STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: April 16, 2015)

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

DECISION

TAFT-CARTER, J. Before this Court for decision are (1) the Plaintiffs' Motion for Class Certification and appointment of class representatives and class counsel pursuant to Super. R. Civ. P. 23 and (2) the Parties' Joint Motion for Preliminary Approval of the Class Settlement and to establish procedures for notice.

I

Facts and Travel

The filing of this case stems from the settlement of several consolidated cases referred to as the pension cases. The pension cases challenged the constitutionality of certain legislative actions reducing the retirement benefits of state employees, public school teachers, and certain municipal employees.

The first of the pension cases, docketed as PC 10-2859, was filed by a number of labor organizations representing state employees and teachers challenging the constitutionality of pension changes enacted in 2009 and 2010. See P.L. 2009, ch. 68, art. 7 (the 2009 Act) and P.L. 2010, ch. 23, art. 16 (the 2010 Act). During the pendency of the 2010 action, the General Assembly enacted the Rhode Island Retirement Security Act of 2011, P.L. 2011, ch. 408 and 409

(RIRSA), which further reduced the retirement benefits of public employees. Following the enactment of the RIRSA, five additional lawsuits were filed by retired or active state employees, public school teachers, and municipal employees challenging the constitutionality of the RIRSA.[1] The 2010 case and the 2012 cases all sought injunctive relief and a declaratory judgment that the 2009 and 2010 Acts and the RIRSA violated the Contract Clause, Takings Clause, and Due Process Clause of the Rhode Island Constitution. These cases were consolidated for discovery purposes.

In 2013, the litigants entered into court-ordered mediation with the Federal Mediation and Conciliation Service (FMCS). In February 2014, after thirteen months of mediation with FMCS, an agreement was reached. The settlement failed because it was not approved by one group. After the settlement failed, a trial date was set by the Court.

Three additional cases were filed after the failed settlement: two by the Cranston Police and Firefighters, in cases docketed as PC 14-4343 and PC 14-4768; and one by a group of individual retirees, in a case docketed as KC 14-345 (the Clifford case)[2]. Each case mounted challenges mirroring those of the Plaintiffs in the initial lawsuits.

[1] The Plaintiffs in the case designated as C.A. No. 12-3166 (the Retiree case) consist of a number of Associations representing retired state and municipal employees and individual Plaintiffs who are all retired public sector employees or were married to public sector employees who are current beneficiaries of the Retirement System. Plaintiffs in the case designated C.A. No. 12-3167 consist of a number of local affiliates of the AFSCME, Council 94, representing general municipal employees. Plaintiffs in C.A. No. 12-3168 consist of a number of local labor organizations representing state employees and public school teachers and/or employees. Plaintiffs in C.A. No. 12-3169 consist of a number of local affiliates of the International Brotherhood of Police Officers representing municipal police officers. Plaintiffs in C.A. No. 12-3579 consist of a number of local affiliates of the International Association of Firefighters (IAFF) representing municipal firefighters.

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

Since that time, the parties have engaged in extensive discovery and pre-trial motions in preparation for the scheduled trial date of April 20, 2015. On March 9, 2015, this Court appointed a Special Master to assist the parties in resolving any discovery issues and narrowing or resolving issues for trial. The Special Master submitted his report to the Court, announcing that the parties, with the exception of the Plaintiffs in the case docketed as PC 12-3169 (active police) and the Cranston Police and Firefighters, had reached a settlement which was approved by a majority of the members of the organizations represented in these pension cases. Accordingly, this Court allowed the parties a forty-five-day implementation period.

This action was filed for the purpose of implementing the proposed settlement. The Plaintiffs have filed a Motion for Class Certification and appointment of class representatives and class counsel. The Defendants[3] do not object. In addition, the parties have filed a Joint Motion for Preliminary Approval of the Class Settlement and notice procedures.

