STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: JANUARY 30, 2012)

THE PROVIDENCE RETIRED POLICE AND FIREFIGHTER'S ASSOCIATION	:	
	:	**C.A. No. PC-11-5853**
v.	:	
THE CITY OF PROVIDENCE, by and through its Treasurer, JAMES J. LOMBARDI	:	

DECISION

TAFT-CARTER, J. To address the mounting cost of non-pension post retirement employment benefits paid by municipalities to their retirees, the State of Rhode Island enacted legislation enabling municipalities to require retirees to enroll in Medicare as soon as they become eligible. Pub. L. 2011, ch. 151, art. 12, § 2 (codified as G.L. 1956 § 28-54-1 (2011)) ("§ 28-54-1"). The legislation also provides that a municipality will not be required to pay healthcare benefits to a Medicare eligible retiree despite any provision in a Collective Bargaining Agreement ("CBA") to the contrary. Id. In response to the legislation, the Defendant City of Providence ("City") enacted Providence, R.I., Code of Ordinances, Ch. 2011-32, No. 422 (2011), amending Code of Ordinances, Art. VI, Ch. 17 ("the Ordinance"). The Ordinance requires Medicare eligible retired employees of the City to enroll in Medicare as a condition of receiving or continuing to receive retirement payments and health benefits.

The Plaintiff Providence Retired Police and Firefighter's Association is an association representing retirees of the Providence Police and Fire Departments ("the Police and Fire Retirees"). On October 12, 2011, the Police and Fire Retirees filed suit seeking declaratory judgment that (I) the state legislation authorizing the actions taken by the City is facially unconstitutional as it violates the Due Process and Contracts Clauses of both the United States and Rhode Island Constitutions ("Contracts Clause" inclusively);[1] (II) the City Ordinance is also facially unconstitutional for the same reasons; (III) as applied to the Police and Fire Retirees, both the Statute and the Ordinance violate the Contracts Clauses of both Constitutions; and (IV) as applied to the Police and Fire Retirees, the City Ordinance violates the Police and Fire Retirees' rights to due process of law. The Police and Fire Retirees also seek (V) a permanent restraining order against the City enjoining it from altering the health benefits that the Police and Fire Retirees currently receive under the collective bargaining agreements that were in place at the time that the Police and Fire Retirees retired and (VI) any damages that the Police and Fire Retirees will have suffered as a result of the City's actions.

Pending a hearing on the merits of the case, the Police and Fire Retirees filed on December 2, 2011 the instant Motion for a Temporary Restraining Order and/or Preliminary Injunction seeking to enjoin the City from canceling the Police and Fire Retirees' health benefits and forcing the Police and Fire Retirees to enroll in Medicare.

[1] The Contracts Clauses of both the Rhode Island Constitution and the United States Constitution use essentially the same language. Thus, use of the term "Contracts Clause" for the purpose of this opinion applies to both constitutions. Compare R.I. Const. art. I § 12 ("No ex post facto law, or law impairing the obligation of contracts, shall be passed.") with U.S. Const. art. I § 10 ("No State shall . . . pass any . . . Law impairing the Obligation of Contracts . . . ."); see R.I. Bhd. of Corr. Officers v. Rhode Island, 264 F. Supp. 2d 87, 92 (D.R.I. 2003).

The Police and Fire Retirees allege that § 28-54-1 and the Ordinance violate the Contracts Clauses of the state and federal constitutions. The City objects. Jurisdiction is pursuant to Super. R. Civ. P. 65 and G.L. § 8-2-13 (1997). For the reasons stated herein, the Court grants the Police and Fire Retirees' Motion. The City is enjoined from terminating the Police and Fire Retirees' Blue Cross/Blue Shield health insurance as defined in the CBAs until final resolution of this dispute. The City is also enjoined from requiring the Police and Fire Retirees to enroll in Medicare until this matter is resolved.

I

Facts and Travel

The Police and Fire Retirees are members of the Providence Police and Fire Departments who retired before the enactment of the Ordinance. While active employees, the Police and Fire Retirees were represented by either the Fraternal Order of Police, Lodge No. 3 or by Local 799 of the International Association of Firefighters, AFL-CIO ("Unions" collectively). Under the terms of the various CBAs between the Unions and the City, each Police and Fire Retiree, as well as his or her spouse, were guaranteed lifetime health insurance under either Classic Blue Cross/Blue Shield or Healthmate Coast-to-Coast ("Blue Cross").[2] Infra at 4–8. The CBAs would ultimately provide prescription drug coverage as well. Infra at 4–8. At a hearing on January 3, 2012, former State Auditor General Ernest Almonte indicated that he provided the City with a report of the cost of Blue Cross coverage. Despite this knowledge, the City entered into the rich CBAs. The City's intended transition to Medicare, if successful, would override these CBA provisions.

[2] For simplicity, the Court refers to both Classic Blue Cross/Blue Shield and Healthmate Coast to Coast as "Blue Cross" because both are administered for the City by Blue Cross/Blue Shield of Rhode Island.

A

The CBAs

The Blue Cross plans were governed by specific provisions in the Providence Police Officers' and Firefighters' respective CBAs.

1

The Police CBAs

The present dispute between the City and Police Retirees involves multiple CBAs, spanning from 1977 to 2004. Between 1977 and 1982, the Police and the City operated under four CBAs: the 1977-1979 Police CBA, the 1979-1980 Police CBA, the 1980-1981 Police CBA, and the 1981-1982 Police CBA. Under the 1977-1979 Police CBA, a Retiree's health benefits were defined as follows:

> "Commencing July 1, 1977, the city agrees to assume the cost of family coverage under the Rhode Island Hospital Service Corporation (Blue Cross) in the present semi-private plan and family coverage under the Rhode Island Medical Society (Physicians Service Plan B) and Blue Shield 100, or Rhode Island Group Health Association Plan for all members retiring on or after said date.
>
> "Should any member or any member of his family be eligible for medical insurance under Blue Cross or any other plan, then the city will be obligated to furnish only excess coverage so that said member will have equivalent coverage as that offered by the city. Should a retired member subsequent to retirement lose said alternate coverage then the city will pick up the full cost of coverage under this section." Hr'g Ex. 14, CBA between the City of Providence and Providence Lodge No. 3, Fraternal Order of Police, 1977-1979, Art. XIV, § 4 (emphasis added).

This provision remained unchanged in all material respects through the 1979-1980 Police CBA, the 1980-1981 Police CBA, and the 1981-1982 Police CBA.[3]

With the 1982-1984 Police CBA, a specific rider for prescription drug coverage was added. Following this change, the Police Retiree health benefits provision stated, in pertinent part:

> "Blue Cross and Physician's Service – Retirees
> Commencing July 1, 1977, the City agrees to assume the cost of family coverage under the Rhode Island Hospital Service Corporation (Blue Cross) in the present semi-private plan and family coverage . . . with riders for Alcoholism, Mental Health, and Prescription Drug for all members retiring on or after said date." Hr'g Ex. 14, CBA between the City of Providence and Providence Lodge No. 3, Fraternal Order of Police, 1982-1984, Art. XIV, § 2 (emphasis added).

Subsequent to this amendment, the Police Retiree's health benefits CBA provision went unchanged in all material respects for almost two decades.[4]

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[3] Hr'g Ex. 14, CBA between the City of Providence and Providence Lodge No. 3, Fraternal Order of Police, 1979-1980, Art. XIV, § 2; Hr'g Ex. 14, CBA between the City of Providence and Providence Lodge No. 3, Fraternal Order of Police, 1980-1981, Art. XIV, § 2; Hr'g Ex. 14, CBA between the City of Providence and Providence Lodge No. 3, Fraternal Order of Police, 1981-1982, Art. XIV, § 2.

[4] Hr'g Ex. 14, CBA between the City of Providence and Providence Lodge No. 3, Fraternal Order of Police, 1984-1985, Art. XIV, § 2; Hr'g Ex. 14, CBA between the City of Providence and Providence Lodge No. 3, Fraternal Order of Police, 1985-1987, Art. XIV, § 2; Hr'g Ex. 14, CBA between the City of Providence and Providence Lodge No. 3, Fraternal Order of Police, 1987-1989, Art. XIV, § 2; Hr'g Ex. 14, CBA between the City of Providence and Providence Lodge No. 3, Fraternal Order of Police, 1989-1991, Art. XIV, § 2; Hr'g Ex. 14, CBA between the City of Providence and Providence Lodge No. 3, Fraternal Order of Police, 1991-1992, Art. XIV, § 2; Hr'g Ex. 14, CBA between the City of Providence and Providence Lodge No. 3, Fraternal Order of Police, 1992-1993, Art. XIV, § 2; Hr'g Ex. 14, CBA between the City of Providence and Providence Lodge No. 3, Fraternal Order of Police, 1993-1995, Art. XIV, § 2; Hr'g Ex. 14, CBA between the City of Providence and Providence Lodge No. 3, Fraternal Order of Police, 1996-1999, Art. XV, § 2; Hr'g Ex. 14, CBA between the City of Providence and Providence Lodge No. 3, Fraternal Order of Police, 1999-2001, Art. XV, § 2; Hr'g Ex. 14, CBA between the City of Providence and Providence Lodge No. 3, Fraternal Order of Police, 2001-2004, Art. XV, § 2. Following the expiration of the 1993-1995 Police CBA,

The 2001-2004 Police CBA further changed prescription drug coverage. In part, this coverage amendment spoke directly to the prescription drug benefits offered Police Retirees under all Blue Cross plans available to them. This provision states:

> "Section 3 - Blue Cross Prescription Drug Programs
> The Blue Cross Prescription Drug coverage plans/riders described in this Section 3 shall be applicable to all Blue Cross Health Care Plans described in Sections 1 [governing Blue Cross and physician's services for active police] and 2 [governing Blue Cross and physician's services for retired police] above.
>
> A. All members of the bargaining unit hired prior to September 1, 2001 shall be covered by the following Blue Cross Prescription Drug coverage plans/riders:
> (i) In between July 1, 2001 and December 31, 2001, the Blue Cross Prescription Drug coverage plans/riders shall be those in effect under the prior 1999-2001 Collective Bargaining agreement;
> (ii) Effective January 1, 2002, the Blue Cross Prescription Drug coverage plan/rider shall be the program that includes a $3 generic drug/$5 non-generic drug co-payment plan with an annual employee co-payment cap of $600, with all co-payments over and above $600 required to be paid by the City; and
> (iii) Effective January 1, 2003, the Blue Cross Prescription Drug coverage plan/rider shall be the program that includes a $5 generic drug/$10 non-generic drug co-payment plan with an annual employee co-payment of $600, with all co-payments over and above $600 required to be paid by the City.
>
> B. All members of the bargaining unit hired on or after September 1, 2001 shall be covered by the Blue Cross Prescription Drug coverage plan/rider that includes a $5 generic drug/$10 non-generic drug co-payment plan with an annual employee co-payment cap of $600, with all co-payments over and above $600 required to be paid by the City.
>
> C. Any member of the bargaining unit who retires shall upon retirement and thereafter receive the Blue Cross

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the City and the Police could not reach a new labor agreement and submitted their case to arbitration. The arbitration award left retiree health benefits unchanged. Hr'g Ex. 14, In the Matter of Providence Fraternal Order of Police, Lodge # 3, AAA #: 11-390-02300-95 (Cochran, Cioci, & Ursillo, arbs.) (regarding 1995-1996 Police CBA).

