STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC **SUPERIOR COURT**

(FILED: MAY 24, 2012)

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

DECISION

TAFT-CARTER, J. Before the Court is Plaintiff's Motion for Class Certification pursuant to Rule 23 of Rhode Island's Superior Court Rules of Civil Procedure.

I

Facts and Travel

The pertinent facts are as follows. Plaintiff, the Providence Retired Police and Firefighter's Association and certain named individuals who are members of the putative class (collectively, "Association"), is an association representing retirees of the Providence Police and Fire Departments ("Retirees"). The Retirees, who all retired before 2011, were guaranteed lifetime health insurance and prescription drug coverage under either Classic Blue Cross/Blue Shield or Healthmate Coast-to-Coast ("Blue Cross"), according to the specific terms set forth in the respective collective bargaining agreements ("CBA") negotiated between their Unions and Defendant, the City of Providence ("City").

In response to a deepening financial crisis, the State Legislature enacted, in 2011, a Statute providing that a municipality will not be required to pay healthcare benefits to a Medicare-eligible retiree regardless of any provision in a CBA to the contrary. Pub. L. 2011, ch. 151, art. 12, § 2 (codified at G.L. 1956 § 28-54-1 (2011)) ("§ 28-54-1" or "Statute"). Defendant, the City of Providence ("City"), thereafter enacted an Ordinance requiring 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.

On October 12, 2011, the Association filed suit seeking, among other relief, a declaratory judgment that § 28-54-1 and the Ordinance violated the Contracts Clause of Article I, § 10 of the United States Constitution and Article I, § 12 of the Rhode Island Constitution ("Contracts Clause").

The Association's request for a preliminary injunction was heard during the weeks of December 12, 2011 and January 3, 2012. A decision was rendered on January 30, 2012 granting the request for a preliminary injunction. The trial on the declaratory judgment complaint is scheduled to begin on May 29, 2012.

In the instant matter, the Association, along with certain named individuals who are members of the putative class, requests that this Court certify a class composed of all persons or entities who are 65 years of age or older and:

1. retired from employment with the Providence Police Department and are entitled to City-paid health benefits for life under a CBA as a result of that employment,
2. retired from employment with the Providence Fire Department and are entitled to City-paid health benefits for life under a CBA as a result of that employment,
3. are or were married to a person who retired from the Providence Police Department and are entitled to City-paid health benefits for life under a CBA as a result of that marriage, or

4. are or were married to a person who retired from the Providence Fire Department and are entitled to City-paid health benefits for life under a CBA as a result of that marriage.

Oral arguments for the instant Motion were heard on May 9, 2012.

II

Standard

In Rhode Island, "[a] finding by the court that a class action will fairly ensure the adequate representation of alleged parties is a condition precedent to the maintenance of a class action." Cabana v. Littler, 612 A.2d 678, 685 (R.I.1992). "The party pleading the class action bears the burden of proof." Id. "The initial burden is not heavy but requires more than mere conjective and conclusory allegations." Id. at 686 (citing Janick v. Prudential Insurance Co. of America, 451 A.2d 451, 455 (Pa. 1982)). In order to satisfy that burden, the party pleading the class action must make, as a requirement of Super R. Civ. P. Rule 23, "a timely motion to certify the suit as a class action and to present evidence from which the court can conclude that class-certification requirements are met." Id. (citing Janick, 451 A.2d at 454).

To certify a proposed class, the Association must demonstrate that it has satisfied the four prerequisite elements outlined in Rule 23(a). As specifically stated in the text of Rule 23(a):

> "One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class." R.I. Super. R. Civ. Pro. 23(a); see also Cohen v. Harrington, 722 A.2d 1191, 1195-96 (R.I. 1999).

Once the requirements of Rule 23(a) are satisfied, the prospective class must then fit into one of the categories provided for in Rule 23(b).

"In ruling on a motion for class certification, a court should not decide the merits of the case." Zarella v. Minnesota Mutual Life Ins. Co., 1999 WL 226223,*3 (Super. Ct. April 14, 1999) (citing Eisen v. Carlisle & Jacquelin, 417 U.S. 156, 177-78 (1974)). "A court may, however, look past the pleadings in determining whether requirements of Rule 23 have been satisfied." Id. (citing Castano v. American Tobacco Co., 84 F.3d 734, 744 (5th Cir.1996)). As noted by the Court in Zarella, there is a "dearth of case law" in Rhode Island pertaining to class actions and Rule 23. Zarella, 1999 WL 226223 at *3, n. 5. Therefore, it is proper for this Court to look to interpretations of Federal Rule 23 from the federal courts. Id. (citing Ciunci v. Logan, 652 A.2d 961, 962 (R.I. 1995)).