In their Motion for Class Certification, the Plaintiffs seek to have this Court certify the following proposed Plaintiff Class:

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

The Plaintiffs further seek to have the Court certify the following subclasses:

[3] The State Defendants are Gina Raimondo, in her capacity as Governor of the State of Rhode Island; Seth Magaziner, in his capacity as General Treasurer; the Employees Retirement System of Rhode Island by and through the Retirement Board; and Frank J. Karpinski, in his capacity as Secretary of the Board. The Municipal Defendants consist of some twenty-nine municipal entities which have collective bargaining agreements (CBA) with one or more of the individual Plaintiffs in these cases and have been joined as indispensable parties to these actions. The State Defendants and Municipal Defendants will be referred to collectively as the Defendants.

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

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

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

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

The Plaintiffs are not seeking class certification for the following: (1) non-retired participants in the City of Cranston's fire MERS pension systems and (2) non-retired participants in a police pension system for any Rhode Island municipality participating in MERS.

The Plaintiffs propose the following individuals to serve as Class Representatives for the Plaintiff Class:

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

In addition to the Plaintiff Class, there is a request to have the following Defendant Class certified: all municipal entities that participate in MERS and all municipal entities that employ teachers who participate in the state employees and teachers' ERS. It is proposed that the following municipal entities serve as Class Representatives for the proposed Defendant Class: The Towns of Barrington, Middletown, and South Kingstown.

[4] The Court notes that the retiree subclass by its terms includes all former and remaining individual plaintiffs in the Clifford case, KC 14-345.

In addition to class certification, the parties, by motion, also seek preliminary approval of the proposed settlement agreement and for the Court to approve the notice procedures for the settlement.

The terms of the proposed settlement agreement are attached as Exhibit 1 of the Joint Motion for Preliminary Approval of the Class Settlement. The Court has reviewed the terms of the proposed settlement agreement and summarizes them as follows:

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

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

- Current retirees (or their beneficiaries) who have or will have retired on or before June 30, 2015 will receive two payments: (1) a one-time $500.00 stipend (not added to the COLA base) within sixty days of the enactment of the legislation approving the terms of the settlement and (2) a one-time $500 stipend payable one year later.

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

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

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

- The settlement reduces the impact of an early retirement.

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

- Otherwise, the terms of the RIRSA remain the same.

The Court heard oral argument on these motions on April 13, 2015 and now issues its Decision.

II

Standard of Review

A prospective class bears the burden of establishing the requirements of Super. R. Civ. P. 23 (Rule 23). DeCesare v. Lincoln Benefit Life Co., 852 A.2d 474, 487 (R.I. 2004). In order to satisfy that burden, the party pleading the class action must make as a requirement of Rule 23 a timely motion to certify the suit as a class action and present evidence from which the Court can conclude that class certification requirements are met. See Janicik v. Prudential Ins. Co. of Am., 451 A.2d 451, 454 (Pa. Super. 1982). Rule 23 of the Rhode Island Rules of Civil Procedure sets out the required elements in order for a court to certify a proposed class. A proposed class must, as an initial matter, satisfy the four prerequisite elements set forth 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." Rule 23(a); see also Cohen v. Harrington, 722 A.2d 1191, 1195-96 (R.I. 1999).

Provided that the requirements of Rule 23(a) are satisfied, the prospective class must qualify under one of the three 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 Mut. Life Ins. Co., 1999 WL 226223,*3 (Super. Ct. Apr. 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, this Court looks to interpretations of Federal Rule 23 from the federal courts. See DeCesare, 852 A.2d at 488-89; see also Ciunci, Inc. v. Logan, 652 A.2d 961, 962 (R.I. 1995).