> Prescription Drug coverage plan/rider in effect for said member on his/her date of retirement." Hr'g Ex. 14, CBA between the City of Providence and Providence Lodge No. 3, Fraternal Order of Police, 2001-2004, Art. XV, § 2. (emphasis added).

Accordingly, by 2004, the Police Retirees and their spouses had been guaranteed lifetime health insurance and prescription drug coverage for over two decades.

2

The Fire CBAs

The CBAs between the City and the Providence Firefighters provided the Firefighter Retirees with a level of health benefits similar to those promised to the Police Retirees. That is, the City agreed to provide a set level of health insurance to the Firefighter Retirees for the rest of their lives. Beginning with the 1989-1990 Fire CBA, the City guaranteed the Providence Firefighters that:

> "Should [retiree] or any member of his family be eligible for medical insurance under Blue Cross or any other plan, then the City will be obligated to furnish only excess coverage so that said member will have equivalent coverage as that offered by the City. Should a retired member subsequent to retirement lose said alternate coverage, then the City will pick up full coverage under this section." Hr'g Ex. 15, CBA between the City of Providence and Local 799, Int'l Ass'n of Firefighters, AFL-CIO, 1989-1990, Art. XIII, § 1 (emphasis added).

This guarantee went unchanged through the 2003-2004 arbitration between the City and the Providence Firefighters.[5]

[5] Hr'g Ex. 15, CBA between the City of Providence and Local 799, Int'l Ass'n of Firefighters, AFL-CIO, 1990-1992, Art. XIII, § 1; Hr'g Ex. 15, CBA between the City of Providence and Local 799, Int'l Ass'n of Firefighters, AFL-CIO, 1992-1995, Art. XIII, § 1; Hr'g Ex. 15, CBA between the City of Providence and Local 799, Int'l Ass'n of

The Providence Firefighters also secured from the City a guarantee of prescription drug coverage for the Firefighter Retirees. From the 1990-1992 Fire CBA through at least the 1999-2001 Fire CBA, the City promised:

> "to assume the cost of family coverage under the Rhode Island Hospital Service Corporation (Blue Cross) in the present Semi-Private Plan and Family Coverage under the Rhode Island Medical Society Physician's Service Plan B and Blue Shield Plan 100, or the Rhode Island Group Health Association Plan and paid prescriptions for all members retiring on or after July 1, 1982." Hr'g Ex. 15, CBA between the City of Providence and Local 799, Int'l Ass'n of Firefighters, AFL-CIO, 1990-1992, Art. XIII, § 1; Hr'g Ex. 15, CBA between the City of Providence and Local 799, Int'l Ass'n of Firefighters, AFL-CIO, 1992-1995, Art. XIII, § 1; Hr'g Ex. 15, CBA between the City of Providence and Local 799, Int'l Ass'n of Firefighters, AFL-CIO, 1996-1999, Art. XIV, § 1; Hr'g Ex. 15, CBA between the City of Providence and Local 799, Int'l Ass'n of Firefighters, AFL-CIO, 1999-2001, Art. XIV, § 1. [6]

Firefighters, AFL-CIO, 1996-1999, Art. XIV, § 1; Hr'g Ex. 15, CBA between the City of Providence and Local 799, Int'l Ass'n of Firefighters, AFL-CIO, 1999-2001, Art. XIV, § 1. At various points during the 1990s and early 2000s (1995-1996, 2001-2002, 2002-2003, and 2003-2004), the City and the Providence Firefighters could not reach a new labor agreement and submitted their case to arbitration. The arbitration awards would leave the Firefighter Retirees' health benefits unchanged. Hr'g Ex. 15, Arbitration Decision: City of Providence and Local 799, Int'l Ass'n of Firefighters, AFL-CIO, April 1, 1998 (O'Neil, McMahon, & Montanaro, arbs.) (regarding 1995-1996 Fire CBA); Hr'g Ex. 15, In the Matter of Providence Firefighters, Local 799, Int'l Ass'n of Firefighters, AAA # 11-390-00153-02 (Ryan, Ragosta, & Montanaro, arbs.) (regarding 2001-2002 Fire CBA); Hr'g Ex. 15, In the Matter of Providence Firefighters, Local 799, Int'l Ass'n of Firefighters, (Ryan, Ragosta, & Montanaro, arbs.) (regarding 2002-2003 Fire CBA); Hr'g Ex. 15, In the Matter of Providence Firefighters, Local 799, Int'l Ass'n of Firefighters, (Ryan, Ragosta & Montanaro, arbs.) (regarding 2003-2004 Fire CBA).

[6] The final phrase in this section changed from "and paid prescriptions for all members retiring on or after July 1, 1982" to "and paid prescriptions for all retired members who were hired on or before June 30, 1996" beginning with the 1996-1999 Fire CBA. Further, the term "or the Rhode Island Group Health Association Plan" changed to "or Healthmate Coast-to-Coast, or City Blue Coast to Coast" in the 2001-2004 Fire CBA. These changes did not alter the City's promises to the Fire Retirees in any respect material to this proceeding.

Thus, by 2001, the Firefighter Retirees had enjoyed roughly a decade of guaranteed lifetime health insurance and prescription drug coverage. Various arbitrations between the City and the Providence Firefighters following the expiration of the 1999-2001 Fire CBA did not alter this equation. Supra note 5.

B

The City's Grim Fiscal Outlook and the Transition to Medicare

The City paints a bleak picture of its financial condition. Active and retired employee medical costs presently comprise more than 15% of the City's operating budget, and the City currently faces approximately $1.497 billion in unfunded accrued liability for non-pension related post-employment benefits. Hr'g Ex. 19, City of Providence, Report of the Municipal Finance Review Panel, Feb. 2011, at 14, 16 ("Municipal Finance Review"). Moreover, Counsel for the City asserted at a hearing on January 5, 2012, that healthcare costs annually for all of the City's retirees are approximately $100 million. The cost of funding health insurance for Police and Fire Retirees who are over the age of sixty-five alone is currently $8 million. Aff. of Caitlin Nangle ¶ 6 ("Nangle Aff."). Thus, the City maintains that the cost of the post-employment benefits, including medical insurance, that it promised to the Police and Fire Retirees have become unsustainable.

To address the rise in costs, the City considered several means of reform. These included mandatory co-pays; implementation of wellness initiatives; eliminating City paid spousal or family coverage entirely and allowing spouses and dependents to purchase coverage at applicable retiree rates; and negotiating a single medical benefit plan for all employees and retirees. Hr'g Ex. 19, Municipal Finance Review, at 14–17.

Nonetheless, the City ultimately concluded that its most viable option was to transition Medicare-eligible retirees from Blue Cross to Medicare pursuant to § 28-54-1. See Providence, R.I., Code of Ordinances, Ch. 2011-32, No. 422, amending Code of Ordinances, Art. VI, Ch. 17. Section 28-54-1 allows municipalities to require their retirees to enroll in Medicare, free of any prior obligations on the part of the municipalities to provide health benefits, CBA provisions to the contrary notwithstanding. Section 28-54-1 states:

> "Every municipality, participating or nonparticipating in the municipal employees' retirement system, may require its retirees, as a condition of receiving or continuing to receive retirement payments and health benefits, to enroll in Medicare as soon as he or she is eligible, notwithstanding the provisions of any other statute, ordinance, interest arbitration award, or collective bargaining agreement to the contrary. Municipalities that require said enrollment shall have the right to negotiate any Medicare supplement or gap coverage for Medicare-eligible retirees, but shall not be required to provide any other healthcare benefits to any Medicare-eligible retiree or his or her spouse who has reached sixty-five (65) years of age, notwithstanding the provisions of any other statute, ordinance, interest arbitration award, or collective bargaining agreement to the contrary. Municipality provided benefits that are provided to Medicare-eligible individuals shall be secondary to Medicare benefits. Nothing contained herein shall impair collectively bargained Medicare Supplement Insurance." Section 28-54-1 (emphasis added).

Pursuant to this authority, the City passed the Ordinance on July 19, 2011. The Preamble to the Ordinance states that the City currently "provides some employees and retirees medical benefits which are in part duplicative of coverage provided by the federal government, a situation which cannot be permitted to continue in the face of the fiscal

crisis . . . ." Providence, R.I., Code of Ordinances, Ch. 2011-32, No. 422, pmbl. ¶ 5, amending Code of Ordinances, Art. VI, Ch. 17. The Ordinance proper provides:

> "Notwithstanding any other ordinance, collective bargaining agreement, or interest arbitration award:
>
> "(1) As a condition of receiving or continuing to receive retirement benefits, all retired individuals and spouses of retired individuals shall enroll in Medicare immediately upon eligibility. Any health benefits provided by the city to Medicare-eligible individuals shall be secondary to the Medicare benefits.
>
> "(2) With the exception of Medicare supplement or gap coverage, the city shall not provide Medicare-eligible retirees or Medicare-eligible spouses of retirees with healthcare benefits. The cost of said Medicare supplement or gap coverage shall be paid by the city and/or retiree as otherwise provided by ordinance or contract."
>
> "(3) Nothing contained in this section shall be construed to confer healthcare benefits on a retiree or retiree's spouse which are not otherwise provided by ordinance or contract." Providence, R.I., Code of Ordinances, Ch. 2011-32, No. 422, amending Code of Ordinances, Art. VI, Ch. 17 (emphasis added).