III

Analysis

A

Timeliness

As a preliminary matter, this Court will address the issue of timeliness. The City contends that the Association failed to file the certification motion in a timely manner as required by Rule 23(c), asserting that the delayed filing is prejudicial to the City and its ability to prepare for the trial in this matter.

Rule 23(c)(1) provides:

> "As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. An order under this subdivision may be conditional, and may be altered or amended before the decision on the merits."

In Cabana, the Rhode Island Supreme Court discussed the class proponent's responsibility in moving to certify a suit as a class action:

> "Rule 23 requires the class proponent to make a timely motion to certify the suit as a class action and to present evidence from which the court can conclude that class-certification requirements are met. . . . The rule does not state when this burden must be met, but the Federal Rule 23(c)(1) codifies the majority view that certification should be determined as soon as practical." 612 A.2d at 686.

Courts have taken divergent approaches in describing the meaning of the "as soon as practicable" requirement. 5 Moore's Federal Practice, § 23.61[4], at 23-278.1 (3d ed.1997). As discussed by the Federal District Court for the District of Rhode Island, "The current practice is to determine maintainability of the class and to identify and structure the class at the earliest pragmatically wise moment." Berman v. Narragansett Racing Association, 48 F.R.D. 333, 336 (D.R.I. 1969). Accordingly, this Court has previously found that a period of two and a half years fulfilled the timeliness requirement where plaintiffs also had to deal with several burdensome discovery requests and other motions, including a motion to dismiss. See Hanoian v. Blue Cross and Blue Shield of Rhode Island, 2002 WL 31097767 (Super. Ct. September 18, 2002).

Upon reviewing the history and circumstances surrounding this case, this Court concludes that the Association has complied with the "as soon as practicable" requirement of Rule 23(c)(1). After this case was originally filed in October of 2011, the Association filed a Motion for a Preliminary Injunction, which this Court granted on January 30, 2012. Since then, the parties have been conducting discovery and preparing for trial. The Association's motion for class certification was filed prior to the close of discovery for this case. It is noteworthy that other courts have declined to rule on motions for class certification until parties have had an opportunity to conduct discovery.

See Brown v. J.P. Allen Co., 79 F.R.D. 32, 35 (N.D.Ga. 1978); Chateau de Ville Prod. v. Tams-Witmark Music, 586 F.2d 962, 966 (2d Cir. 1978). Accordingly, the Court does not find that there was any unreasonable delay on the Association's part in making the instant Motion and therefore, the City's argument will not prevail.

B

Requirements of Rule 23(a)

The Court will now address the four prerequisites of Rule 23(a) for class certification.

1

Numerosity

The first requirement under Rule 23(a) is numerosity. Numerosity requires a finding that the class is so numerous that joinder of all members is impracticable. As a general rule, a class of forty (40) or more members raises a presumption of impracticability of joinder. See Newberg on Class Actions § 3:12 at 198 (5th ed. 2011). In the instant case, the Association alleges that the putative class consists of approximately 648 retirees and spouses who receive health benefits from the City. The Association has also submitted evidence demonstrating that the retirees are geographically diverse, dispersed throughout the country. From sheer numbers alone as well as the geographic diversity of the putative class members, the Court finds that joinder of all members would be impracticable and that, therefore the requirement of numerosity is met.

2

Commonality

The second requirement under Rule 23(a) is that there are questions of law or fact common to the entire class. The proposed class representative has the burden of proving that there is at least one common question of law or fact shared by the class and that the common question is not peripheral but important to most of the individual class member's claims. The U.S. Supreme Court recently reiterated that "even a single [common] question will do." Wal-mart Stores, Inc. v. Dukes, 131 S.Ct. 2541 (2011). In the Wal-mart case, the Supreme Court found that plaintiffs had not met the commonality requirement because they presented no evidence of a uniform employment practice that caused the discrimination plaintiffs were alleging. See id. at 2554-55. The Supreme Court emphasized that what was necessary for a finding of commonality was "the capacity of a classwide proceeding to generate common answers apt to drive the resolution of the litigation." Id. at 2551 (internal citations omitted). Similarly, in DeCesare v. Lincoln Benefit Life Co., the R.I. Supreme Court found that class certification is appropriate when a common question of contractual liability is present, even if individual damage assessments would be required later. 852 A.2d 474, 488 (R.I. 2004). The Association alleges multiple common questions regarding liability. The primary common contention is the constitutional challenge to the Statute and the Ordinance permitting the City to alter the health insurance coverage the Retirees are entitled to under their CBAs. The Court contrasts this with the Wal-mart case where the plaintiffs could not allege a company-wide policy any more specific than the rule granting individual store managers great discretion in their personnel decisions. See

Wal-mart, 131 S.Ct. at 2551. In this case, the common question of law is specific and defined, as is the challenged action, and therefore, the Court finds the commonality requirement to be met.