Rule 23(e) provides that "[a] class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs." As one court has explained, the purpose underlying Rule 23(e) "is to protect unnamed members of the class from unjust or unfair settlements affecting their rights." In re Syncor ERISA Litig., 516 F.3d 1095, 1100 (9th Cir. 2008). To effectuate this mandate, a court must be satisfied that the proposed settlement agreement is "fundamentally fair, adequate, and reasonable" before granting approval. In re Heritage Bond Litig., 546 F.3d 667, 674-75 (9th Cir. 2008); see also Stanton v. Boeing Co., 327 F.3d 938, 959 (9th Cir. 2003). In reviewing a proposed settlement, courts are "restrained by the clear policy in favor of encouraging settlements" to facilitate resolution of controversies and

promote judicial economy. Durrett v. Hous. Auth. of City of Providence, 896 F.2d 600, 600-04 (1st Cir. 1990) (citing Metro. Hous. Dev. Corp. v. Vill. of Arlington Heights, 616 F.2d 1006, 1014 (7th Cir. 1980)).

Further, "[b]efore sending notice of the settlement to the class, the court will usually approve the settlement preliminarily." In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig., 55 F.3d 768, 785 (3d Cir. 1995). "The preliminary approval decision is not a commitment [to] approve the final settlement; rather, it is a determination that 'there are no obvious deficiencies and the settlement falls within the range of reason.'" Gates v. Rohm and Haas Co., 248 F.R.D. 434, 438 (E.D. Pa. 2008) (quoting Smith v. Prof'l Billing & Mgmt. Servs., Inc., 2007 WL 4191749 at *1 (D.N.J. 2007)). "Preliminary approval is not binding, and it is granted unless a proposed settlement is obviously deficient." Id.

III

Analysis

A

Class Certification

As a preliminary matter, the Court will address the issue of timeliness. "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 Ass'n, 48 F.R.D. 333, 336 (D.R.I. 1969); see also Cabana v. Littler, 612 A.2d 678, 686 (R.I. 1992). A determination of timeliness "depends on the facts and circumstances of the case." Zarrella v. Minnesota Mut. Life Ins. Co., 824 A.2d 1249, 1263 n.16 (R.I. 2003). Upon review of the history and circumstances of this case, this Court concludes that the Plaintiffs have complied with the "[a]s soon as practicable" requirement of Rule 23(c)(1). Since the inception of these cases, the parties have

worked diligently on motion practice, discovery, trial preparation, and mediation. The good-faith efforts in mediation for a period of nearly two years prolonged the trial date; however, the attempt was not unfruitful. In the preparation for trial and in an attempt to resolve or narrow the issues for trial, the parties once more engaged in the negotiations that resulted in the instant proposed settlement. Although the initial pension case dates to 2010, the motion for class certification is timely based upon the pre-trial status of the case as well as the complexity of the trial.

Having concluded the issue of timeliness, the Court will now address the four prerequisites of Rule 23(a) for class certification.

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 or more members raises a presumption of impracticability of joinder. See William B. Rubenstein, Alba Conte & Herbert Newberg, Newberg on Class Actions § 3:12 at 198 (5th ed. 2011). The Plaintiffs estimate that there are approximately 60,000 members in the proposed Plaintiff Class. Without a doubt, a proposed class of 60,000 satisfies the numerosity requirement of Rule 23(a). Additionally, the Plaintiffs submit that there are 113 municipal entities which participate in MERS and would be members of the proposed Defendant Class. The Court is satisfied that the Defendant Class also meets the numerosity requirement.

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). The Rhode Island Supreme Court has found that class certification is appropriate when a common question of contractual liability is present, even if individual damage assessments would be required later. DeCesare, 852 A.2d at 488.

All of the Plaintiffs raise the same constitutional challenges to the 2009 and 2010 Acts and to the RIRSA, alleging that the Acts violated the Contract Clause, Due Process Clause, and Takings Clause of the Rhode Island Constitution. This Court previously found in granting the Defendants' motion to consolidate all the underlying pension cases for purposes of trial that the cases brought by each of the different proposed subclasses here involved common questions of law and fact such that the cases should be consolidated. The Court sees no reason to depart from this conclusion. All of the Plaintiffs in this case are either retired or active public sector employees of either a municipality or the State, who became members in either the ERS or MERS as a result of their employment and, accordingly, had their current or future retirement benefits reduced through the enactment of the 2009 and 2010 Acts and the RIRSA. Finally, all of the Plaintiffs' claims against the Defendants rest on their assertion that the RIRSA substantially impaired their contract rights to their retirement benefits. Accordingly, the Court finds that the proposed Plaintiff Class shares common questions of law or fact that are central to their claims.