C

The Medicare Plans Summarized

Compared to the CBA Blue Cross plans that the Police and Fire Retirees are accustomed, Medicare is a government program available only to those sixty-five and older who have contributed into Medicare through deductions in their pay. See generally Hr'g Ex. 12, Centers for Medicare & Medicaid Services, Medicare & You ("Medicare & You"). Medicare consists of essentially four separate insurance plans: Medicare Parts A, B, C and D. Hr'g Ex. 12, Medicare & You, at 14. Medicare Part A covers in-patient hospital care. Enrollees in Part A pay no premiums. Hr'g Ex. 8, Blue Cross/Blue Shield of R.I., Your Medicare Options Guide Book, at 2 ("Medicare Guide Book").

Medicare Part B covers out-patient medical care such as physician visits and various procedures. Hr'g Ex. 8, Medicare Guide Book, at 2. Enrollees in Part B pay a monthly premium, which was $96.40 in 2011 and will rise to $99.90 in 2012 according to the hearing testimony of the City's Manager of Employment Benefits, Caitlin Nangle. Hr'g Ex. 6, Blue Cross/Blue Shield of R.I., BlueCHiP for Medicare, 2012 Summary of Benefits, at 6 ("BlueCHiP Benefits"). Part B Enrollees are also responsible for an annual deductible, which was $162 in 2011, and must pay co-pays for office visits and certain procedures. Hr'g Ex. 6, BlueCHiP Benefits, at 6, 8. In the instant matter, the City has promised to pay the portion of the Police and Fire Retirees' Part B premiums that constitutes a late enrollment penalty, if any, but the Police and Fire Retirees will be responsible for the remainder of their Part B premiums, Part B deductibles and Part B co-pays.[7] See Hr'g Ex. 17, Premium Surcharge Agreement between the Dep't of Health & Human Servs. and the City of Providence, at ¶ A, §§ 5, 8 and ¶ B, §§ 2, 8, 15 ("Premium Surcharge Agreement"); Hr'g Ex. 4, Letter of City of Providence to Retirees of Nov. 15, 2011, at 2 ("Nov. 15 Letter"); Nangle Aff. ¶¶ 1, 4. Notably, however, the City's penalty payment agreement with the U.S. Department of Health and Human Services is unsigned. Hr'g Ex. 17, Premium Surcharge Agreement.

The third Medicare component is a Medicare Advantage Plan sometimes referred to as Medicare Part C. Hr'g Ex. 12, Medicare & You, at 14–15. Medicare Advantage

[7] Retirees who are presently eligible for Medicare but have yet to enroll must pay a penalty. Late enrollment in Part B may result in penalties for as long as the enrollee is a part of Medicare. In some instances, the enrollee's monthly premium could be ten (10) percent higher for each twelve (12) month period that the enrollee has failed to enroll. Hr'g Ex. 12, Medicare & You, at 30. At present, the City has represented to the Court that it will pay the penalties added to the late enrollees' Part B premiums. Hr'g Ex. 4, Nov. 15 Letter, at 2; Nangle Aff. at ¶¶ 1, 4.

Plans are offered by private insurance companies and cover virtually all of the services that Medicare Parts A and B cover. Hr'g Ex. 12, Medicare & You, at 15. Medicare Advantage Plans may offer additional coverage, and most include a prescription drug benefit (Medicare Part D). Hr'g Ex. 12, Medicare & You, at 70, 73. Here, the City has offered the Police and Fire Retirees a choice between two plans: BlueCHiP and Plan 65. Hr'g Ex. 5, City of Providence, Post 65 Benefits Brochure, at 2.

BlueCHiP is a Medicare Advantage Plan, and provides prescription drug coverage to its enrollees.[8] Hr'g Ex. 7, Blue Cross/Blue Shield of R.I., PowerPoint Presentation, Introducing the City of Providence Medicare Options, at 3 ("Medicare PowerPoint"). Plan 65 is a supplemental plan to Medicare Parts A and B, and is considered secondary coverage. Hr'g Ex. 7, Medicare PowerPoint, at 3. Unlike BlueCHiP, Plan 65 does not offer prescription drug coverage and so Plan 65 enrollees must purchase a prescription drug component, Medicare Part D. Hr'g Ex. 5, Post 65 Benefits Brochure, at 2. Because BlueCHiP is only available in Rhode Island and certain surrounding communities, this prescription drug coverage difference between BlueCHiP and Plan 65 is significant. Hr'g Ex. 5, Post 65 Benefits Brochure, at 3. A Police or Fire Retiree living outside of a BlueCHiP zone has no choice but to select Plan 65 and pay for an additional Part D prescription drug benefit. Hr'g Ex. 5, Post 65 Benefits Brochure, at 2. To address this lack of prescription drug coverage for Police and Fire Retirees selecting Plan 65, the City has made available a supplemental Part D prescription drug plan, MedicareRx. Hr'g Ex.

[8] BlueCHiP provides benefits additional to those offered by original, fee-for-service, Medicare. For example, under original, fee-for-service, Medicare, recipients must pay a 20% coinsurance charge for a doctor's visit, whereas they need only make a flat $20 co-pay under BlueCHiP. Hr'g Ex. 6, BlueCHiP Benefits, at 8.

7, Medicare PowerPoint, at 17. Those retirees who select MedicareRx must pay monthly premiums of $180. Hr'g Ex. 7, Medicare PowerPoint, at 17.

Enrollees in both BlueCHiP and Plan 65/MedicareRx must also pay for prescription drugs in accordance with a tiered prescription drug co-pay formulary. Hr'g Ex. 7, Medicare PowerPoint, at 9–10, 18. At a basic level, generic drugs have the least expensive co-pays while specialty brand name drugs can cost considerably more. A BlueCHiP enrollee, for instance, must pay $8 for a monthly supply of generics and $24 for a monthly supply of preferred brand name drugs. Hr'g Ex. 6, BlueCHiP Benefits, at 14. A MedicareRx enrollee, in contrast, must pay a $180 monthly premium and, depending on their prescriptions, $10 for a monthly supply of generics and $20 for a monthly supply of brand names. Hr'g Ex. 7, Medicare PowerPoint, at 17–18.

Both Medicare Advantage Plans, like BlueCHiP, and Part D specific plans, like MedicareRx, contain a gap in prescription drug coverage commonly called the "Part D Doughnut Hole." Hr'g Ex. 6, BlueCHiP Benefits, at 15; Hr'g Ex. 6, Blue Cross/Blue Shield of R.I., Blue MedicareRx: 2012 Summary of Benefits, at 4–5. Under these plans, when an enrollee's total annual prescription drug costs exceed $2930, the enrollee's coverage for prescription drug coverage ends and the enrollee must pay all subsequent prescription drug costs until the enrollee's annual drug costs exceed $4700. Hr'g Ex. 6, BlueCHiP Benefits, at 15. Once the $4700 threshold is crossed, prescription drug coverage resumes, but with the caveat that the enrollee must pay the greater of either a 5% coinsurance or a $2.60 co-pay for generic drugs (and brand name drugs treated as generic) and a $6.50 co-pay for specialty drugs. Hr'g Ex. 6, BlueCHiP Benefits, at 15.

The following chart summarizes the Medicare plans and the costs that would be borne by the City and the Police and Fire Retirees following the move to Medicare.

Medicare Part		**Benefits**	**Cost to Retirees**
Part A		In-Patient Care	Free if contributed via pay deductions
Part B		Out-Patient Care	$99.90 monthly premium = $1198.80 annual premium per person
Part C	BlueCHiP - Medicare Advantage Plan	- All services covered by Parts A & B plus additional coverage (such as lower co-pays, etc.) - Prescription Drug Plan	- City pays premiums - Beneficiary pays co-pays and deductibles - Beneficiary pay prescription drug co-pays based on tertiary formula.*****
	Plan 65 – Medicare Supplement	- All services covered by Parts A & B plus additional coverage (such as lower co-pays, etc.) - No Prescription Drug Plan	- City pays premiums - Beneficiary pays co-pays and deductibles
Part D	Blue MedicareRx – Supplemental Drug Plan	- Prescription Drug Plan	- $180 monthly premium = $2160 annual premium per person - Beneficiary pays prescription drug co-pays based on tertiary formula.*****

*****If a beneficiary's total annual cost for prescription drugs, not including copays, reaches $2930, he/she enters what is referred to as the "Part D Doughnut Hole"— wherein he/she must pay out-of-pocket for prescription drugs until drug costs reach $4700. Once the $4700 threshold is crossed, drug coverage resumes. Supra at 11–14.

D

The City's Procedure for Transitioning to Medicare

The City maintains that the transition to Medicare will net substantial annual savings to the City. Def.'s Post-Hr'g Mem. at 36. To begin the Medicare transition, the City sent a letter to each Police and Fire Retiree dated November 15, 2011, along with a brochure, summarizing the new "Post 65 Benefits" that the City was offering to the Police and Fire Retirees. Hr'g Ex. 4., Nov. 15 Letter; Hr'g Ex. 5, Post 65 Benefits Brochure. The letter apprised the Police and Fire Retirees of § 28-54-1 and the City's decision to make enrollment in Medicare a condition to the Police and Fire Retirees' continued receipt of health benefits. Hr'g Ex. 4, Nov. 15 Letter, at 1. The letter advised the Police and Fire Retirees of fast approaching deadlines, compliance with which was necessary to ensure a smooth transition for both the City and the Police and Fire Retirees. Hr'g Ex. 4, Nov. 15 Letter, at 1–2. The letter also expressed the City's expectation that by July 1, 2012, all Medicare-eligible Police and Fire Retirees would be enrolled in Medicare, at which point, their Blue Cross insurance would terminate. Hr'g Ex. 4, Nov. 15 Letter, at 2; Hr'g Ex. 5, Post 65 Benefits Brochure, at Rear Cover.

