. State Teachers Ret. Bd., 1998 WL 46441, at *8 (Conn. Super. Ct. Jan. 28, 1998) ("There is no clear statement from the legislature that it created a contract with the plaintiffs as to a specific COLA amount. Accordingly, there is no violation of the plaintiffs' constitutionally guaranteed contractual rights.").

With respect to the SSA Option, the Employees' Retirement Manual specifically cautioned, in explaining the Option, that "[a]ll amounts and computations used herein are based on current retirement law and rules and are subject to change." (Edward T. Smith Objection, "Your Retirement Benefits" Booklet 7). Additionally, two of the Class Representatives of the Retiree Subclass, Michael Connolly and Roger Boudreau, selected the SSA Option. As such, the concerns of these Objectors were certainly represented during the settlement negotiations.

c

Adequacy of Representation

Next, as discussed above, many Objectors challenge whether the settlement negotiation and subsequent class certification violated their due process rights. In particular, some nonunion employees and a group of retired Woonsocket police officers maintain they were not adequately represented at the settlement negotiations. However, as explained supra, the unique procedural posture of this case allays many of the concerns other courts have raised with respect to

settlements that are negotiated prior to formal class approval. Given the extensive discovery, and the fact that this Court has already ruled on a number of issues and heard the parties' numerous dispositive motions, the Settlement was negotiated after "litigation had proceeded to a point at which both plaintiffs and defendants 'ha[d] a clear view of the strengths and weaknesses of their cases.'" Chun-Hoon v. McKee Foods Corp., 716 F.Supp.2d 848, 852 (N.D. Cal. 2010) (quoting In re Warner Comm'ns Sec. Litig., 618 F.Supp. 735, 745 (S.D.N.Y. 1985) aff'd 798 F.2d 35 (2d Cir. 1986)).

Relatedly, many Objectors expressed their desire to "opt out" of the current settlement thereby challenging this Court's decision to certify the class pursuant to Super. R. Civ. P. 23(b)(2), which does not allow class members to "opt out." See Knight v. Alabama, 469 F.Supp.2d 1016, 1030 (N.D. Ala. 2006) aff'd sub nom. United States v. Alabama, 271 F. App'x 896 (11th Cir. 2008) ("Because the Court certified the Plaintiff class pursuant to Federal Rule of Civil Procedure 23(b)(2), class members do not possess a right to opt out of the class even if they object to the terms of the proposed agreement."). However, given the following—(1) the challenged conduct by the State is applicable to the entire class; (2) courts' general preference for Rule 23(b)(2) certifications rather than certification under Rule 23(b)(3); and (3) the fact that the underlying pension suits challenged the constitutionality of a complex statutory scheme—certification pursuant to Super R. Civ. P. 23(b)(2) was proper. See DeCesare, 852 A.2d at 490; DeBoer, 64 F.3d at 1175; 7AA Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice & Procedure, Civil 3d § 1775 at 73 (2005) (stating that Rule 23(b)(2) is particularly relevant to and often used to "challenge the enforcement and application of complex statutory schemes").

d

Challenges to Settlement Negotiation Process

Within the context of the settlement negotiation, some Objectors also take issue with the role of retired Chief Justice Williams in overseeing the negotiations. Chief Justice Williams assumed the arduous task of assisting this Court with discovery issues when a trial date was on the horizon. His diligent work assisted the parties in reaching a resolution. This Court's order appointing Chief Justice Williams as Special Master explicitly stated that he was authorized to "[a]ssist the parties in narrowing and/or resolving disputed issues by agreement, subject to further approval by the Court." Thus, in overseeing the settlement negotiations, Chief Justice Williams was well within the scope of his appointed role. See generally Manual for Complex Litigation, § 21.644 (4th ed. 2004) (discussing the role of Special Masters within the context of class action settlements). In addition, he was within the scope of his appointed role when asked by the parties to attend and participate in the informational meetings to discuss the enhancements made to RIRSA.