The Court is further satisfied that the proposed Defendant Class share common questions of law or fact. All of the municipal entities who are members of the proposed Defendant Class participate in MERS on behalf of their employees and, accordingly, share the same interest in maintaining a sustainable retirement program. In addition, all of the members of the proposed Defendant Class have the same potential defenses to the Plaintiffs' claims.

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 Court is satisfied that this requirement has been met. The proposed individual Plaintiff Class Representatives, like all class members, are either current or former state employees, public school teachers, or municipal employees who either are members in the ERS or MERS or who are currently receiving pension benefits from their memberships in the ERS or MERS. The legal theories and the evidence used to advance the claims will be the same for the proposed Class Representatives as for the claims of other class members. With regard to the proposed Defendant Class, the Court is equally satisfied that the typicality requirement has been met. The towns of Barrington, Middletown, and South Kingstown, like all the other municipal entities in the proposed Defendant Class, have the same status as municipal employers participating in MERS and as such share the same available defenses as the other Defendant Class members.

The fourth and final requirement of Rule 23(a) is adequacy of representation of both the Class Representatives and class counsel. Two primary 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 Tel. Co. v. Falcon, 457 U.S. 147 (1982).

The counsel who request to be designated as counsel for the Plaintiff Class and subclasses are as follows:

> Class Counsel: Lynette Labinger, Esq.; Thomas Landry, Esq.; Douglas Steele, Esq.; Joseph F. Penza, Esq.; Carly Iafrate, Esq.; Maame Gyamfi, Esq.
> Subclass Counsel: (1) Teacher/State Employee Subclass: Lynette Labinger, Esq.; (2) Municipal Subclass: Thomas Landry, Esq.; (3) Firefighter Subclass: Douglas Steele, Esq.; Joseph F. Penza, Esq.; and (4) Retiree Subclass: Carly Iafrate, Esq.; Maame Gyamfi, Esq.

The inquiry of 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. Attorneys Labinger, Penza, Landry, and Iafrate are members of the Rhode Island Bar. Attorneys Labinger and Penza have been members for approximately forty years. Attorneys Landry and Iafrate have been members of the bar for fifteen years. All counsel have appeared before this Court in prior cases. The attorneys have extensive expertise in the areas of labor law and constitutional law. All represent labor unions. In addition, Attorneys Steele and Gyamfi, admitted pro hac vice, have experience in the area of labor law. The proposed counsel for the Defendant Class are Attorneys Marc DeSisto, Esq. and Gerald Petros, Esq. As with Plaintiffs' counsel, both have extensive experience in labor law. Both are also versed in municipal law. The Court is completely satisfied that the Plaintiff Class counsel and Defendant Class counsel are all well-qualified and competent. The Court is familiar with the many combined years of legal experience possessed by counsel as a group and individually. In addition, all the attorneys have been participating in the underlying pension cases as counsel of record and, in that capacity, the Court has been witness to the levels of professional competence consistently demonstrated by each of the attorneys.

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. Sec. Litig., 2005 WL 3178162 (D.Mass. 2005). The proposed Class Representatives are as follows:

For the Plaintiff Class:

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

For the Defendant Class: The Towns of Barrington, Middletown, and South Kingstown.