The letter divided the Police and Fire Retirees into three groups: (1) those over sixty-five and not yet enrolled in Medicare, (2) those over sixty-five and already enrolled in Medicare, and (3) those close to turning sixty-five. The letter also stated enrollment deadlines for each group. Hr'g Ex. 4, Nov. 15 Letter, at 1–3.

There are 283 Police and Fire Retirees who are eligible for Medicare, but have yet to enroll. Nangle Aff. ¶ 4. In its letter, the City directed this group to enroll with Medicare by the program's enrollment deadline of March 31, 2012. Hr'g Ex. 4, Nov. 15

Letter, at 2. Once enrolled, the City informed them that they would need to select either BlueCHiP or Plan 65 by June of 2012. Hr'g Ex. 4, Nov. 15 Letter, at 2; Hr'g Ex. 5, Post 65 Benefits Brochure, at 2. The letter also stated that these Police and Fire Retirees would face a penalty for failing to enroll in Medicare when initially eligible to do so, but that the City would pay the penalty. Hr'g Ex. 4, Nov. 15 Letter, at 2.

There are 312 Police and Fire Retirees who are already in Medicare. Nangle Aff. ¶ 3. The City asked this group to select either BlueCHiP or Plan 65 by December 31, 2011, with the plan becoming effective on February 1, 2012. Hr'g Ex. 4., Nov. 15 Letter, at 2. Since the filing of the instant Motion, the City has agreed to extend this enrollment deadline to February 1, 2012, the date that their new insurance is to go into effect. Nangle Aff. ¶ 3. The Court notes that had this group been held to the original December 31, 2011 deadline, they would have had less than forty-five days to review options and make a selection.[9]

There are at least thirteen Police and Fire Retirees—and possibly as many as fifty-four—who fit into the final category: individuals close to turning sixty-five. Nangle Aff. ¶¶ 1–2. The letter informed these Police and Fire Retirees that they would no longer be eligible for their current benefit plan as of the first day of the month in which they turn sixty-five. Hr'g Ex. 4, Nov. 15 Letter, at 1. Members of this group whose birthdays were between December 1 and January 31 would need to enroll in Medicare Parts A and B and either BlueCHiP or Plan 65 by February 1, 2012. Nangle Aff. ¶ 2.

[9] Notice of these changes and deadlines may have been even less for Police and Fire Retirees living outside of Rhode Island. The Police and Fire Retirees represent to the Court that some of their number did not receive the City's letter until after Thanksgiving.

The City's proposed timeline for Police and Fire Retiree enrollment in Medicare is diagrammed below:

Timeline of Transition from City Insurance Plans to Medicare		**Retiree Categories**	
	Not Enrolled in Medicare	Enrolled in Medicare	Soon to Turn Sixty-Five
Dec. 31, 2011		a) Select either BlueCHiP or Plan 65 *Deadline extended to Feb. 1, 2012	If sixty-fifth birthday is between Dec. 1, 2011 and Jan. 31, 2012: a) Enroll in Medicare b) Select either BlueCHiP or Plan 65
Feb. 1, 2012	Deadline to enroll in Medicare (will incur penalty)	* New deadline for Police and Fire Retirees already enrolled in Medicare - Medicare & BlueCHiP/Plan 65 is effective	
Mar. 31, 2012	Select either BlueCHiP or Plan 65; select Part D Drug Plan if in Plan 65		Select Part D Drug Plan if in Plan 65
June 30, 2012	Medicare Effective & City Insurance Terminated	Select Part D Drug Plan if in Plan 65	Medicare Effective & City Insurance Terminated
July 1, 2012		Medicare Effective & City Insurance Terminated	

Nangle Aff. ¶¶ 1–5; Hr'g Ex. 4, Nov. 15 Letter, at 1–3; Hr'g Ex. 5, Post 65 Benefits Brochure, at 1–3, Rear Cover; Hr'g Ex. 7, Medicare PowerPoint, at 21.

In the letter and brochure, the City warned that failure to meet the above deadlines could result in the termination of the Police and Fire Retirees' health benefits. Hr'g Ex. 4, Nov. 15 Letter, at 1; Hr'g Ex. 5, Post 65 Benefits Brochure, at Rear Cover.[10] The City's letter acknowledged that the transition to Medicare would be a significant change and that the Police and Fire Retirees would have many questions. Hr'g Ex. 4, Nov. 15 Letter, at 2–3. To address this, each Police and Fire Retiree was invited to attend one of six information sessions held by the City beginning on November 29, 2011. Hr'g Ex. 4, Nov. 15 Letter, at 2–3.

E

Impact of the Transition to Medicare on Possible Savings/Costs to the Parties

The City anticipates that the transition to Medicare will save it $6 million annually in Police and Fire Retiree health benefit costs. Def.'s Post-Hr'g Mem. at 36.

[10] On the rear cover of an informational brochure sent to Police and Fire Retirees along with the City's letter, it states:

> "**Automatic Termination of Current Coverage:** If you are currently over the age of 65, you will be automatically terminated from your current benefits as of 6/30/12. If we do not receive confirmation of your Medicare enrollment by 3/31/11, and a supplement plan election in the month of June 2012, we will be unable to add you to Post-65 benefits.
>
> "If you are turning 65 in the future, you will be automatically terminated from your current benefits plan as of the first day of the month that you turn 65. If we do not receive confirmation of your Medicare enrollment and your election of a supplement plan prior to that date, we will be unable to add you to Post-65 benefits.
>
> "TO AVOID A LAPSE IN COVERAGE, IT IS VERY IMPORTANT THAT YOU FOLLOW THE STEPS OUTLINED IN THIS BROCHURE." Hr'g Ex. 5, Post 65 Benefits Brochure, at Rear Cover.

The financial impact of the transition to Medicare to the Police and Fire Retirees is not as clear because their expenses are driven by their individual medical needs. The Police and Fire Retirees, however, argue that by transitioning to Medicare, they will receive less coverage and incur more costs than they would under the plans promised to them in their respective CBAs.

One Police and Fire Retiree testified to the Court that he pays a total of $20 a month for his 10 prescriptions under the current Blue Cross plans. Under BlueCHiP, he asserts that his co-pays will range from $8 to $52 per month depending on the type of drug, resulting in a monthly payment of $188. In addition, because the total cost to BlueCHiP for his prescriptions is approximately $1090 per month, this Police and Fire Retiree testified that he will fall into the Medicare "Part D Doughnut Hole" by the fourth month of his enrollment, forcing him to pay for his prescriptions out-of-pocket until his expenditures reach $4700. By the end of the year, he estimates that he will spend $5000 more than what he is currently paying for prescription drugs.

There is no dispute that the Police and Fire Retirees had a right to specific Blue Cross health insurance benefits pursuant to the language contained in their respective CBAs. In addition, no one disputes that the Ordinance unilaterally amended the terms of the Police and Fire CBAs vis a vis the City and the Police and Fire Retirees. It is this unilateral change by the City that is the progenitor of this lawsuit and that the Retirees assert is unconstitutional.

F

The Filing of the Instant Motion

The Police and Fire Retirees claim that they were taken by surprise by the City's letter with its various imminent deadlines for Medicare enrollment. Upset and confused, many of their number left voice messages on the answering machine of Past-President of the Executive Board of the Providence Retired Police and Firefighter's Association Richard DiCicco to voice their worry about the City's planned course of action. Hr'g Ex. 22, Aff. of Richard DiCicco ¶¶ 9, 12 ("DiCicco Aff."). Robert Jarvis, a retired Providence Firefighter and current President of the Providence Retired Police and Firefighter's Association, also received telephone calls over Thanksgiving weekend from members. The members indicated that they were confused, angry, and upset after receiving the City's November 15 letter. Jarvis also received calls from anxious and confused widows of members. He testified that they seemed desperate.

Accordingly, the Police and Fire Retirees filed the instant Motion on December 2, 2011, seeking a Temporary Restraining Order and/or Preliminary Injunction prohibiting the City from imposing the Medicare enrollment deadlines and terminating their insurance until the underlying dispute is resolved. Hearings on the Motion were held the weeks of December 12, 2011 and January 3, 2012.

II

Standard of Review

> "There is no power the exercise of which is more delicate, which requires greater caution, deliberation, and sound discretion, or more dangerous in a doubtful case, than the issuing [of] an injunction; it is the strong arm of equity, that never ought to be extended unless to cases of great injury, where courts of law cannot afford an adequate or

> commensurate remedy in damages. The right must be clear, the injury impending or threatened, so as to be averted only by the protecting preventive process of injunction; but that will not be awarded in doubtful cases, or new ones, not coming within well established principles; for if it issues erroneously, an irreparable injury is inflicted, for which there can be no redress, it being the act of a court, not of the party who prays for it. It will be refused till the courts are satisfied that the case before them is of a right about to be destroyed, irreparably injured, or great and lasting injury about to be done by an illegal act; in such a case the court owes it to its suitors and its own principles, to administer the only remedy which the law allows to prevent the commission of such act." 11 Charles Allen Wright, et al., Federal Practice & Procedure § 2942 (3d ed. 1998) (brackets in original) (quoting Bonaparte v. Camden, 3 Fed. Cas. 821, 827 (C.C. D.N.J. 1830)).

The issuance of an injunction is therefore "an extraordinary remedy," Brown v. Amaral, 460 A.2d 7, 10 (R.I. 1983), the purpose of which is not to determine the rights of the parties, but to prevent a threatened wrong and to maintain things in the condition they are presently in until the issues are determined at trial. 11 Charles Allen Wright, et al., Federal Practice & Procedure § 2947; see Coolbeth v. Berberian, 112 R.I. 558, 564, 313 A.2d 656, 659 (1974); see also In re State Emps.' Unions, 587 A.2d 919, 926 (R.I. 1991) (Appendix A) (noting an injunction is warranted when a later judgment on the merits is an "empty victory" for the prevailing party). Whether to issue a preliminary injunction is left to "the sound discretion of the trial justice," City of Woonsocket v. Forte Brothers, Inc., 642 A.2d 1158, 1159 (R.I. 1994), and a justice's decision will not be disturbed unless "it is reasonably clear that the hearing justice illegally exercised [or] . . . abused his or her discretion." Fund for Cmty. Progress v. United Way of Se. New England, 695 A.2d 517, 521 (R.I. 1997); see Jacob v. Burke, 110 R.I. 661, 675, 296 A.2d 456, 464

(1972) (reversing trial justice's issuance of a preliminary injunction where no record of a hearing was made and the trial justice did not provide any findings of fact).