Many Objectors also argue that the March 17, 2015 Confidentiality Order directing the parties "to strictly maintain the confidentiality of the process, including discussions, proposals and all else relating to resolving disputed issues" prevented a fair and open discussion of the settlement terms prior to the approval vote. This objection is understandable but rests largely on a misconception of the ordinary methods used during the settlement process. It should be noted that the Order did not prevent the parties from discussing the terms of the 2015 Settlement Agreement with the Class Members. Importantly, the Order specifically stated that "to the extent that the parties seek to communicate any information (other than a proposal requiring the participation, action, consent or consensus of constituents or members) to any persons, including

constituents, members, and/or the public, concerning the Court Order of March 9, 2015 relating to resolving disputed issues, they shall be required to formulate a joint statement with the Master, which joint statement shall be submitted to the Court." (Emphasis added.) Further, "protective orders over discovery and confidentiality orders over matters concerning other stages of litigation are often used by courts as a means to aid the progression of litigation and facilitate settlements." Pansy v. Borough of Stroudsburg, 23 F.3d 772, 786 (3d Cir. 1994). Accordingly, "courts have inherent equitable power by means of protective orders, 'to prevent abuses, oppression, and injustices' in discovery and 'to grant confidentiality orders, whether or not such orders are specifically authorized by procedural rules.'" Bonin v. World Umpires Ass'n, 204 F.R.D. 67, 69 (E.D. Pa. 2001) (quoting Pansy, 23 F.3d at 785). Thus, the Confidentiality Order served to protect the integrity of the settlement process.

e

The Severity of the Pension Crisis

Additionally, many Objectors contend the State and Municipal Defendants overstated the financial crisis' effect on the Defendants' ability to pay for the Plaintiffs' pension benefits. Opinions differ as to the cause of the pension crisis which has been described as a "ticking time bomb." Honor Moore, Note, The Public Pension Reform Problem, 22 Elder L.J. 249, 249 (2014). Which side of the issue one is on will determine the conclusion drawn. "Some blame the power of unions who pushed for increased benefits, while others blame the state for not following through on its actuarial required contribution (ARC)." Id. at 251. Regardless of who points the finger, the fact remains that the crisis is here, and a solution to the problem must be implemented. See, e.g., T. Leigh Anenson, Alex Slabaugh, Karen Eilers Lahey, Reforming Public Pensions, 33 Yale L. & Pol'y Rev. 1, 64 (2014) ("The public pension debt crisis

jeopardizes the fiscal solvency of states and the nation's long-term financial health."); Jack M. Beermann, The Public Pension Crisis, 70 Wash. & Lee L. Rev. 3 (2013); Christopher D. Hu, Reforming Public Pensions in Rhode Island, 23 Stan. L. & Pol'y Rev. 523, 524 (2012) ("Pension systems for retired state and local employees, many of which were already seriously underfunded, have taken a turn for the worse in the post-2008 recession.") (footnote omitted). In fact, many of the Objectors admit that pension reform was necessary given the ongoing financial crisis. As such, objections that rest their challenge to the settlement on doubts regarding the severity of the pension crisis cannot seriously be considered. See DeHoyos v. Allstate Corp., 240 F.R.D. 269, 293 (W.D. Tex. 2007) ("General objections without factual or legal substantiation do not carry weight.").

f

Remaining Objections

The remaining objections, as summarized supra, can be broadly categorized as objecting to the settlement due to its purported disproportionate impact on certain groups. For example, many of the Objectors contest the settlement term that those with twenty years or more of service will be returned to a defined benefit plan. These Objectors include, inter alia, those who are eligible to retire due to age rather than years of service. Although the Court is certainly sympathetic to the Objectors' concerns, the fact remains that "pension payments are predominantly rewards for continuous employment with the same employer." Alabama Power Co. v. Davis, 431 U.S. 581, 594 (1977). Thus, the 2015 Settlement Agreement's more favorable terms for those employees with twenty years or more of service aligns with the underlying purpose of pension plans, which are designed to reward length of service.