The Court does not find any conflicts of interest between the proposed Class Representatives for either the Plaintiff Class or the Defendant Class. The Court has previously concluded that the proposed Class Representatives' claims or available defenses are typical of the class as a whole. The individual circumstances of the proposed Plaintiff Class Representatives do not differ significantly from those of the other class members. Each retiree subclass Representative suffered the same contractual impairment when the RIRSA suspended and reduced the amount of the annual cost of living adjustments (COLA) to which he or she had been entitled. Further, each of the Class Representatives has the same interests in maintaining the pre-enactment level of pension and COLA benefits as the other class members. The Plaintiffs assert and the Defendants do not dispute that all the proposed Class Representatives are committed to serving in their respective roles as Plaintiff Class Representatives or Defendant Class Representatives.

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 subsections of Rule 23(b). The Plaintiffs ask this Court to certify the proposed classes under either Rule 23(b)(1) or

23(b)(2). "Classes certified under (b)(1) and (b)(2) share the most traditional justifications for class treatment—that individual adjudications would be impossible or unworkable, as in a (b)(1) class, or that the relief sought must perforce affect the entire class at once, as in a (b)(2) class." Walmart-Stores, 131 S.Ct. at 2558. In general, courts prefer to certify classes under either Rule 23(b)(1) or (b)(2), rather than under Rule 23(b)(3) "so as to avoid unnecessary inconsistencies and compromises in future litigation." DeBoer v. Mellon Mortg. Co., 64 F.3d 1171, 1175 (8th Cir. 1995). The Court concludes that certification is most appropriate in this case under Rule 23(b)(2).

Rule 23(b)(2) provides that a class action is appropriate when "[t]he party opposing the class has acted or refused to act on grounds generally applicable to the class," and the representatives are seeking "final injunctive relief or corresponding declaratory relief." Rule 23(b)(2). "'Stated another way, this rule seeks to redress what are really group, as opposed to individual injuries.'" DeCesare, 852 A.2d at 488 (quoting Bolin v. Sears, Roebuck & Co., 231 F.3d 970, 975 n.22 (5th Cir. 2000)). "Broken into its component parts, a prospective class must establish two factors under this subsection: '(1) the opposing party's conduct or refusal to act must be 'generally applicable' to the class [as a whole], and (2) final injunctive or corresponding declaratory relief must be requested for the class.'" Id. at 489. Rule 23(b)(2) is particularly relevant to and often used to "challenge the enforcement and application of complex statutory schemes." 7AA Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice & Procedure, Civil 3d § 1775 at 73 (2005).

Here, the facts clearly establish that the State Defendants' actions were generally applicable to the class as a whole. The Plaintiffs are challenging the State Defendants' actions in enacting the 2009 and 2010 Acts and the RIRSA, which altered the statutory schemes that

described the retirement benefits the Plaintiffs are or would be entitled to receive. The Plaintiffs seek injunctive relief and a declaratory judgment that the challenged statutes are unconstitutional. This Court previously concluded in granting the State Defendants' motion for a jury trial in the underlying pension cases that the Plaintiffs' claims were predominantly seeking equitable relief, i.e. the restoration of their retirement benefits prior to the passage of the 2009 and 2010 Acts and the RIRSA. Accordingly, the Court is satisfied that the proposed Plaintiff Class meets the requirements and should be certified under Rule 23(b)(2).

With regard to the proposed Defendant Class, the Court also finds that the Defendant Class may be certified under Rule 23(b)(2). "What is necessary [for Rule 23(b)(2) to apply] is that the challenged conduct or lack of conduct be premised on a ground that is applicable to the entire class." Wright, Miller & Kane, supra, § 1775 at 50. Here, all the municipal entities' interests are affected because they are all employers who participate in MERS on behalf of their employees. All the members of the Defendant Class are potentially liable to the Plaintiffs for this same reason, as participants in MERS, and the outcome of the proposed settlement will require all members of the Defendant Class to respond in largely the same manner, by continuing to participate in and fund MERS as required by the amended statutory scheme set forth as part of the proposed settlement.

For the foregoing reasons, the Court concludes that the Plaintiffs have met the burden of showing that the requirements of Rule 23 are satisfied and that the Plaintiff and Defendant Classes, as proposed by the Plaintiffs, shall be certified under Rule 23(b)(2).