In deciding whether to issue an injunction, this Court is mindful of the magnitude of the remedy and will be guided by four factors. The Court must ask (1) whether the moving party has demonstrated "a reasonable likelihood of success on the merits," (2) whether the moving party stands to suffer "irreparable harm without the requested injunctive relief," (3) whether "the balance of the equities, including the possible hardships to each party and to the public interest," tip in the moving party's favor and (4) whether the granting of an injunction will adequately "preserve the status quo." DiDonato v. Kennedy, 822 A.2d 179, 181 (R.I. 2003) (quoting Iggy's Doughboys, Inc. v. Giroux, 729 A.2d 701, 705 (R.I. 1999)). Guided by these principles, the Court will begin its analysis.

III

Analysis

At its heart, this action is a dispute between the Sovereign's police power and the Contracts Clause. The police power—reserved by the States to safeguard the welfare of their citizens—has been stated by the United States Supreme Court to be "paramount to any rights under contract between individuals." Manigault v. Springs, 199 U.S. 473, 480 (1905). However, the police power is limited by the Contracts Clause when the Sovereign is attempting to use its power to abridge existing contractual relationships. See Allied Structural Steel Co. v. Spannaus, 438 U.S. 234, 242 (1978).

A

Reasonable Likelihood of Success on the Merits

The Court must begin its inquiry by asking whether the Police and Fire Retirees' claim has a reasonable likelihood of succeeding on the merits. The burden is on the Police and Fire Retirees to "affirmatively demonstrate that [they] will probably succeed on the merits." In re State Employees' Unions, 587 A.2d 919, 925 (R.I. 1991). Although the moving party is not obligated to show "a certainty of . . . success," Coolbeth, 112 R.I. at 566, 313 A.2d at 660 (1974), it must provide sufficient evidence to "make out a prima facie case." Fund for Community Progress, 695 A.2d at 521. Prima facie evidence is that "amount of evidence that, if unrebutted, is sufficient to satisfy the burden of proof on a particular issue." Paramount Office Supply Co., Inc. v. D.A. MacIsaac, Inc., 524 A.2d 1099, 1101 (R.I. 1987) (citing Nocera v. Lembo, 121 R.I. 216, 397 A.2d 524 (1979)). It is insufficient for the moving party to rely solely on assertions in pleadings and filings. See id. Rather, the court must have an actual, although not necessarily complete, evidentiary record upon which to base its decision. See id. (granting of injunction reversed in an employment dispute where the employer failed to provide evidence of damages he would suffer as a result of his customer list being stolen).

The Police and Fire Retirees have brought a claim based on a violation of the Contracts Clauses of the Rhode Island and United States Constitutions. They argue that Sec. 28-54-1 and the Ordinance violate the Contracts Clause because they have a contractually vested right to the health care benefits defined in their respective CBAs. The City argues that it enacted the Ordinance pursuant to its police power and that therefore, the Ordinance is constitutional.

Although the Contracts Clause appears to be an absolute bar to the impairment of public and private contracts, the United States Supreme Court does not interpret it so. See generally U.S. Trust Co. v. New Jersey, 431 U.S. 1 (1977). The Court has recognized a three-part analysis for "harmonizing the command of the Clause with the 'necessarily reserved' sovereign power of the states to provide for the welfare of their citizens." Baltimore Teachers Union v. Mayor & City Council of Baltimore, 6 F.3d 1012, 1015 (4th Cir. 1993) (quoting U.S. Trust Co., 431 U.S. at 21); see In re Advisory Opinion to the Governor (DEPCO), 593 A.2d 943, 947–49 (R.I. 1991) (accepting the U.S. Trust standard and deferring to the General Assembly's determination that the "public purpose" of enacting legislation to address banking crisis outweighed interference with bank creditors' contractual interests). In deciding whether a state enactment violates the Contracts Clause, a court must engage in the following three-pronged analysis:

> "First, has the state law in fact substantially impaired a contractual relationship? Second, if the law constitutes a substantial impairment, can the state show a legitimate public purpose behind the regulation, 'such as the remedying of a broad and general social or economic problem'? Third, is the legitimate public purpose sufficient to justify the impairment of the contractual rights?" In re Advisory Opinion to the Governor (DEPCO), 593 A.2d at 948–49 (quoting Energy Reserves Group, Inc. v. Kansas Power & Light Co., 459 U.S. 400, 411–12 (1983)) (internal citations omitted).[11]

[11] The Court notes that this three-pronged test is also presented by some courts as a two-pronged test: (1) whether the State has acted in a manner that substantially impairs a contractual relationship and (2) whether the impairment was reasonable to serve an important government purpose. See Parella v. Ret. Bd. of R.I. Emps' Ret. Sys., 173 F.3d 46, 59 (1st Cir. 1999). This Court employs the three-pronged approach because the R.I. Supreme Court has employed it in the past, In re Advisory Opinion to the Governor, 593 A.2d at 948-49, and courts employing the two-pronged test have found "no substantive difference between these differing characterizations of the Contract Clause analysis." United Auto., Aerospace, Agric. Implement Workers of Am. Int'l Union v. Fortuño, 633 F.3d 37, 41 n.4 (1st Cir. 2011).

1

Substantial Impairment

There is no dispute that the Ordinance changes the terms of the CBAs between the City and the Police and Fire Retirees. Def.'s Post-Hr'g Mem. at 35. The level of impairment created by the enactment of the Ordinance is the issue. The Police and Fire Retirees argue that their coverage under Blue Cross—a specific type and level of lifetime benefits at a set price—was a central element of their respective CBAs with the City. They claim a vested right to the benefits and argue that the Ordinance substantially impairs this right.

The City counters that a modification from one health insurance provider to another does not constitute a substantial impairment to the CBAs. It posits that the CBAs govern a multitude of issues associated with working for the City, from salaries and overtime to sick leave and clothing allowances. Coverage under Blue Cross, the City argues, was only one of many items in the CBAs, and not a central provision. The City maintains that the Ordinance only changes the entity providing the Police and Fire Retirees with benefits from Blue Cross to Medicare. Such a shift, the City asserts, falls far short of the "substantial impairment" burden of the Contracts Clause.

Further, the City claims that the Police and Fire Retirees overstate the extra costs that they will face once their insurance transitions from Blue Cross to Medicare. According to the City, some Police and Fire Retirees do not take any prescriptions, are already enrolled in Medicare and paying Part B premiums, or have a working spouse who supplements their income. Moreover, the City notes that even under their current Blue Cross plans, the Police and Fire Retirees are still required to pay co-pays and major

medical deductibles. Thus, the City argues that the Police and Fire Retirees' evidence of harm is insufficient to constitute a substantial impairment of the CBAs as a whole.

The Sovereign's power to enact legislation pursuant to its police power has limits, especially "when its exercise effects substantial modifications of private contracts." Allied Structural Steel, 438 U.S. at 244. No rigid test exists, however, to determine whether an alleged contractual impairment is substantial. The United States Supreme Court in Allied Structural Steel stated that:

> "The severity of an impairment of contractual obligations can be measured by the factors that reflect the high value the Framers placed on the protection of private contracts. Contracts enable individuals to order their personal and business affairs according to their particular needs and interests. Once arranged, those rights and obligations are binding under the law, and the parties are entitled to rely on them." Id. at 245.

Thus, an important factor in the substantial impairment analysis is an examination of the parties' expectations at the time they entered into the agreement. Energy Reserves Group, 459 U.S. at 411; Allied Structural Steel, 438 U.S. at 245–47; Liberty Mut. Ins. Co. v. Whitehouse, *868 F. Supp. 425, 431 (D.R.I. 1994). Those expectations are telling* because they signal what aspects of the agreement were central and which were peripheral. See Liberty Mut. Ins. Co., 868 F. Supp. at 431-32 (rejecting challenge to modification of statutory COLA benefits in part because they were highly regulated by the state and thus beneficiaries must have expected that their benefits were subject to change). To demonstrate substantial impairment, a party need not show a "total destruction" of contractual expectations. U.S. Trust, 431 U.S. at 26-27. That said, a statute does not necessarily substantially impair a contract simply because it "may inconvenience individuals and affect contracts previously entered into by them."

Creditors' Service Corp. v. Cummings, 57 R.I. 291, 190 A. 2, 11 (1937); see Allied Structural Steel, 438 U.S. at 245 ("Minimal alteration of contractual obligations may end the inquiry at its first stage.").

To determine the expectations of the parties, the Court has reviewed the CBAs. It is apparent that at the time the parties entered into the CBA, the Police and Fire Retirees expected to receive health insurance for life. The City, on the other hand, expected to pay for the Police and Fire Retirees' health insurance. The intentions and expectations are clearly and unambiguously set forth in CBA provisions relating to retiree health insurance. See supra notes 3–5 (citing relevant CBA provisions).

The terms of the express language of the CBAs demonstrate that the parties' expectations were to provide the Police and Fire Retirees with continued health insurance coverage. See Cathay Cathay, Inc. v. Vindalu, LLC, 962 A.2d 740, 746 (R.I. 2009) (stating that when the language of a contract is clear, "words contained therein will be given their usual and ordinary meaning and the parties will be bound by such meaning."). As a result, the Police and Fire Retirees have a vested right under the agreement, the impairment of which is substantial. See Arena v. Providence, 919 A.2d 379 (R.I. 2007). The transition to Medicare is more than an "entity" change. It is a unilateral alteration of a vested benefit. Such an alteration materially affects the expectations of the parties and substantially changes the agreement.