3

Typicality

The third requirement is that the claims or defenses of the class representatives must be typical of the claims or defenses of the class as a whole. "When it is alleged that the same unlawful conduct was directed at or affected both the named plaintiff and the class sought to be represented, the typicality requirement is usually met irrespective of minor variations in the fact patterns underlying individual claims." Robidoux v. Celani, 987 F.2d. 931, 936-37 (2d Cir. 1993).

The Association asserts that typicality is met because the legal theories and evidence the class representatives will use to advance their claims will simultaneously advance the claims of other class members. In general, most courts have found that the typicality requirement is satisfied in suits, such as this one, seeking declaratory or injunctive relief. See Newberg on Class Actions § 3:34 at 279. Furthermore, typicality is generally presumed to be met where all the class members' claims arise out of the same general contract. See Mund v. EMCC, Inc., 259 F.R.D. 180 (D.Minn. 2009). Here, the relevant provisions of the CBAs for the firefighters and the police officers are similar enough that they may be treated essentially as the same contract. See, e.g., In re Universal Service Fund Telephone Billing Practices Litigation, 219 F.R.D. 661 (D. Kan. 2004) (finding typicality despite the class members' claims arising out of different portions of their individual contracts because the substance of the provisions at issue

were the same); Steinberg v. Nationwide Mut. Ins. Co., 224 F.R.D. 67 (E.D. N.Y. 2004) (finding typicality where all of defendant insurance company's contracts with individual class members were uniform regarding the pertinent provisions and the challenged conduct was standard practice that had affected all the class members). Accordingly, the Court finds the typicality requirement has been met.

4

Adequate Representation

The fourth and final requirement of Rule 23(a) is adequacy of representation of both the class representatives and class counsel. Two main factors that must be determined under Rule 23(a)(4) are (1) whether the Association's attorneys are qualified and experienced, and (2) whether conflicts of interest exist between the named representatives and the class members. See General Telephone Co. v. Falcon, 457 U.S. 147 (1982).

With regard to the adequacy of the proposed representatives, the inquiry is focused on whether there are any conflicts of interest between the proposed representative and the class, such as any differences in the type of relief sought or any economic competitors within the class. Moreover, the conflict of interest must be fundamental, going to the specific issues in controversy. See In re Transkaryotic Therapies, Inc. Securities Litigation, 2005 WL 3178162 (D.Mass. 2005). The Court is satisfied that there are no potential conflicts of interest between the named plaintiffs and the rest of the class. All the class members, including the named plaintiffs, receive the same benefit of City-paid health insurance and have the same interest in opposing the transition to Medicare. The Court notes that although the extent of the financial impact

on the individual members of the class will differ because of their individual financial and health situations, the type of injury suffered is substantively the same for all class members. Therefore, the named plaintiffs may suffer financial harm to differing degrees. That fact is not indicative of inadequate representation. The Court is satisfied that the interests of the named plaintiffs in continuing to receive City-provided health insurance are sufficiently similar to those of the rest of the class members to ensure adequate representation.

Adequacy of representation also requires that the proposed class representatives are sufficiently knowledgeable about the case or about their duties as class representatives. While a plaintiff must have some knowledge of the litigation and facts of the case, only a "minimal degree of knowledge [is] necessary to meet the adequacy standard." Newberg on Class Actions § 3:67 at 378 (internal quotations omitted). More importantly, class representatives should understand their role as class representatives and be committed to serving in that role in litigation. See Spinelli v. Capital One Bank, 265 F.R.D. 598, 614 (M.D. Fla. 2009) (finding inadequacy where the class representative "provided no affidavit reflecting her understanding and acceptance of the duties of a class representative"); In re AEP ERISA Litigation, 2008 WL 4210352 (S.D. Ohio 2008) (finding a proposed class representative inadequate because he stated that he was "just a member of the class," thereby suggesting that he didn't realize that the role of representative required actively assisting counsel in prosecuting the litigation).

The Court notes that the burden of disproving adequacy is on the party objecting to it. See Lewis v. Curtis, 671 F.2d 779 (3d Cir. 1982). In the absence of any evidence from the City alleging that the named plaintiffs will not adequately represent the class,

the Court is satisfied that the adequacy requirement has been met. The Court will, however, require affidavits from the individual named plaintiffs asserting that they have some basic knowledge of the litigation and of their duties as a class representative, in order to ensure a thorough record.