B

Preliminary Approval of the Settlement

Having certified both the Plaintiff and Defendant Classes, the Court will proceed to address the Parties' Joint Motion for Preliminary Approval of the Class Settlement.

The standards for approval of a class settlement are well settled. The Court must determine if the proposed settlement is fair, adequate, and reasonable. See In re Lupron Mktg. and Sales Practices Litig., 228 F.R.D. 75, 93 (D. Mass. 2005). In making that determination, courts generally have considered the following factors:

> "(1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation." Id. at 94; see also Girsh v. Jepson, 521 F.2d 153, 157 (3d Cir. 1975).

In addition, "a preliminary determination establishes an initial presumption of fairness when the court finds that: (1) the negotiations occurred at arm's length; (2) there was sufficient discovery; (3) the proponents of the settlement are experienced in similar litigation; and (4) only a small fraction of the class objected." In re Gen. Motors Corp., 55 F.3d at 785; see also R.I. Depositors Econ. Prot. Corp., 661 A.2d 969, 971 (R.I. 1995) (holding that a settlement must be the product of good faith negotiations between the parties, rather than the product of collusion or bad faith); In re Fleet/Norstar, 935 F. Supp. 99, 105-06 (D.R.I. 1996) supplemented, 974 F. Supp. 155 (D.R.I. 1997) (discussing the good faith inherent to arm's length negotiations); Nat'l Ass'n of Chain Drug Stores v. New England Carpenters Health Benefits Fund, 582 F.3d 30, 44,

(1st Cir. 2009) ("there is a presumption in favor of the settlement if discovery has been adequate and the Parties have bargained at an arm's length"); Rubenstein, Conte & Newberg, supra, § 11:42). "If, after consideration of those factors, a court concludes that the settlement should be preliminarily approved, an initial presumption of fairness is established." Gates, 248 F.R.D. at 439 (internal citations omitted).

The proposed settlement is the result of good-faith, serious, arm's-length negotiations between the parties. The parties in the initial pension cases engaged in mediation facilitated by FMCS for a period of thirteen months. Although the initial settlement failed as a consequence of being rejected by a small group of active employees, the instant proposal was approved by a majority of the Plaintiff unions. Throughout the advancing stages of the underlying litigation, all counsel have been zealous advocates on behalf of their respective clients and have demonstrated independent lawyering in all respects. The Court has no reason to doubt that the same level of professionalism and diligence were also on display during the course of the settlement negotiations. Nothing in the circumstances surrounding this proposed settlement indicates that the negotiations were made in anything other than good faith or as a result of arm's length negotiations.

The Court further concludes that there has been sufficient discovery to support preliminary approval of the proposed settlement. The underlying pension cases were scheduled for trial on April 20, 2015. The parties have devoted significant time and resources in preparation for the trial. The parties have conducted extensive discovery and have engaged in significant motion practice, including discovery motions, motions to dismiss, a motion for a jury trial, and at least ten dispositive motions. Consequently, the Plaintiffs' claims have been tested, developed, and narrowed such that all the parties have become familiar with the substantive legal

issues involved in the Plaintiffs' claims and could also estimate the likely cost and duration of proceeding to trial.

On a preliminary basis, the proposed settlement appears to be fair and within the range of settlements that could be worthy of final approval as fair, reasonable, and adequate. See Collier v. Montgomery Cnty. Hous. Auth., 192 F.R.D. 176, 186 (E.D. Pa. 2000). This stage of approval is not final. It is preliminary, and as such, courts determine whether the settlement, as proposed, merits an initial presumption of fairness. See In re Linerboard Antitrust Litig., 292 F. Supp. 2d 631, 638 (E.D. Pa. 2003). The proposed settlement meets this threshold. The proposed settlement will provide security to the Plaintiff and Defendant class members. In addition, it will preclude a lengthy, expensive, and uncertain trial for the litigants.