The disparity between the medical and prescription drug coverage in the existing Blue Cross plans and either BlueCHiP or Plan 65 is also considerable. The Police and Fire Retirees represent to the Court that a couple living out-of-state, enrolled in Plan 65 and paying for the City's sponsored MedicareRx for Part D coverage potentially could

pay $6717.60 per month in premiums alone.[12] Pl.'s Post-Hr'g Mem. at 16–17, 17 n.19. If, as the Police and Fire Retirees' claim, the median pension for a Police or Fire Retiree is $44,826, the premium payment alone will consume approximately 15% of his or her income following the shift to Medicare.

In addition, the figures, affidavits, and testimony offered by the Police and Fire Retirees are additional indicators of the impact on the Police and Fire Retirees' vested right to healthcare under their respective CBAs. Merely paying Part B premiums alone will cost each retiree an additional $1200 per year. Hr'g Ex. 6, BlueCHiP Benefits, at 6. For those Police and Fire Retirees who reside outside Rhode Island, eligibility is limited to Plan 65, which requires the additional purchase of a Part D prescription plan. Further, regardless of whether the Police and Fire Retirees are eligible for BlueCHiP or Plan 65, there is the potential that their prescription drug expenses will reach the drug cost threshold, their eligibility will end, and they will fall into the coverage gap or "Part D Doughnut Hole." Once in the "Doughnut Hole," the Police and Fire Retirees will pay out-of-pocket for all of their prescription drugs until their total drug costs exceed $4700 and catastrophic coverage is triggered. Such a predicament is in stark contrast to the small co-pays they currently pay under their Blue Cross plans. Cf. El Paso v. Simmons, 379 U.S. 497, 515 (1965) (no substantial impairment where a regulation merely "restrict[s] a party to those gains reasonably to be expected from the contract") (emphasis added). Accordingly, the Court is satisfied that the clear and unambiguous reference to

[12] According to the Police and Fire Retirees, Part B premiums cost $99.90 per person, per month, which results in a total cost of $2397.60 per year for a retired couple. Premiums for Blue MedicareRx are $180 per person, per month, resulting in an annual premium total of $4320 for a couple. Thus, total premium costs per couple come to $6717.60. Pl.'s Post-Hr'g Mem. at 16–17, 17 n.19.

Blue Cross coverage in the CBAs, as well as the significant costs that the Police and Fire Retirees have demonstrated that they stand to suffer, constitutes a prima facie showing of substantial impairment of their rights under their respective CBAs. Paramount Office Supply Co., 524 A.2d at 1101 ("Prima facie evidence is that amount of evidence that, if unrebutted, is sufficient to satisfy the burden of proof on a particular issue").

2

Legitimate Public Purpose

As a preliminary matter, the Court will address the issue of which party bears the burden of proof to demonstrate that a challenged regulation serves a legitimate public purpose. Courts have reached differing conclusions on the question of the burden of proof. However, this Court is satisfied that the correct reading of the law as established by the U.S. Supreme Court and other courts requires the burden of proof to be placed on the state. The U.S. Supreme Court noted: "[i]f the state regulation constitutes a substantial impairment, the State, in justification, must have a significant and legitimate public purpose behind the regulation," which implies that the burden is on the state to provide the justification. See Energy Reserves Group, 459 U.S. at 411. The First Circuit acknowledged that "many courts have concluded that this burden rests with the state, and others, including this Court and the Supreme Court, have used language that arguably supports such a conclusion." United Auto., Aerospace, Agric. Implement Workers of Am. Int'l Union, 633 F.3d at 43. Furthermore, the First Circuit previously stated that "a state must do more than mouth the vocabulary of the public weal in order to reach safe harbor." See McGrath v. R.I. Ret. Bd., 88 F.3d 12, 16 (1st Cir. 1996) (emphasizing that a "vaguely worded or pretextual objective" would not be enough). The Sixth Circuit

agreed, holding that once a plaintiff has established a substantial impairment, the burden shifts to the state to "proffer a significant and legitimate public purpose for the regulation." Toledo Area AFL-CIO Council v. Pizza, 154 F.3d 307, 323 (6th Cir. 1998) (internal citation omitted).

A legitimate public purpose is one "aimed at remedying an important general social or economic problem rather than providing a benefit to special interests." Sanitation and Recycling Indus., Inc. v. City of New York, 107 F.3d 985, 993 (2d Cir. 1997) (quoting Energy Reserves Group, 459 U.S. at 411–12). The regulation should "impose a generally applicable rule of conduct designed to advance a broad societal interest." See Lefrancois v. State of R.I., 669 F. Supp. 1204, 1215 (D.R.I. 1987) (internal citation omitted). A state's economic interests may be a legitimate public purpose. See Blaisdell, 290 U.S. at 444-48 (impairment of mortgages in addressing Depression-era problems); In re Advisory Opinion to the Governor (DEPCO), 593 A.2d at 947 (rearrangement of security interests in bank assets to address a state-wide credit crisis). However, "the purpose may not be simply the financial benefit of the sovereign." Buffalo Teachers Federation v. Tobe, 464 F.3d 362, 368 (2d Cir. 2006). The economic purpose, then, must be one meant to address fiscal emergencies and not merely a sovereign attempting to save money. See U.S. Trust, 431 U.S. at 26 (noting that while "a governmental entity can always find a use for extra money," a sovereign's purely financial interest in avoiding its contractual obligations was not a legitimate public purpose). Indeed, the Eighth Circuit has emphasized that, "[a]lthough economic concerns can give rise to the City's legitimate use of the police power, such concerns must be related to 'unprecedented emergencies,' such as mass foreclosures caused by the Great

Depression." AFSCME, Local 2957 v. City of Benton, 513 F.3d 874, 882 (8th Cir. 2008).

From the evidence provided, the Court finds the City had a legitimate public purpose in passing the Ordinance. It is clear that the City continues to suffer a severe fiscal crisis, and attempting to reduce City liabilities and expenses—including retiree benefits—is not an uncommon course of action for municipalities faced with a similar predicament. Prefatory language to the Ordinance recites relevant aspects of the current fiscal crisis and provides the framework within which the Ordinance's provisions are to be understood. See Blaisdell, 290 U.S. at 442 (upholding mortgage moratorium statute in part because the state legislature had declared in the Act itself the nature of the emergency). Those aspects reflected in the Ordinance are substantiated in the facts before the Court, and addressing the City's budget crisis is an end in which all residents of the City are concerned.

3

Reasonableness and Necessity

That the City may have enacted the statute in furtherance of a legitimate public interest does not end the Court's inquiry. The impairment to the CBAs created by the Ordinance "must also be one where the means chosen are reasonable and necessary to meet the stated legitimate public purpose." Buffalo Teachers Federation, 464 F.3d at 369. Courts usually defer to legislative determinations of what is reasonable and necessary. See Energy Reserves Group, 459 U.S. 412-13. Where, as here, the state itself is a party to the contract and is seeking to modify its own financial obligations, "complete deference to a legislative assessment of reasonableness and necessity is not appropriate

because the State's self-interest is at stake." U.S. Trust, 431 U.S. at 25-26 (further commenting "[i]f a state could reduce its financial obligations whenever it wanted to spend the money for what it regarded as an important public purpose, the Contract Clause would provide no protection at all."). Less deference does not translate into no deference, however, particularly "where economic or social legislation is at issue . . . ." Local Div. 589, Amalgamated Transit Union v. Massachusetts, 666 F.2d 618, 643 (1st Cir. 1981). Thus, for an impairment to be both reasonable and necessary under this less deferential standard,

> "it must be shown that the state did not (1) 'consider impairing the . . . contracts on par with other policy alternatives' or (2) 'impose a drastic impairment when an evident and more moderate course would serve its purpose equally well,' nor (3) act unreasonably 'in light of the surrounding circumstances." Buffalo Teachers Federation, 464 F.3d at 371 (quoting U.S. Trust Co., 431 U.S. at 30-31).

This Court is mindful that in considering whether a challenged regulation was reasonable and necessary to achieve its stated purpose, a court should be careful not to "act as [a superlegislature], overturning laws as unconstitutional when [it] believed the legislature acted unwisely." Buffalo Teachers Federation, 464 F.3d at 371. However, in the instant matter, the Court finds sufficient prima facie evidence that the City's chosen course of action—transitioning the Police and Fire Retirees from their Blue Cross plans to Medicare—was not reasonable "in light of the surrounding factors." U.S. Trust Co., 431 U.S. at 31. In finding sufficient evidence to suggest the Ordinance is unreasonable in light of the circumstances, the Court is particularly persuaded by the fact that the City's difficulties in funding its non-pension post-retirement employment benefits liabilities is not a new phenomenon but rather a chronic problem that has only gotten worse. The

Court finds especially compelling the testimony of Mr. Almonte, which indicates that the City knew or should have known of the cost of Blue Cross. Mr. Almonte testified that during his tenure as the State Auditor, he repeatedly informed the City of the cost of Blue Cross insurance for the Police and Fire Retirees. Despite this, the City continually entered into CBAs wherein it expressly promised the Retirees that it would provide them with health insurance from Blue Cross. The City, therefore, cannot claim to be taken by surprise at the present state in which it finds itself. See Blaisdell, 290 U.S. at 444-47 (noting an important factor in determining whether the state action was reasonable and necessary is whether the act was an emergency measure.).

Another factor to be considered is whether the conditions that immediately led to the subsequent impairment of a contract were foreseeable in determining the reasonableness of the impairment. See El Paso, 379 U.S. at 515 (retroactive imposition of a statute of limitations was constitutional where nineteenth century law had the unintended effect of creating windfalls for speculators); U.S. Trust, 431 U.S. at 31-32 (denying state's reneging on prior bond covenants to fund public transportation improvements in part because it was well known at the time the covenants were executed that public commuter trains were likely to produce operating deficits). This Court finds particularly instructive a comparison between the City of Providence's foreseeable predicament in this case and the unexpected challenges faced by the City of Baltimore in Baltimore Teachers, Am. Fed'n of Teachers Local 340, AFL-CIO v. City of Baltimore. 6 F.3d 1012 (4th Cir. 1993). There, the City of Baltimore was forced to impose a 1% decrease in pay to municipal employees after a series of unexpected cuts in state aid. Id. at 1014. Despite violating express provisions of CBAs between Baltimore and the

teachers' unions, the court found the pay cuts were reasonable and necessary because Baltimore had already instituted layoffs, job abolishments, and early retirements and the decision to cut pay was one of last resort. Id. at 1020; see also U.S. Trust, 431 U.S. at 29-31 ("[A] State is not completely free to consider impairing the obligations of its own contracts on a par with other policy alternatives."). Additionally, the court noted that the cuts in state aid were unexpected and the potential for the cuts was not provided for in the CBAs. Baltimore Teachers, Am. Fed'n of Teachers, 6 F.3d at 1021-22.