Nonetheless, the fact that the settlement may impact certain groups more than others is an important consideration in determining whether the 2015 Settlement Agreement is fair, adequate, and reasonable. As the Ninth Circuit made clear, "'a small minority of the class members may not be asked to bear an unduly disproportionate share of the accompanying burdens." Officers for Justice, 688 F.2d at 624 (quoting Mendoza v. Tucson Sch. Dist. No. 1, 623 F.2d 1338, 1344 (Ariz. 1980). Thus, the Court expressly rejects the often repeated justification that the 2015 Settlement Agreement did "the greatest good for the great number." See Marcello v. Regan, 574 F.Supp. 586, 597 (D.R.I. 1983) ("[T]he greatest good for the greatest number cannot suffice as a justification for the subversion of constitutionally-protected rights."); see also Officers for Justice, 688 F.2d at 624; Mandujano v. Basic Vegetable Prods., Inc., 541 F.2d 832, 835 (9th Cir. 1976). At the same time, the Court expressly rejects the Objectors' contention that the Settlement is "kicking the can down the road" with the Objectors as the proverbial can. Although some Objectors expressed the belief that settlement is "inevitable" and that their written submissions would be "tossed into a sack with all other objections," the Court has carefully reviewed every objection multiple times and is cognizant of the fear, anger, and sense of betrayal that many Objectors articulated in response to both the passage of RIRSA as well as to the terms of the 2015 Settlement Agreement. See Maywalt v. Parker & Parsley Petroleum Co., 67 F.3d 1072, 1078 (2d Cir. 1995) ("The ultimate responsibility to ensure that the interests of class members are not subordinated to the interests of either the class representatives or class counsel rests with the . . . court."). In addition, the Court has observed firsthand the efforts that counsel, with the assistance of the Special Master, have made to produce a fair, reasonable, and adequate settlement agreement. All efforts should be applauded as the end result is certainly more desirable than the original RIRSA. This is said with the understanding that the Class

Members request a return to pre-RIRSA standards and would prefer to litigate the underlying pension cases.

Undoubtedly, the challenged reforms in the underlying pension cases resulted in serious consequences for all Class Members. Yet, while many Class Members are unhappy with the Settlement, "compromise is the essence of a settlement . . . 'a yielding of absolutes and an abandoning of highest hopes.'" Knight, 469 F.Supp.2d at 1034 (quoting Cotton v. Hinton, 559 F.2d 1326, 1330 (5th Cir. 1977); see also United States v. Armour & Co., 402 U.S. 673, 681-82, 691 (1971) ("Naturally, the agreement reached normally embodies a compromise; in exchange for the saving of cost and elimination of risk, the parties each give up something they might have won had they proceeded with the litigation . . . ."). Thus, upon thorough review of the 2015 Settlement Agreement and all of the Objections, the Court finds that no one group bears an "unduly disproportionate share" of any burdens imposed by the settlement. Officers for Justice, 688 F.2d at 624.

In reviewing the Settlement, the Court must also be "mindful of the 'strong judicial policy in favor of settlements, particularly in the class action context.'" Wal-Mart Stores, Inc., 396 F.3d at 116 (quoting In re PaineWebber Ltd. P'ships Litig., 147 F.3d 132, 138 (2d Cir. 1998)). Importantly, the 2015 Settlement Agreement is entitled to a presumption of fairness given that (1) the Court has already given it preliminary approval, and (2) the 2015 Settlement Agreement was negotiated at arm's-length after extensive discovery and litigation. As such, the Objectors bear a heavy burden of showing that the settlement is unfair or unreasonable. See In re PaineWebber Ltd. P'ships Litig., 171 F.R.D. at 125 ("So long as the integrity of the arm's length negotiation process is preserved, however, a strong initial presumption of fairness attaches to the proposed settlement . . . ."). Additionally, the 2015 Settlement Agreement has been endorsed by

class counsel and "[t]he endorsement of class counsel is entitled to deference, especially in light of class counsel's significant experience in complex civil litigation and their lengthy opportunity to evaluate the merits of the claims." DeHoyos, 240 F.R.D. at 292. Overall, "[o]nce the court has given preliminary approval, an agreement is presumptively reasonable, and an individual who objects has a heavy burden of demonstrating that the settlement is unreasonable." Id. at 293.