Accordingly, the Court finds that the proposed settlement merits an initial presumption of fairness and concludes, preliminarily, that the proposed settlement is within the range of reasonableness. In making this initial determination, the Court notes that the questions surrounding the Plaintiffs' retirement benefits have been unsettled for several years already, with all the attending anxiety and uncertainty, both on a financial and an emotional level. Reaching a settlement will save both the Plaintiff and Defendant Classes from the risks inherent in litigation as well as from the additional delays and expense of continued litigation and bring some finality to this long-running dispute over the Plaintiffs' retirement benefits.

C

Notice

Finally, this Court will turn to the notice procedures to the Plaintiff and Defendant Classes of the class certification and proposed settlement. Rule 23(e) requires that all members of the class be notified of the terms of any proposed settlement. See Rule 23(e). This notice

requirement is "designed to summarize the litigation and the settlement and to apprise class members of the right and opportunity to inspect the complete settlement documents, papers, and pleadings filed in the litigation." Gates, 248 F.R.D. at 445. Although notice is discretionary in Rule 23(b)(2) classes, the U.S. Supreme Court has stated that the notice provisions of Rule 23 must be interpreted to comply with the requirements of due process. See Johnson v. Gen. Motors Corp., 598 F.2d 432, 436 (5th Cir. 1979). Rule 23 allows courts to exercise their discretion to provide appropriate notice to protect class members and fairly conduct the action. See Rule 23.

The parties propose that the notices be mailed, postage prepaid, to the class members at their last-known address, by April 20, 2015, and that the notices be published in the Providence Journal on or before April 27, 2015. Additionally, information about the proposed settlement will also be posted online at the ERSRI website. The parties further propose that May 15, 2015 be set as the deadline for the filing of any objection to the proposed settlement and/or request for the right to be heard in person at the Fairness Hearing.

The Court agrees that the methods of notice proposed by the parties are reasonable and will provide sufficient notice to the class members under the circumstances of this case.

IV

Conclusion

For the foregoing reasons, the Court concludes:

(1) The Plaintiffs' Motion for Class Certification is granted. The Plaintiff Class, Subclasses, and Defendant Class are certified under Rule 23(b)(2) as defined below:

> (a) The Plaintiff Class: All persons (and/or their beneficiaries) who, on or before July 1, 2015, are receiving benefits or are participating in the State Employees, Teachers, or Municipal Employees retirement systems administered by ERSRI and all future employees, excepting only those

individuals who on July 1, 2015, are participating in a municipal retirement system administered by ERSRI for municipal police officers in any municipality and/or for fire personnel of the City of Cranston;

Including the following Plaintiff Subclasses:

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

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

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

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

(b) The Defendant Class: All municipal entities that participate in MERS and all municipal entities that employ teachers who participate in the state employees and teachers' ERS.

(2) The following individuals are designated as Class Representatives:

(a) For the Plaintiff Class:

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

(b) For the Defendant Class: the Towns of Barrington, Middletown, and South Kingstown.

(3) The following attorneys are appointed and designated as class counsel for the Plaintiff and Defendant Classes:

> (a) Plaintiff Class Counsel: Lynette Labinger, Esq.; Thomas Landry, Esq.; Douglas Steele, Esq.; Joseph F. Penza, Esq.; Carly Iafrate, Esq.; Maame Gyamfi, Esq.
>
> (b) Defendant Class Counsel: Marc DeSisto, Esq. and Gerald Petros, Esq.

(4) The Parties' Joint Motion for Preliminary Approval of the Class Settlement is granted. The proposed settlement is preliminarily approved as being fair, adequate, and reasonable. The proposed form and manner of notice to the Plaintiff and Defendant Classes is approved.

(5) A Fairness Hearing to determine whether the proposed settlement will be given final approval by the Court will be held on May 20, 2015.

In Re Rhode Island Public Employees Retiree Coalition, et als. v. Gina Raimondo, et als.
C.A. No.: PC 15-1468

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