In the instant matter, the Court finds the willingness of the City of Providence to continually agree to provide Blue Cross insurance in successive CBAs when it was clear to the City that such a practice was contributing to an impending fiscal crisis is sufficient prima facie evidence that the City's act via the Ordinance is unreasonable. See Mass. Comm. College Council v. Commonwealth, 649 N.E.2d 708, 713 (Mass. 1995) (citing U.S. Trust, 431 U.S. at 29-32) ("An impairment is not a reasonable one if the problem sought to be resolved by an impairment of a contract existed at the time the contractual obligation was incurred. If the foreseen problem has changed between the time of the contracting and the time of the attempted impairment, but has changed only in degree and not in kind, the impairment is not reasonable."). The Court cannot and will not infer that the financial issues of the City resulting in the impairment of the CBAs in the instant matter changed in kind and not only in degree since the CBAs were entered into by the parties.

The City argues that it is facing a "Category 5 fiscal hurricane" as a result of an "unprecedented financial crisis." Def's Reply Brief at 1. While the Court is well aware of the current economic climate, "[f]inancial necessity, though superficially compelling,

has never been sufficient of itself to permit states to abrogate contracts." See Carlstrom v. State, 694 P.2d 1, 5 (Wash. 1985) (citing U.S. Trust, 431 U.S. 1) ("An economic emergency . . . is just another factor 'subsumed in the overall determination of reasonableness.'"). Furthermore, the Court notes that another factor courts have frequently cited in their discussion of reasonableness is whether or not the impairment is intended to be temporary or permanent. See, e.g., AFSCME v. City of Benton, 513 F.3d 874 (8th Cir. 2008) (where the court ruled that the City of Benton violated the Contracts Clause by permanently eliminating the city's payment of health care premiums for retired city employees). It is undisputed that in the instant case, the transfer of the Police and Fire Retirees from Blue Cross health insurance to Medicare is intended to be permanent, and not only for the duration of the fiscal crisis. See Sonoma County Org. of Pub. Employees v. County of Sonoma, 591 P.2d 1 (Cal. 1979) (comparing unfavorably the permanent elimination of wage increases with the temporarily deferred increase at issue in another case).

The Court emphasizes that the instant matter involves a preliminary injunction, which requires only a reasonable likelihood of success on the merits, not certainty of success. Coolbeth, 112 R.I. at 566, 313 A.2d at 660 (1974). In the instant case, the Court is merely deciding whether the unrebutted evidence before it is sufficient to make a prima facie challenge to the Ordinance. See Paramount Office Supply Co., Inc., 524 A.2d at 1101. As such, there is no finding by the Court, on the merits, that the City's action was either unreasonable or unnecessary, in violation of the Contracts Clause. The conclusion reached is that the Police and Fire Retirees have established a prima facie case. The City is yet free to prove that the economics involved in providing health care benefits to the

Police and Fire Retirees changed in kind and not only in degree, and that therefore, its actions were necessary. The final determination of that issue is not before the Court in the present matter.

Because the Court finds that the Retirees have sufficient evidence for a prima facie showing of substantial impairment and unreasonableness of the City Ordinance, the Court concludes that the Retirees do have a likelihood of success on the merits. Such a conclusion, however, has no bearing on the ultimate disposition of the parties' rights and obligations pending the conclusion of the underlying dispute.

B

Irreparable Harm

A finding of irreparable harm is proper when the moving party stands to suffer an imminent or threatened harm for which no legal remedy is available to restore it to its rightful position. See Brown v. Amaral, 460 A.2d 7, 10 (R.I. 1983); see also In re State Emps.' Unions, 587 A.2d 919, 926 (R.I. 1991) (noting irreparable injury occurs when later success on the merits is an "empty victory"); R.I. Tpk. & Bridge Auth. v. Cohen, 433 A.2d 179, 182 (R.I. 1981) ("Irreparable injury must be either 'presently threatened' or 'imminent'; injuries that are prospective only and might never occur cannot form the basis of a permanent injunction."). Courts have recognized that a violation of constitutional rights constitutes irreparable injury as a matter of law. Springtree Apartments, ALPIC v. Livingston Parish Council, 207 F. Supp. 2d 507, 515 (M.D.La. 2001) (citing Elrod v. Burns, 427 U.S. 347 (1976)). The Police and Fire Retirees assert that the Ordinance violates their constitutional rights under the Contracts Clause. The Court has already addressed this issue in substantial detail above and has concluded that

the Police and Fire Retirees have a reasonable likelihood of success of prevailing on the merits of their claim. See supra at 23–36. Thus, the Court shall not belabor the point here. As the Police and Fire Retirees have a reasonable likelihood of demonstrating the Ordinance's unconstitutionality at trial, failure to enjoin the Ordinance's operation would leave them irreparably harmed. See Springtree Apartments, 207 F. Supp. 2d at 515; cf. Wedgewood Ltd. P'ship I v. Township of Liberty, Ohio, 610 F.3d 340, 349 (6th Cir. 2010) ("A party is entitled to a permanent injunction if it can establish that it suffered a constitutional violation and will suffer 'continuing irreparable injury' for which there is no adequate remedy at law." (quoting Deja Vu of Nashville, Inc. v. Metro. Gov't of Nashville & Davidson Cnty., 466 F.3d 391, 394 (6th Cir. 2006))).

Violation of their Contract Clause rights, however, is not the only irreparable harm that the Police and Fire Retirees allege that they will suffer barring the issuance of an injunction. The Police and Fire Retirees also contend that the loss of health benefits alone amounts to irreparable harm. The Court finds merit in the Police and Fire Retirees' argument. Modification and or loss of health benefits is well recognized as a source of irreparable harm and grounds for an injunction. See, e.g., United Steel Workers of Am., AFL-CIO v. Textron, Inc., 836 F.2d 6, 8 (1st Cir. 1987) (concluding that "retired workers would likely suffer emotional distress, concern about potential financial disaster, and possibly deprivation of life's necessities"); Whelan v. Colgan, 602 F.2d 1060, 1062 (2d Cir. 1979) (stating that "the threatened termination of benefits such as medical coverage for workers and their families obviously raise[s] the spectre of irreparable injury"); Hinckley v. Kelsey-Hayes Company, 866 F. Supp. 1034, 1044 (E.D. Mich. 1994) ("[R]eductions in retiree insurance coverage constitute irreparable harm, meriting a

preliminary injunction."); Zotto v. Scovill, Inc., No. Civ. N-85-494, 1985 WL 14176, *2 (D. Conn. Nov. 7, 1985) ("[A] reduction in medical benefits establishes the threat of irreparable harm because the practical effect of the reductions could well be to preclude retirees from seeking needed medical treatment . . ."). One authority has stated:

> "Retiree insurance cases are costly and time-consuming, often taking years to reach final judgment. Preliminary injunctive relief is often critical, especially considering the age of most retirees and the impact that loss of benefits has on them and their families. Most decisions have no difficulty in finding that plaintiff-retirees facing loss of health insurance coverage satisfy the traditional equitable requirements for a preliminary injunction, including the irreparable harm requirement." 2 Employee and Union Member Guide to Labor Law § 9:61 (2004).

There is no dispute that the Ordinance affects the Police and Fire Retirees' health benefits under their respective CBAs. Def. Post-Hr'g Mem. at 35. Thus, as modification or loss of health benefits is a source of irreparable harm, the Court finds that the Ordinance works such injury on the Police and Fire Retirees. See Textron, 836 F.2d at 8.

Finally, the individualized proof of irreparable harm as submitted by the Retirees through testimony, affidavits, and personal information can be generalized to all of the Retirees. The evidence, coupled with general observations of retirement as set forth in Textron, demonstrates irreparable harm. In Textron, the Court accepted the specific facts proven at trial and added "the following generally accepted facts" to find irreparable harm in the loss of retiree health insurance benefits. 836 F.2d at 8. The court observed that "(1) most retired union members are not rich, (2) most live on fixed incomes, (3) many will get sick and need medical care, (4) medical care is expensive, [and] (5) medical insurance is, therefore, a necessity . . . ." Id. at 8; see Sch. Comm. of Pawtucket v. Pawtucket Teachers' Alliance Local No. 930, 117 R.I. 203, 207–08, 365 A.2d 499, 502

(1976) (In finding testimony by school superintendent alone was sufficient for a showing of irreparable harm in the midst of a teacher strike, the Court held "[w]hat constitutes irreparable harm is generally a factual determination made after considering the particular circumstances of a case.") (emphasis added)). These general facts, along with the testimony, affidavits, and personal financial information of the Police and Fire Retirees, have demonstrated the significant financial burden the transition to Medicare will have on them. The anxiety that they and those similarly situated are experiencing because of the City's plan—as evident in the phone messages of distraught Police and Fire Retirees to Robert Jarvis and Richard DiCicco—is readily apparent. Hr'g Ex. 22, DiCicco Aff. ¶ 12.