Although the reaction of the class is compelling, the Court must pause to note that the number of objections as compared to the size of the class is small and therefore weighs in favor of finding that the 2015 Settlement Agreement is fair, reasonable, and adequate. As Mr. Walsh, Executive Director of Plaintiff NEARI testified at the Fairness Hearing, the proposed settlement "can be fair and heartbreaking at the same time." Thus, "[e]ven its proponents do not claim this settlement is perfect or without problems. In approving the settlement, the court is heeding the admonition of Voltaire, which has been often repeated and rephrased during the hearing process: 'The best is the enemy of the good.'" In re Silicone Gel Breast Implant Prods. Liab. Litig., 1994 WL 578353, at *1 (N.D. Ala. Sept. 1, 1994).

3

The Stage of the Proceedings and the Amount of Discovery Completed

The scope of discovery is considered for two basic reasons: to ensure that (1) the parties have a good understanding of the strengths and weaknesses of their respective claims so that the settlement's value is based on adequate information, and (2) the parties litigated the case in an adversarial manner. See Newberg on Class Actions § 13:50; see also McBean v. City of New York, 233 F.R.D. 377, 386 (S.D.N.Y. 2006) (noting that "the inquiry into the amount of discovery necessary for substantive fairness is not a matter of attaining some rigid number of

pages or depositions" but rather is focused on "whether the parties have a thorough understanding of their case and the extent to which there are remaining factual unknowns prior to trial") (internal quotations omitted).

At the time the 2015 Settlement Agreement was reached, the parties had conducted significant discovery in preparation for the expected trial. The parties have exchanged a tremendous volume of documents in discovery. To date, discovery has resulted in the production of some millions of documents from the State Defendants while the Plaintiffs have produced thousands of pages of documents of their own in response to the State Defendants' discovery requests. (Hr'g Joint Mem. 21-22, Stip. Facts.) In addition, the parties have noticed but not yet taken Rule 30(b)(6) depositions. (Hr'g Joint Mem. 22, Stip. Facts.) It is noted, as well, that the Special Master was appointed to help resolve pending discovery motions, a number of which had been filed by both sides in these cases. In addition, the parties have engaged the services of their respective expert witnesses, which include actuaries for both the Plaintiffs and the Defendants, an economist on behalf of the Plaintiffs, and an institutional pension investment consultant on behalf of the Defendants. See Hr'g Joint Mem. 8; see also In re Nissan Radiator/Transmission Cooler Litig., 2013 WL 4080946 (S.D.N.Y. May 30, 2013) (noting that the plaintiffs' retention of expert witnesses weighed in favor of finding that sufficient discovery had been completed, although the parties had not otherwise engaged in extensive discovery). There has been extensive and complex motion practice including dispositive motions.

The 2015 Settlement Agreement was reached after significant motion practice, including dispositive motions for summary judgments which could have potentially obviated the need for a trial on many, if not all, the disputed issues. Both counsel and the parties have a thorough understanding of the strengths and weaknesses of their respective claims and defenses.

Accordingly, the Court finds that this factor—the scope of discovery—weighs in favor of finding the 2015 Settlement Agreement to be fair, reasonable, and adequate.

4

The Risks of Establishing Liability and Damages

The next two Grinnell factors consider the risk of establishing liability and the risk of establishing damages. "In examining th[ese] factor[s], the Court need not delve into the intricacies of the merits of each side's arguments, but rather may 'give credence to the estimation of the probability of success proffered by class counsel, who are experienced with the underlying case, and the possible defenses which may be raised to their causes of action." Perry v. FleetBoston Fin. Corp., 229 F.R.D. 105, 115 (E.D. Pa. 2005) (quoting Lachance v. Harington, 965 F.Supp. 630, 638 (E.D.Pa. 1997).

Here, Class Counsel for both Plaintiff and Defendant Classes have been candid about the attendant risks of establishing liability and damages.[20] In particular the Plaintiffs' likelihood of success at trial is low considering (1) their heavy burden of proof; (2) the strength of Defendants' position that the Enactments were for legitimate public purpose; and (3) the fact that many other Courts have upheld pension reform, including changes to COLAs. There are presently pending for decision nine dispositive motions. If the Plaintiffs prevailed in these motions, then they would proceed to trial requiring them to prove their allegations with the highest burden of proof. Thus, there is great risk to both the Plaintiffs and the Defendants.