In the instant Motion, the Providence Retired Police and Firefighter's Association is also seeking to be certified as a class representative, in addition to the named plaintiffs, even though the Association itself is not technically a member of the class. Most courts have accepted that an organization may represent a class provided that the purpose of the association is to represent the interests of the class. See e.g., Percy v. Brennan, 384 F.Supp. 800 (D.C. N.Y. 1974) (finding that organizations had standing to represent their members where representation of their members' interests was the primary reason for the organization's existence). The Court can find no reason why the Association may not serve as an adequate representative as the members of the Association are all Retirees from the Police and Fire Departments. While the membership of the Association is not entirely composed of putative class members, the members of the Association, even if not members of the putative class, will have sufficient interest in the outcome of this litigation as it will very likely affect their own health insurance. This Court can find no serious, potential conflicts of interest between the members of the Association and the putative class that would otherwise prevent the Association from being an adequate class representative. Cf. Arena v. City of Providence, 919 A.2d 379, 389 (R.I. 2007) (stating that retirees may not be considered employees because "employees and retirees do not share a 'community of interests,' thereby creating a danger that active employees will bargain for better conditions at the expense of retirees' benefits."). Accordingly, the

Court will certify the Association as an adequate class representative for the purposes of the declaratory and injunctive relief sought.[1]

Adequacy of counsel focuses on whether the attorneys are competent to represent the class, which is usually determined based on factors such as counsel's knowledge and experience with class action law and the relevant substantive law, and any past ethical violations on counsel's part. The qualifications of counsel are generally held to a heightened standard in order to protect the interests of absent class members, with the adequacy determination resting primarily on the level of competence displayed by counsel in the present case. See Caranci v. Blue Cross & Blue Shield of Rhode Island, 1999 WL 766974 (D.R.I. 1999).

With regard to adequacy of counsel, both counsel meet the standard. The Court has observed the handling of this case and both counsel are well-qualified and competent. Further, the Motion asserts that they have been in regular contact with the Association. Accordingly, the Court is satisfied that the adequacy of representation requirement has been met with regard to both the putative class representatives and class counsel.

C

Rule 23(b)

Having found that the four initial prerequisites of Rule 23(a) have been met, the Court will now turn to whether the class may be certified under one of the three provisions of Rule 23(b). Here, the Association is seeking certification under either Rule 23(b)(1)(A), Rule 23(b)(2), or Rule 23(b)(3); only one of the provisions need to be

[1] The Association is not certified as a class representative for the issue of damages, should the Court find it necessary to address the issue of damages hereafter.

satisfied. The Court concludes that in the instant case, certification under Rule 23(b)(2) is the most appropriate.[2]

Rule 23(b)(2) permits class certification if "[t]he party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole". Classes certified under Rule 23(b)(2) are not prohibited from also seeking damages, provided that the request for monetary damages are only incidental to the injunctive or declaratory relief sought. "Whether an action should be certified under Rule 23(b)(2) 'depends on the appropriateness of injunctive or corresponding declaratory relief with respect to the class as a whole.'" Caranci v. Blue Cross and Blue Shield of Rhode Island, 1999 WL 766974, *19 (D. R.I., August 19, 1999) (citing Dionne v. Bouley, 757 F.2d 1344, 1356 (1st. Cir. 1985)).

In the instant case, the Association is requesting declaratory and injunctive relief. The City's actions in passing the Ordinance have inflicted the same injury to all members of the class, in that the plaintiffs could lose their health insurance provided within their CBAs and further requiring them to enroll in Medicare. A declaratory judgment as to the constitutionality of either the Statute or the Ordinance in the Association's favor will necessarily redress the harm the putative class members suffered. Moreover, the Amended Complaint makes it clear that any monetary damages are incidental to the suit and may not be maintained at all. Accordingly, the Court will certify the class under Rule 23(b)(2).

[2] The Court notes that certification under Rule 23(b)(1)(1) or 23(b)(2) is generally preferred due to the additional requirements for certification under Rule 23(b)(3). See Newberg on Class Actions § 4:20 at 146-48.

In finding that class certification is appropriate, the Court is further satisfied that the class action is the superior method for the fair and efficient adjudication of this case. At the heart of this controversy is a single action taken by the City in passing the Ordinance requiring the Retirees to enroll in Medicare. The Ordinance has necessarily affected the Retirees in a uniform fashion in threatening them with the loss of their current health insurance. Requiring the individual Retirees to bring suit on their own behalf would be highly inefficient, both because of the cost of litigation and because of the geographic diversity of the Retirees. Both the interests of justice and judicial economy will be served by permitting the Retirees to consolidate their claims into this one suit. Furthermore, certifying the class will ensure easier management of this case, obviating the need for testimony from every individual Retiree as to the effect the Ordinance will have.

Conclusion

For the foregoing reasons, Plaintiff's Motion for Class Certification is Granted as to the proposed class described in paragraph 1 of the Second Amended Complaint. The individual named plaintiffs and the Providence Retired Police and Firefighter's Association are hereby certified as the representatives of the class certified under Rule 23(b)(2).

Counsel shall submit the appropriate Order for entry.