The City's reliance on the Adams, LaForest, Angotti, and Cooper cases as to the burden of proof on this issue is misplaced. See Adams v. Freedom Forge Corp., 204 F.3d 475, 480–88 (3d Cir. 2000); LaForest v. Former Clean Air Holding Co., Inc., 376 F.3d 48, 57–58 (2d Cir. 2004); Angotti v. Rexam, Inc., 2006 WL 1646135, at *13–15 (N.D. Cal. 2006); Cooper v. TWA Airlines, LLC, 274 F. Supp. 2d 231, 242 (E.D.N.Y. 2003). The Court notes, for example, that in Adams, there was "no evidence [submitted] that the eleven witnesses were representative of the other retirees and surviving spouses." 204 F.3d at 481. The Court is satisfied that in the instant case, it may properly generalize from the individualized evidence submitted by the Police and Fire Retirees to all the Retirees. The court in Adams acknowledged that "resting a preliminary injunction for many on the testimony of a few . . . is not inappropriate so long as the plaintiffs lay an adequate foundation from which one could draw inferences that the testifying plaintiffs are similarly situated—in terms of irreparable harm—to all the other plaintiffs." Id. at 487. Furthermore, this Court is satisfied that it may properly take notice of the "generally

accepted facts" as set forth in Textron, 836 F.2d at 8, regarding the importance of health insurance to retirees. See generally, Colonial Plumbing & Heating Supply Co. v. Contemporary Constr. Co., Inc., 464 A.2d 741, 742 (R.I. 1983) ("[A] court may take judicial notice of two categories of facts. One category consists of facts generally known with certainty by all reasonably intelligent people in the community, and the other consists of facts capable of accurate and ready determination by resort to sources of indisputable accuracy." (citing McCormick's Handbook of the Law of Evidence § 329-30 (2d ed. Cleary 1972))).

For the foregoing reasons, the Court finds that failure to grant the Police and Fire Retirees' injunction will cause them irreparable harm. Thus, the Court moves on to next prong of the injunction analysis.

C

Balance of Equities

Once the moving party has demonstrated a likelihood of success on the merits as well as irreparable harm, the court must consider "the equities of the case by examining the hardship to the moving party if the injunction is denied, the hardship to the opposing party if the injunction is granted and the public interest in denying or granting the requested relief." Fund for Cmty. Progress, 695 A.2d at 521; see also In re State Emps.' Unions, 587 A.2d at 925 ("[T]he relief which is sought must be weighed against the harm which would be visited upon the other party if an injunction were to be granted."). The Court must also be cognizant of "the practicality of imposing the desired relief." In re State Emps.' Unions, 587 A.2d at 927. Finally, the Court is mindful of our Supreme Court's comments in Fund for Community Progress that in considering the equities,

> "the hearing justice should bear in mind that 'the office of a preliminary injunction is not ordinarily to achieve a final and formal determination of the rights of the parties or of the merits of the controversy, but is merely to hold matters approximately in status quo, and in the meantime to prevent the doing of any acts whereby the rights in question may be irreparably injured or endangered.'" 695 A.2d at 521 (quoting Coolbeth, 112 R.I. at 564, 313 A.2d at 659).

The Court has already examined in substantial detail the question of harm to the Police and Fire Retirees if the injunction is denied and determined that failure to grant the injunction would result in irreparable injury. Supra at 37–41. In brief, absent an injunction, the Police and Fire Retirees stand to incur potentially thousands of dollars in new healthcare costs to retain insurance—expenses that could force them to choose between other necessities and forgoing medical treatment. Supra at 37–41. The Court finds this a significant harm.

Accordingly, the Court must now weigh the substantial injury to the Police and Fire Retirees if an injunction is denied against the harm which may redound to the disfavor of the City if an injunction is granted. The City asserts that grant of an injunction will require it to continue providing the Police and Fire Retirees with their current health insurance until the close of this litigation, at an annual cost of approximately $6 million dollars in lost savings. Def.'s Post-Hr'g Mem. at 36. It is in the public interest, the City maintains, that it not be made to forgo such savings.

The Court is well aware of the City's financial difficulties and recognizes that they are substantial. Whatever harm the City alleges, however, may be discounted in some degree by the fact that the Police and Fire Retirees have already demonstrated a likelihood of success on the merits. See Secs. & Exch. Comm'n v. World Radio Mission, Inc., 544 F.2d 535, 541 (1st Cir. 1976) ("To the extent that a defendant can show harm,

this must be discounted by the degree that a plaintiff can show likelihood of success."); see also Vargas-Figueroa v. Saldana, 826 F.2d 160, 162 (1st Cir. 1987) ("[T]he harm caused plaintiff without the injunction, in light of the plaintiff's likelihood of eventual success on the merits, outweighs the harm the injunction will cause defendants." (emphasis in original)). Moreover, the Court notes that $6 million in lost savings—although hardly a paltry sum—is less than 1% of the City's approximate $1.5 billion in liabilities for non-pension post-retirement employment benefits. Hr'g Ex. 19, Municipal Finance Review, at 14, 16. Immediate receipt of these alleged savings would not save the City from financial ruin. Conversely, the Court has gleaned from the testimony, affidavits, and personal financial information submitted by the Police and Fire Retirees that failure to grant an injunction would impose weighty new healthcare costs on the Police and Fire Retirees that could seriously impact their standard of living. Supra at 19–20, 25–29, 37–41. As such, the Court finds that the Police and Fire Retirees would suffer greater hardship from a failure to enjoin the City than would the City from a grant of an injunction.

The public interest and practicality factors of the equities prong can be addressed summarily. The City presents its interest in putting its fiscal house in order as "the public interest," but the public interest is many things. The public does have a clear interest in the financial health of its cities and towns, but the public interest is not simply synonymous with the interest of government. For example, there is also a strong public interest in the termination or prevention of unconstitutional acts. Nat'l Foreign Trade Council, Inc. v. Giannoulias, 523 F. Supp. 2d 731, 751 (N.D. Ill. 2007) ("[T]he public interest is served by any abatement of unconstitutional activity." (quoting Decker v. U.S.

Dep't of Labor, 473 F. Supp. 770, 776 (E.D. Wis. 1979))). As the Police and Fire Retirees have shown a reasonable likelihood of success on their Contracts Clause claim, the public interest would seemingly favor the Police and Fire Retirees' position as much as it favors the City's. Accordingly, this factor aids neither party.

The Court must also consider the practicality of issuing an injunction. In re State Emps.' Unions, 587 A.2d at 927. Here, practicality is no obstacle. The Court must simply order the City to refrain from taking action against the Police and Fire Retirees' health benefits under their respective CBAs and from requiring them to enroll in Medicare until this matter is resolved. As such, practicality concerns are minimal.

Having balanced the equities, the Court concludes that the equities favor grant of an injunction restraining the City from terminating the Police and Fire Retirees' Blue Cross insurance under their respective CBAs and from requiring them to enroll in Medicare.

D

Preservation of the Status Quo

Lastly, in considering whether to grant an injunction, a court must consider whether the injunction will adequately preserve the status quo. See DiDonato, 822 A.2d at 181. The purpose of an injunction is to "hold matters approximately in status quo, and in the meantime to prevent the doing of any acts whereby the rights [of the parties] . . . may be irreparably injured or endangered." Coolbeth, 112 R.I. at 564, 313 A.2d at 659. The Court finds that the grant of an injunction restraining the City from terminating the Blue Cross plans, to which the Police and Fire Retirees are accustomed, will provide them with a greater sense of certainty about their medical and financial options moving

forward. The Court notes that the Police and Fire Retirees will be better able to make informed decisions regarding their enrollment in the Medicare associated plans if they may do so without the concern that their current healthcare insurance will be terminated. The Court has already identified the substantial harm warranting the imposition of the injunction, which is the concern that the Police and Fire Retirees will refrain from seeking necessary medical treatments or be forced to decide between basic necessities and necessary medical services. Textron, Inc., 836 F.2d at 8. By requiring the City to continue to offer and fund the Police and Fire Retirees' current insurance until this matter is decided, the Police and Fire Retirees will be in a better position to manage their finances and make adequate medical decisions. Furthermore, the Court is satisfied that, absent the grant of this injunction, the Police and Fire Retirees' ability to pursue the underlying dispute may be compromised while they make the necessary adjustments to their finances and decisions about their health insurance. For the foregoing reasons, the Court finds that the granting of an injunction is required to adequately preserve the status quo while this dispute is ongoing. See Coolbeth, 112 R.I. at 564, 313 A.2d at 659.

E

Summary of Findings and Remedy

In sum, the Court finds that the Police and Fire Retirees have a reasonable likelihood of prevailing on the merits of their Contracts Clause claim and that they will be irreparably harmed if an injunction does not issue. The Court also finds that the balance of the equities favors an injunction restraining the City from terminating the Police and Fire Retirees' health insurance benefits under their respective CBAs and barring the City from requiring Police and Fire Retiree Medicare enrollment. Finally, the

Court also finds that grant of an injunction will preserve the status quo. Based on these findings, the Court enjoins the City from cancelling the Police and Fire Retirees' collectively bargained-for Blue Cross health insurance benefits and from requiring the Police and Fire Retirees to enroll in Medicare until trial on the merits.

IV

Posting of Bond

The City requests that the Court require the Police and Fire Retirees to post $6 million bond pursuant to Super. R. Civ. P. 65(c) to reimburse the City for the costs and damages that the City will incur if it is subsequently determined that the injunction issued improperly. The demand that the moving party post bond is not mandatory, but left to the discretion of the Court. See Macera Bros. of Cranston, Inc. v. Gelfuso & Lachut, Inc., 740 A.2d 1262, 1264–1265 (R.I. 1999). The Court declines to exercise its discretion as the City requests. The Police and Fire Retirees shall not post bond.

V

Conclusion

After due consideration of the arguments advanced by Counsel and the testimony, affidavits, labor agreements, financial data, and other exhibits submitted by the parties, the Court grants Plaintiff Providence Retired Police and Firefighter's Association's Motion. The Court finds that the Police and Fire Retirees have a substantial likelihood of success on the merits of their constitutional challenge of the Ordinance and that they stand to suffer irreparable harm if an injunction does not issue. The Court also finds that the equities favor stopping Defendant City of Providence from cancelling the Police and Fire Retirees' health benefits under the CBAs and freezing the City's plan for Police and

Fire Retiree Medicare enrollment. Accordingly, the Motion is granted. The City is enjoined from terminating the Police and Fire Retirees' Blue Cross/Blue Shield health insurance as defined in the CBAs until final resolution of this dispute. The City is also enjoined from requiring the Police and Fire Retirees to enroll in Medicare until this matter is resolved. This Decision should not be construed in a manner which prohibits the Police and Fire Retirees from exercising their right to enroll in Medicare if they so choose. Counsel shall submit an appropriate Order for entry.