Importantly "[e]ven if Plaintiffs obtain a favorable jury verdict on the issue of liability, Plaintiffs are highly unlikely to receive significant damages from this litigation." Perry, 229 F.R.D. at 115. The testimony on the record from both Mr. Dingley and Mr. Alfred for the

[20] The Court notes that the Plaintiffs in the underlying cases were not seeking monetary damages as such.

Municipal Defendants makes it by no means clear that either the State or Municipal Defendants would, in fact, be able to afford the cost of restoring the Plaintiffs' benefits to pre-RIRSA levels. As such, these two factors weigh in favor of finding that the 2015 Settlement Agreement is fair, reasonable, and adequate.

5

The Risks of Maintaining the Class Action Through Trial

"Because the prospects for obtaining certification have a great impact on the range of recovery one can expect to reap from the [class] action, this factor measures the likelihood of obtaining and keeping a class certification if the action were to proceed to trial." In re Warfarin Sodium Antitrust Litig., 391 F.3d 516, 537 (3d Cir. 2004) (internal citation and quotation marks omitted). However, other courts have noted, this factor is "perfunctory" or "toothless" in the context of settlement only class action cases. In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions, 148 F.3d 283, 321 (3d Cir. 1998); see also In re Lupron Mktg. & Sales Practices Litig., 228 F.R.D. 75, 95 n.39 (D. Mass. 2005) ("[T]his factor is largely irrelevant in settlement-only cases. . . ."). As the United States Supreme Court made clear in Amchem Prods., Inc. v. Windsor, "[c]onfronted with a request for settlement-only class certification, a . . . court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial." 521 U.S. 591, 620 (1997) (internal citation omitted). Thus, the Court gives this factor little weight in reviewing the adequacy of the settlement.

6

The Ability of Defendants to Withstand a Greater Judgment

"This factor assesses the ability of defendants to withstand a greater judgment, and is 'most clearly relevant where a settlement in a given case is less than would ordinarily be

awarded but the defendant's financial circumstances do not permit a greater settlement.'" In re Nat'l Football League Players' Concussion Injury Litig., 2015 WL 1822254, at * 39 (E.D. Pa. April 22, 2015) (quoting Reibstein v. Rite Aid Corp., 761 F.Supp.2d 241, 254 (E.D. Pa. 2011)). Because this case (and the underlying pension cases) primarily concern equitable relief rather than monetary damages, this factor appears to be neutral.

Nonetheless, the Court pauses to note the uncertainty of having such pending litigation looming over the State and the Municipal Defendants. The pendency of these actions, as was testified to by Mr. Alfred at the Fairness Hearing, affected the credit bond rating for the State and the municipalities. In addition, it is ultimately in the best interest of the taxpayers of this State to close the book and end this long drawn-out process that would, no matter the outcome at a trial, have significant impacts on the State's budget and finances.

7

The 2015 Settlement Agreement's Range of Reasonableness

"The last two [ ] factors ask whether the settlement is reasonable in light of the best possible recovery and the risks the parties would face if the case went to trial." In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions, 148 F.3d at 322. Thus, "[t]he factors test two sides of the same coin: reasonableness in light of the best possible recovery and reasonableness in light of the risks the parties would face if the case went to trial." In re Warfarin Sodium Antitrust Litig., 391 F.3d at 538.

Importantly, "[i]n comparing the value of settlement versus trial, [the Court] must be careful to judge the fairness factors 'against the realistic, rather than theoretical, potential for recovery after trial.'" Sullivan v. DB Invs., Inc., 667 F.3d 273, 323 (3d Cir. 2011) (quoting In re Global Crossing Sec. & ERISA Litig., 225 F.R.D. 436, 461 (S.D.N.Y. 2004)). Here, as stated

earlier, the Plaintiffs' likelihood of success is low. First, the Plaintiffs bear a high standard of proof in that they must establish that the Enactments are unconstitutional beyond a reasonable doubt. See, e.g., Oden v. Schwartz, 71 A.3d 438, 456 (R.I. 2013); Dowd v. Rayner, 655 A.2d 679, 681 (R.I. 1995) ("[T]he party challenging the constitutional validity of a statute carries the burden of persuading the court beyond a reasonable doubt that the legislation violates an identifiable aspect of the constitution."); Kass v. Ret. Bd. of Emps.' Ret. Sys. of the State of R.I., 567 A.2d 358, 360 (R.I. 1989); In re Advisory Op. to House of Representatives, 485 A.2d 550, 552 (R.I. 1984); Malinou v. Bd. of Elections, 108 R.I. 20, 25, 271 A.2d 798, 800 (1970) ("Any act passed by the General Assembly and approved by the Governor carries with it a presumption of constitutionality, and the challenger, in seeking to overcome this presumption, has the burden of proving the statute's unconstitutionality beyond a reasonable doubt."); Gorham v. Robinson, 57 R.I. 1, 10, 186 A. 832, 838 (1936) ("The act must stand as valid, unless we are convinced beyond a reasonable doubt that it is contrary to a provision which is either expressly set forth in the State Constitution, or must, beyond a reasonable doubt, be necessarily implied from language expressly set forth therein.").

Additionally, while many Objectors stress the fact that they have a contractual right to their pension benefits, the existence of a contractual relationship is but one element of the Court's constitutional analysis. Specifically, a statute may still "pass constitutional muster under contract clause analysis so long as it is reasonable and necessary to carry out a legitimate public purpose." Brennan v. Kirby, 529 A.2d 633, 638 (R.I. 1987) (citing United States Trust Co. of New York v. New Jersey, 431 U.S. 1, 25-26 (1977). In this regard, Mr. Dingley testified at some length about how the pre-RIRSA pension reforms did not adequately address the State and local government's fiscal crisis, and thus further reform was necessary. In South Kingstown, for

example, without RIRSA, homeowners' real estate taxes would have increased by $400 to meet the required contribution level. While the pension fund's unfunded liabilities certainly did not appear overnight, the Great Recession's devastating impact on state and local government's fiscal health and the need for pension reform has been studied and discussed extensively. See, e.g., Christopher D. Hu, Reforming Public Pensions in Rhode Island, 23 Stan. L. & Pol'y Rev. 523, 524 (2012) ("Pension systems for retired state and local employees, many of which were already seriously underfunded, have taken a turn for the worse in the post-2008 recession.") (footnote omitted).

In response to the State's representations that RIRSA serves a legitimate public purpose, the Objectors stress the fact that some actuarial analyses found that RIRSA made more severe cuts than necessary. However, Plaintiffs' high burden of proof remains a difficult hurdle for the Plaintiffs to overcome. As was explained in the Court's March 18, 2015 Decision, if the State makes a sufficient showing of reasonableness and necessity, in order for Plaintiffs to prevail on their claim of unconstitutionality under the Contracts Clause, Plaintiffs must produce evidence to establish beyond a reasonable doubt that the legislation was not reasonable and necessary. See Donohue v. Mangano, 886 F. Supp. 2d 126, 160 (E.D.N.Y. 2012) ("A lack of reasonableness or necessity is an element of a Contract Clause claim which the Plaintiffs bear the burden of establishing.").

Further, Plaintiffs' reliance on the Illinois Supreme Court decision in In re Pension Reform Litig., 2015 IL 118585 (Ill. 2015), and the Oregon Supreme Court Decision in Moro v. State, 2015 WL 1955591 (Or. Apr. 30, 2015) (Moro) is misplaced. In In re Pension Reform Litig., the Illinois Supreme Court held that certain pension reforms were unconstitutional because they violated the Illinois Constitution's Pension Protection Clause, which clearly states

that "[m]embership in any pension or retirement system of the State . . . shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired." In re Pension Reform Litig., 2015 IL 118585, ¶ 45 (quoting Ill. Const. 1970, art. XIII, § 5) (emphasis in original). Rhode Island has no comparable constitutional provision. This decision has no application or relevance to the case at bar.

In Moro, the Oregon Supreme Court held that two legislative amendments that reduced the plaintiffs' COLA benefits violated the Oregon Constitution's Contract Clause. In rejecting the State's argument that the amendments served a legitimate public purpose, the Court noted (1) that the State did not consider any alternatives, including the possibility of raising Oregon's below-average tax rate; (2) that the Defendants only put forth vague public purposes for the pension changes, such as the need for increased funding for public agencies; and (3) the fact that the Oregon COLA provisions were unchanged for forty years. Thus, the Moro decision is distinguishable from the present suit. Here, the Defendants did consider a number of alternatives. Prior to RIRSA, the State made a number of other pension reforms that still did not address the pension system's severe underfunding. In addition, the public purposes supporting Rhode Island pension reform stand in marked contrast to the justifications put forth by the Defendants in Moro. Specifically, the Oregon Supreme Court noted that "Respondents' desire for additional funding . . . is not tied to any specifically identifiable deficiencies resulting from the current funding levels." Moro, 2015 WL 1955591 at *36. By contrast, Rhode Island pension plans face high unfunded liabilities.

Moreover, while Moro held that Oregon's changes to the vested COLA benefits were unconstitutional, the majority of other courts have found no constitutional right to a specific COLA formula. See, e.g., Maine Ass'n of Retirees, 954 F. Supp. 2d at 54 ("[T]he Court

concludes as a matter of law that [p]laintiffs cannot prove that the Maine Legislature unmistakably intended to contractually obligate the State to provide COLAs to any member of Plaintiff Class under the formula in place prior to the [challenged law]."); Puckett, 2014 WL 5093420 at *3 ("Here, the plaintiffs have failed to plead sufficient facts to overcome the strong presumption that the Kentucky General Assembly did not intend to grant them a contractual right to COLA benefits at a rate of 2% to 5%."); Am. Fed'n of Teachers, 111 A.3d at 73 ("We are not persuaded that the statutory language established a contractual obligation to provide a COLA."); Justus, 336 P.3d at 211-12 ("We hold that the [retirement system statute] did not establish any contract between [the retirement system] and its members entitling them to the specific COLA formula in place on the date each became eligible for retirement . . ."); Bartlett, 316 P.3d at 896 ("We hold, therefore, that in the absence of any contrary indication from our Legislature, any future cost-of-living adjustment to a retirement benefit is merely a year-to-year expectation that, until paid, does not create a property right under the Constitution."); Levine, 1998 WL 46441, at *8 ("There is no clear statement from the legislature that it created a contract with the plaintiffs as to a specific COLA amount. Accordingly, there is no violation of the plaintiffs' constitutionally guaranteed contractual rights."). In addition, while many Class Members rely on the Rhode Island Supreme Court's decision in Arena to support their position that they have a constitutional right to a specific COLA formula, that case did not concern a constitutional challenge to COLA benefits. Also, Arena predates much of the still-developing case law concerning pension reform in other states. Thus, it is unclear whether the Rhode Island Supreme Court would expand the holding in Arena to apply to this particular case or limit Arena to the case's particular facts.

In addition to the Plaintiffs' low likelihood of success, the underlying pension cases have been pending, in one case, since 2010 and in most of the other cases, since 2012, during which time all the Plaintiffs' rights have essentially been in limbo, to say nothing of the ultimate financial situation of the State. The Court is mindful of the very real financial impact which RIRSA has had on the Plaintiffs' lives and financial situations and the fact that the Plaintiffs have made life decisions based on their understanding of the pension benefits they would receive upon retirement. However, when taking into account the high cost of proceeding forward and the great uncertainties which attach to any trial, especially when combined with the Plaintiffs' high burden of proof, the Court is convinced that the concrete and immediate benefits which all the parties to this litigation will receive through the 2015 Settlement Agreement weigh in favor of approving the settlement.

The Court takes note of the statement made by counsel for the Defendants that this case is one in which, regardless of the outcome, there would be no real winner. Notably, a trial on the merits and the inevitable appeal process would have ultimately taken an additional number of years and an uncalculated amount of money. Further, even if the Plaintiffs were to succeed at trial on the merits—which is by no means certain or probable—there would still be the outstanding issue of whether the Court would have granted the Plaintiffs the injunctive relief they requested. Assuming the Court granted the full equitable relief sought by the Plaintiffs, the testimony on the record from both Mr. Dingley and Mr. Alfred for the Municipal Defendants makes it by no means clear that either the State or Municipal Defendants would, in fact, be able to afford the cost of restoring the Plaintiffs' benefits to pre-RIRSA levels

In contrast to the uncertainty, duration, and high cost of continued litigation in the instant case, the Court finds that the settlement offers concrete and immediate benefits to the Class

Members including, inter alia: (1) a more favorable COLA formula, (2) the $500 stipend paid to retirees; (3) the fact that employees with twenty years or more of service will be returned to the defined benefit plan; and (4) the added calculation to reduce the minimum retirement age for state workers, teachers, and general MERS. See In re Global Crossing Sec. & ERISA Litig., 225 F.R.D. at 461 ("Due to the complexities inherent in this case, the certainty of this settlement amount has to be judged in this context of the legal and practical obstacles to obtaining a large recovery."). Notably, the 2015 Settlement Agreement also allows Municipalities to "re-amortize" to be able to pay for the increased cost of the settlement.

Nonetheless, some Class Members challenge the reasonableness of the above settlement terms including, inter alia, the transfer of those employees with twenty or more years of contributory service back to the defined benefit plan. In effect, many Objectors questioned why other more beneficial terms were not considered. Yet, as Mr. Walsh testified, the Plaintiffs had attempted to have all employees with at least ten years of contributory service returned to the defined benefit plan, but they were not successful. While some Class Members may have wanted more favorable terms from the settlement, "compromise is the essence of a settlement." Cotton, 559 F.2d at 1330. As the Fifth Circuit explained, "[t]he trial court should not make a proponent of a proposed settlement 'justify each term of settlement against a hypothetical or speculative measure of what concessions might have been gained[.]'" Id. (quoting Milstein v. Werner, 57 F.R.D. 515, 524-25 (S.D.N.Y. 1972)).

The 2015 Settlement Agreement is not being offered as a perfect solution, nor is perfection required of it under the law. Our Supreme Court has consistently recognized the desirability of a settlement when possible. See Ryan v. Roman Catholic Bishop of Providence, 941 A.2d 174, 187 (recognizing "the venerable judicial policy of encouraging settlement and

endorsing the mediation alternative"); Homar, Inc. v. North Farm Assocs., 445 A.2d 288, 290 (R.I. 1982) ("Our policy is always to encourage settlement. Voluntary settlement of disputes has long been favored by the courts."). Accordingly, in light of the aforementioned factors and having given the terms of the 2015 Settlement Agreement and the objections raised by the Class Members a thorough and independent review, the Court is satisfied that the 2015 Settlement Agreement is fair, adequate, and reasonable.

III

Conclusion

For the foregoing reasons, the Court confirms the certification of the Plaintiff and Defendant Classes, as amended, pursuant to Super. R. Civ. P. 23(b)(2). The Court also confirms the appointment of the Plaintiff and Defendant Class Representatives and Class Counsel. In addition, the Court finds that the 2015 Settlement Agreement is fair, reasonable, and adequate and it therefore is approved. The objections to the 2015 Settlement Agreement are overruled. The Court approves the proposed form of Final Judgment submitted by the Parties (Hr'g Ex. 11) and direct the Final Judgment to be presented for entry upon fulfillment of the condition precedent of passage of the Legislation.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	Rhode Island Public Employees Retiree Coalition, et al. vs. Gina Raimondo, et al.
CASE NO:	PC 15-1468
COURT:	Providence County Superior Court
DATE DECISION FILED:	June 9, 2015
JUSTICE/MAGISTRATE:	Taft-Carter, J.

ATTORNEYS:

For Plaintiff:

For Defendant: