**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

**KENT, SC.** **SUPERIOR COURT**

**(FILED: July 22, 2016)**

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| **CRANSTON POLICE RETIREES ACTION COMMITTEE,** | : | |
| **Plaintiff,** | : | |
| **v.** | : | **C.A. No. KC-13-1059 (formerly PC-13-3212)** |
| **THE CITY OF CRANSTON, by and through its Finance Director ROBERT STROM and its City Treasurer DAVID CAPUANO, ALLAN FUNG, in his capacity as Mayor of the City of Cranston, Members of the Cranston City Council JOHN LANNI, JR., DONALD BOTTS, JR., MARIO ACETO, MICHAEL J. FARINA, MICHAEL W. FAVICCHIO, PAUL H. ARCHETTO, RICHARD D. SANTAMARIA, JR., SARAH KALES LEE, and STEVEN A. STYCOAS, in their capacity as members of the Cranston City Council,** | : | |
| **Defendants.** | : | |

## DECISION

**TAFT-CARTER, J.** This case is before the Court for decision following a non-jury trial on a Complaint filed by the Plaintiff, Cranston Police Retirees Action Committee (CPRAC), against Defendant, the City of Cranston (City). CPRAC is a non-profit corporation formed in 2012 whose membership is comprised of seventy-five retired members of the Cranston Police Department and the Cranston Fire Department who retained their right to sue the City by opting out of a class action settlement.[1] The Court is called upon to decide whether certain ordinances

[1] Although the Complaint lists sixty-five members of the CPRAC, testimony from the CPRAC's President, Mr. Glenn Gilkenson, lists the number at seventy-five original members. Four

passed by the City violated the contract clauses of the Rhode Island and United States Constitutions.[2,3] In its Complaint, the Plaintiff asserts that the 3% compounded cost of living adjustment (COLA) was a vested contractual right for its members, the suspension of which amounts to a violation of the contract clause. The City maintains that its actions do not violate the contract clause, that CPRAC has not met its burden to show that the City's actions amounted to a substantial impairment, and that it has presented sufficient credible evidence that the City's actions were reasonable and necessary to achieve a significant and legitimate public purpose. In November of 2015, the matter proceeded to a non-jury trial. The Court exercises jurisdiction pursuant to G.L. 1956 §§ 8-2-13 and 9-30-1.

## I

## Findings of Fact

The Court has reviewed the evidence presented at trial by both parties and makes the following findings of fact.

The City established the Cranston Police Pension fund for permanent members of the Cranston Police Department and the Cranston Fire Pension fund for permanent members of the City Fire Department in 1937. Compl. at ¶¶ 6, 7. Throughout the years, the International Brotherhood of Police Officers, Local 301 (IBPO) on behalf of the police, and International Association of Fire Fighters, Local 1363 (IAFF) on behalf of the firefighters, engaged in mandatory and binding collective bargaining with respect to all terms and conditions of employment. Id. at ¶¶ 9, 10; see also Municipal Police Arbitration Act, G.L. 1956 § 28-9.2-1,

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members have since passed away, leaving seventy-one remaining members. See Trial Tr. 11:5–6, Nov. 9, 2015.

[2] See U.S. Const. art. I, § 10; R.I. Const. art I, § 12.

[3] CPRAC also alleges breach of contract and requests declaratory and injunctive relief. See Compl. at Counts I, III, V; see also Pl.'s Post-Trial Mem. at 2 and Def.'s Post-Trial Br. at 3 (indicating that only three Counts remain of CPRAC's Compl.).

Municipal Fire Fighters Arbitration Act, G.L. 1956 § 28-9.1-1. As a result, collective bargaining agreements (CBAs) were routinely negotiated between the IBPO and the City and the IAFF and the City. Id. at ¶¶ 9, 10.

The health of the City pension fund was examined yearly through actuarial studies and reports. Trial Tr. 61:19–22, Nov. 10, 2015 (Mayor Traficante). By the early 1990s, the actuarial reports indicated that the "appropriations [to the pension] were not keeping up with that growth." Id. at 60:16–17. As a result, Mayor Traficante prudently addressed the issue of the expanding unfunded pension liability. Id. at 61:23–62:14. To achieve the goal, he sought the assistance of the police and fire unions. Id. at 62:3–14. The first step was to ask the unions to reopen their contracts with the potential of moving the employees from the City pension system into the state pension system. Id. Initially, this notion was dismissed by the unions; however, after discussions, an agreement was reached in 1996. Id. at 62:24–63:11.

This agreement transformed the City pension system by creating a two-tier pension system. Id. at 64:13–15, 70:18–71:1. Members of the police and fire departments hired after July 1, 1995 would enroll in the state pension system. Id. at 64:13–15, 70:18–71:1; see also Exs. 88A, Sec. 2-24-23(C)(1); 89A, Sec. 1-10-11(C)(1). Employees with less than five years of service on July 1, 1995 could elect to transfer into the state pension system or remain in the City pension system. Trial Tr. 70:7–11, Nov. 10, 2015; see also Exs. 88A, Secs. 2-24-23(B)(1), 2-24-23(A)(1); 89A, Secs. 1-10-11(B)(1), 1-10-11(A)(1). The agreement also provided, for the first time, a minimum 3% compounded COLA upon retirement with an escalator clause.[4] Trial Tr.

[4] The agreement provided, in pertinent part:

> "Retired members pension payments will automatically escalate in an amount equal to all contractual increases received by active duty members of similar rank or position and similar credited years with regard to annual salary. In any contractual year in which the

72:12–23, 88:12–90:6, 101:21–25, Nov. 10, 2015; see also Exs. 88A, Sec 2-24-23(A)(20); 89A, Sec. 1-10-11(A)(3). The escalator clause ensured that there would be an increase in the compounded COLA equivalent to any raise active employees received. Trial Tr. 72:12–23, 88:12–90:6, 101:21–25, Nov. 10, 2015; see also Exs. 88A, Sec. 2-24-23(A)(20); 89A, Sec. 1-10-11(A)(3). The COLA was implemented by the City at the insistence of the unions to achieve parity with the state pension system. Trial Tr. 64:8–12, Nov. 10, 2015. This agreement was ratified by the unions and codified into law by the passage of two ordinances on November 25, 1996 (1996 Ordinances). Id. at 63:1–11, 68:24–69:22, 72:10–11; see also Exs. 88A, 89A.

CBAs[5] negotiated between the City and the IBPO after the 1996 Ordinances incorporated the provisions of the 1996 Ordinances, including the 3% compounded COLA with an escalator clause.[6] In addition, CBAs negotiated between the City and the IAFF subsequent to the 1996 Ordinances specifically included a minimum 3% compounded COLA with an escalator clause.[7]

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> annual salary for active members with over three (3) years of service does not increase by three (3%) percent, then said retired members shall receive a three (3%) percent escalation of said pension payment on June 30 of that year." Ex. 88A, Sec. 2-24-23(A)(20); see also Ex. 89A, Sec. 1-10-11(A)(3) (containing nearly identical language); see also Trial Tr. 88:12–90:6, Nov. 10, 2015 (Mayor Traficante).

[5] All CBAs, unless otherwise noted, are effective for the duration of the fiscal year, beginning on July 1 of the starting year and ending on June 30 of the ending year.

[6] Section 24-1 of the 1997–1999 CBA, 1999–2002 CBA, 2002–2005 CBA and Section 23-1 of the 2006–2008 CBA and the 2009–2012 CBA provides that:

> "All City ordinances, state statutes and current benefits now in existence as evidenced by a memorandum of understanding signed by [the] city and IBPO, providing the various forms of retirement benefits in existence upon the execution of the Agreement for members of the bargaining unit are hereby incorporated by reference as if fully stated herein and shall inure to all members of the bargaining unit for the duration of this Agreement. No changes shall be made to said benefits without the written agreement between the City and the I.B.P.O." Exs. 34, 35, 36, 37, 38.

Prior to instituting these changes, Mayor Traficante considered many options such as accessing the rainy day fund. Trial Tr. 102:9–25, 107:24–108:10, Nov. 10, 2015 (Mayor Traficante). All alternatives were dismissed. Id. at 102:9–25, 107:24–108:10. For instance, the suggestion to secure a pension obligation bond was dismissed because it would have increased the debt service of the City. Id. at 104:21–105:7. A supplemental tax was also rejected. Id. at 108:14–109:14. Mayor Traficante felt that another tax increase would be harmful to City taxpayers who had faced no fewer than six tax increases since 1985. Id. Additionally, the privatization of the wastewater treatment plant was explored. Id. at 110:1–25. The option was deemed imprudent. Id.

Despite these crucial changes to the City pension system, the unfunded accrued liability continued to grow. By 1999, the unfunded accrued liability reached a total of $169 million for police officers and firefighters. Id. at 100:13–15; see also Ex. 60. One of the biggest factors that

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Section 23-1 of the 2006–2008 CBA and 2009–2012 CBA additionally removed the escalator clause and fixed the compounded COLA at 3% per annum: "Notwithstanding the above, for all existing employees who retire after the execution of this collective bargaining agreement, the pension cost-of-living adjustments (COLAs) will be fixed at 3.0% per annum, compounded, without any escalation based on raises granted to active employees." Exs. 37, 38.

[7] Section 24(A)(3) of the 1997–1998 CBA, 1998–2001 CBA, 2001–2004 CBA, 2006–2007 CBA, 2007–2010 CBA, 2008–2011 CBA, and 2011–2013 CBA provides:

> "All retired employees' pension payments will automatically escalate based on any and all contractual increases received by active duty employees of similar rank or position and similar credited years of service with regard to weekly salary, longevity pay, and holiday pay. In any contractual year in which the active employee's over three (3) years of service weekly salary does not increase by a gross of three (3%) percent, the retired employee's escalation of pension payments will automatically increase by three (3%) percent compounded on July 1 of that year. All active duty employees when retired shall have their pension payments adjusted, if necessary, to pension payments received by retired employees of similar rank or position and similar credited years of service at the time of their retirement." Exs. 14, 15, 16, 17, 18, 19, 22.

drove the growth of the unfunded accrued liability was the newly-implemented compounded COLA. Trial Tr. 100:22–101:4, Nov. 10, 2015. Although the growth of the unfunded accrued liability was recognized as an issue, this administration was unable to achieve additional modifications due to the significant achievements accomplished in 1996. Id. at 101:11–25.

The structural deficit continued to grow in the years following the Traficante administration. Id. at 116:8–16 (Mayor O'Leary). Mayor John R. O'Leary was elected and assumed office in 1999. Id. at 115:1–6, 116:1–3. During his tenure, there remained a structural deficit as well as challenges with respect to the unfunded pension liability. Id. at 116:18–117:5. In an effort to meet the City's obligations to pay retirees' pension and healthcare obligations, Mayor O'Leary, during his fourth and final year as mayor, borrowed against the pension fund which was repaid the following year. Id. at 120:8–21, 122:24–123:12.

The issue of the expanding unfunded pension liability was confronted in 2008, when Allan Fung was elected Mayor. Trial Tr. 2:20–21, 9:19–23, Nov. 12, 2015 (Mayor Fung). As with his predecessors, Mayor Fung was responsible for overseeing the City's budget, including the City's pension plan. Id. at 2:22–4:1. The major sources of revenue for the City continued to be the tax levy, state aid, and grant money. Trial Tr. 3:19–23, Nov. 13, 2015 (Mr. Strom). These sources were substantially reduced because of the negative economic conditions developing during the initial days of the Fung administration. Among the many economic challenges encountered were the Great Recession, rising unemployment, and the devaluation of the City property assessment. Trial Tr. 13:9–17, 17:10–20, Nov. 12, 2015 (Mayor Fung). It was estimated that the property assessments decreased by one billion dollars between 2008 and 2009. Id. at 13:9–17, 17:10–20; see also Exs. YYY, ZZZ. This resulted in lower tax revenue for the City.

Trial Tr. 17:10–20, Nov. 12, 2015. To compound matters, the City was challenged by two natural disasters in March of 2010 that cost the City in excess of $1.4 million. Id. at 24:17–25:5.

Colliding with these events came a substantial decrease in state aid due to the state budgetary crisis. Id. at 19:25–20:3. State aid decreased from twenty-two million dollars in fiscal year 2007 to less than six million dollars in fiscal year 2011. Trial Tr. 11:5–12:7, Nov. 13, 2015 (Mr. Strom); see also Exs. H, I, J, K, L. The reduction in aid created a nearly five percent gap in the budget. Trial Tr. 14:5–12, Nov. 13, 2015. The overall fiscal health of the City was disabled. Trial Tr. 22:18–23:19, Nov. 12, 2015 (Mayor Fung); see also Ex. R. As a consequence, Moody's Investors Services downgraded the City's bond rating. Trial Tr. 23:20–24:14, 27:25–28:25, Nov. 12, 2015; see also Exs. R, X. There were several reasons listed to support the downgrade, including the continued underfunding of the annual required contribution and the anticipated increase in the unfunded pension liability, among others. Id.; see also Exs. R, X.

Faced with these financial difficulties, the City undertook significant expenditure cuts and many attempts to increase City revenue. Trial Tr. 16:11–17:3, Nov. 13, 2015; see also Ex. MM. Mayor Fung began to tackle the problem through the implementation of a series of steps that included cost cutting measures. Trial Tr. 12:8–19, Nov. 12, 2015 (Mayor Fung). The administration explored cuts that included a reduction in staff and an increase in the healthcare co-pays for City employees. Id. A multi-year pay freeze was instituted to further reduce costs. Id. at 71:12–72:17; see also Ex. JJ. Public motor vehicles and buildings were sold for revenue. Trial Tr. 70:20–71:3, 144:7–16, Nov. 12, 2015; see also Ex. JJ.

The Fung administration also reviewed the City's pension system. Trial Tr. 29:1–6, Nov. 12, 2015. The City pension system's large, unfunded liability was a result of historical underfunding as well as the high cost of the compounded COLAs. Id. at 31:4–17. By 2011, the

unfunded liability totaled $256 million, with $35 million in assets. Id. at 30:6–15, 39:5–21; see also Exs. U, Y. There were approximately 480 participants and beneficiaries in the City pension system. Trial Tr. 29:7–12, Nov. 12, 2015. Of those, an estimated fifty-seven were active employees. Id. at 29:13–18. A 2011 report estimated that—with demographic and economic assumption changes—the unfunded and accrued liability actually would increase to approximately $271 million. Id. at 46:11–21; see also Ex. Y. Additionally, the City made less than the 100% annual required contribution (ARC)[8] to the pension for fiscal years 2009, 2010, and 2012. Trial Tr. 41:15–42:16, Nov. 12, 2015; see also Ex. U. With demographic and economic assumption changes taken into account, the ARC increased by several million dollars a year in fiscal year 2010. Trial Tr. 47:13–21, Nov. 12, 2015; see also Ex. U.

The decision to act was based on a real fear of bankruptcy. Trial Tr. 81:11–19, 82:1–15, 121:18–122:2, 126:11–23, Nov. 12, 2015 (Mayor Fung). Mayor Fung had witnessed the Central Falls bankruptcy in 2011, and he recognized that bankruptcy was also a possibility for Cranston. Id. Mayor Fung noted that the Auditor General's report from 2011 detailed Cranston's pension problem and that all three ratings agencies indicated pension issues in Cranston. Id. at 82:19–83:11. Although it was conceded that the Auditor General had sounded the alarm in its 2002 report on the City's pension system, there was a firm testified belief that the total context of budgetary crises, inherited deficits, unanticipated cuts in state aid, and the 2010 natural disasters

[8] There is some disagreement as to the meaning of the acronym "ARC." Mayor Fung testified that ARC stood for "annual [] required contribution." Trial Tr. 41:15–42:16, Nov. 12, 2015 (Mayor Fung). The Government Accounting Standards Board uses this same definition. See, e.g., "Protecting Pension and Retiree Health Care Benefits: A Glossary of Actuarial and Accounting Terms and Concepts for Retirement Plans." National Education Association, Jan. 2015, 4 (http://www.nasra.org/Files/Topical%20Reports/Actuarial/Glossary%20of%20Actuarial%20Terms.pdf). However, CPRAC's expert, Mr. Fornia, defined ARC as the "actuarial required contribution." Trial Tr. 27:18–20, Nov. 13, 2015 (Mr. Fornia). For purposes of clarity and consistency, the Court will use ARC to mean "annual required contribution."

constituted an unexpected fiscal emergency in 2009. Trial Tr. 13:3–14:24, Nov. 13, 2015 (Mayor Fung); see also Exs. HHHH, IIII, 57.

Also occurring during this timeframe was the state's undertaking to address the status of locally administered pension plans. Trial Tr. 33:21–25, Nov. 12, 2015. Mayor Fung was a member of the Pension Study Commission charged with analyzing pension issues and formulating recommendations to the Governor and the General Treasurer. Id. at 34:1–6.

Ultimately, the Rhode Island Retirement Security Act (RIRSA) was passed in 2011. G.L. 1956 §§ 45-65-1 et seq.; see also Ex. VVV. Under RIRSA, any municipal pension plan that was less than sixty percent funded was defined to be in "critical status." Trial Tr. 5:22–6:5, 35:1–36:19, Nov. 12, 2015 (Mayor Fung); see also Ex. VVV. A municipality that was deemed to be in critical status was tasked with two responsibilities: (1) submitting a notice of critical status to plan participants and beneficiaries and to the general assembly, governor, general treasurer, director of revenue, and auditor general within thirty days; and (2) submitting a reasonable alternative funding improvement plan to emerge from critical status to the Pension Study Commission within 180 days of sending the critical status notice. Trial Tr. 36:7–19, Nov. 12, 2015; see also Ex. VVV. If a critical status municipality failed to comply, it faced reductions in state aid. Trial Tr. 36:12–19, 37:6–14, Nov. 12, 2015; see also Ex. VVV. If deemed to be in critical status, the City had twenty years to achieve sixty percent funding status—and thus emerge from critical status—or it would face significant further reductions in state aid. Trial Tr. 85:16–86:8, 95:4–6, 102:17–25, Nov. 12, 2015.

The City met the rubric for critical status. Id. at 48:1–11. As a result, on April 1, 2012, the City's actuary sent a letter to the Cranston Finance Director indicating that the City was in critical status as defined in RIRSA. Id. at 48:6–11; see also Ex. Z. A notice of critical status

designation was sent to all of the City pension system participants and beneficiaries as well as to the various state officials required by RIRSA on April 6, 2012. Trial Tr. 48:23–49:19, Nov. 12, 2015; see also Exs. AA, BB, CC, DD, EE, FF. The City had 180 days to submit a reasonable alternative funding improvement plan to the Pension Study Commission. Trial Tr. 87:19–25, Nov. 12, 2015; see also Ex. VVV. At the time, Cranston's pension was 16.9% funded and one of the worst in the state. Trial Tr. 61:16–20, Nov. 12, 2015; see also Ex. GG. For fiscal year 2012, the City was required to increase its ARC to pension payments by $14 million to 100% fund the plan. Trial Tr. 53:15–54:6, Nov. 12, 2015; see also Ex. GGGG. It was concluded that obtaining $14 million through spending cuts would decimate city services, eliminate parks and recreation services, and shutter libraries. Trial Tr. 57:3–20, Nov. 12, 2015; see also Ex. GGGG.

Ultimately, it was decided that the solution involved the suspension of the 3% compounded COLA. The suspension of the 3% compounded COLA, however, was not the only option considered by the Fung administration. Trial Tr. 89:1–11, 94:9–15, 112:6–11, Nov. 12, 2015 (Mayor Fung); see also Trial Tr. 9:19–11:7, Nov. 13, 2015 (Mayor Fung). Over twenty-five different alternatives were researched and considered with City actuaries, and it was only after a long process that the ten-year suspension of the 3% compounded COLA was chosen. Trial Tr. 89:1–11, 94:9–15, 112:6–11, Nov. 12, 2015 (Mayor Fung); see also Trial Tr. 25:25–26:11, Nov. 13, 2015 (Mr. Strom). With the assistance of consultants from Buck Consulting, the City examined prudent measures to achieve a more sustainable City pension system. Trial Tr. 25:25–26:11, Nov. 13, 2015 (Mr. Strom). Raising the employee contributions was not seriously considered because of the relatively small number of current employees and the large size of the unfunded liability. Trial Tr. 77:25–78:13. Nov. 12, 2015 (Mayor Fung). Funds in the rainy day

fund were also not considered in resolving the pension crisis, as Mayor Fung thought it unwise to use those funds for a systemic problem. Id. at 120:9–17.

Equally unsuitable to achieve fiscal readiness was raising taxes. Trial Tr. 18:6–16, Nov. 13, 2015 (Mr. Strom). The City had recently undergone tax increases and further tax increases were deemed unsustainable to taxpayers. Id. In Cranston, the assessed value of real and tangible property from 2008 to 2015 declined, whereas the net tax levy increased. Id. at 18:25–21:11, 22:2–12; see also Exs. YYY, ZZZ, AAAA, BBBB, CCCC, DDDD, EEEE, FFFF. Indeed, the City was listed by the State as a "[d]istressed [c]ommunity" for at least two years, indicating a high tax burden. Trial Tr. 22:13–23:4, Nov. 13, 2015. In fact, between 1985 and 2013, there were at least fifteen tax increases in the City. Trial Tr. 76:13–16, Nov. 12, 2015 (Mayor Fung); see also Ex. XXX. Cranston residents were paying high taxes for extremely limited services. Trial Tr. 59:2–5, Nov. 12, 2015. Any subsequent tax increases to deal with the crisis were not feasible. Id. at 76:21–23, 80:11–15. Furthermore, a tax increase would defy the state property tax cap. Trial Tr. 37:10–23, Nov. 13, 2015 (Mr. Strom). The cap prevents any municipality from raising the tax levy by more than 4% in any fiscal year. Id.

It was clear that to avert disaster the City had to act. The primary reason that the suspension of the 3% compounded COLA for ten years appeared fruitful was to rescue the pension plan from extinction. Trial Tr. 121:20–23, Nov. 12, 2015 (Mayor Fung). The suspension of the 3% compounded COLA suspension was a measure of last resort. Trial Tr. 27:15–23, Nov. 13, 2015 (Mayor Fung). In the end, it was concluded that the 3% compounded COLA suspension would reduce the City's unfunded pension liability and ultimately reverse the Moody's Investors Service's negative outlook on the City's bonds. Trial Tr. 28:14–29:16, Nov. 13, 2015; see also Exs. X, PPP, QQQ.

The Mayor created an alternative funding improvement plan and presented it to stakeholders through a series of meetings. Trial Tr. 59:10–15, 81:20–24, Nov. 12, 2015; see also Exs. HH, KK. The Mayor attempted to openly and transparently resolve the crisis. Trial Tr. 61:21–62:12, Nov. 12, 2015. Over one hundred police officers, firefighters, and/or retirees attended a meeting on September 13, 2012 with Mayor Fung to discuss what could be done. Id. at 63:19–64:13; see also Ex. JJ. At this meeting, Mayor Fung presented a PowerPoint slideshow that provided information as to the City's past and present financial situation, RIRSA's requirements, and a proposed funding improvement plan. Trial Tr. 64:24–70:13, Nov. 12, 2015; Ex. JJ. The slideshow attempted to explain to pension plan participants and beneficiaries why the City needed to act now, how precarious the City's financial situation was, and how the compounded COLAs impacted the pension fund. Trial Tr. 81:5–83:24, Nov. 12, 2015; see also Ex. JJ. The suspension of the 3% compounded COLA was proposed. Trial Tr. 84:19–85:15, Nov. 12, 2015; see also Ex. JJ. It was explained by Mayor Fung that the proposal would accomplish the goal of removing the City pension system from critical status within twenty years. Trial Tr. 86:9–14, Nov. 12, 2015. The presentation included a suggestion that retirees engage legal counsel to negotiate; Mayor Fung insisted that, although he had proposed a solution, he was open to considering additional alternatives. Id. at 88:21–89:11; see also Ex. JJ. Mayor Fung had a similar meeting on September 25, 2012. Trial Tr. 90:11–19, Nov. 12, 2015.

Mayor Fung proposed two ordinances at a special meeting of the Cranston City Council Finance Committee on October 25, 2012. Trial Tr. 90:14–92:2, Nov. 12, 2015; see also Ex. NN. The ordinances would implement a ten-year suspension of the 3% compounded COLA. Trial Tr. 90:14–92:2, Nov. 12, 2015; see also Ex. NN. During this meeting, Mayor Fung made a presentation that contained much of the same information from the slideshow presented on

September 13, 2012. Trial Tr. 93:19–94:24, Nov. 12, 2015; see also Ex. MM. By this time, the City and its actuaries had considered over twenty-five different alternatives and had narrowed the alternatives to four options for consideration. Trial Tr. 93:19–94:24, Nov. 12, 2015; see also Ex. MM. These options compared the effect of suspending the 3% compounded COLA with various amortization periods on ARC contributions to determine the year in which the City was expected to emerge from critical status. Trial Tr. 94:9–98:5, Nov. 12, 2015; see also Ex. MM. If the status quo was to remain, the City would be required to infuse an additional $100 million over twenty years to emerge from critical status in a timely fashion. Trial Tr. 95:11–97:7, Nov. 12, 2015; see also Ex. MM. By suspending the 3% compounded COLA for ten years, the City would emerge from critical status by 2032, within the Pension Study Commission's twenty-year requirement. Trial Tr. 97:8–22, Nov. 12, 2105; see also Ex. MM.

On November 11, 2012, Mayor Fung sent a letter to the Pension Study Commission containing the four potential scenarios for emerging from critical status. Trial Tr. 98:9–19, Nov. 12, 2015; see also Ex. QQ. The four options included a ten-year suspension of the 3% compounded COLA, a fifteen-year suspension of the 3% compounded COLA, a permanent suspension of the 3% compounded COLA with large ARC in fiscal years 2013 and 2014, and a permanent suspension of the 3% compounded COLA with different ARC in fiscal years 2013 and 2014. Trial Tr. 99:2–100:11, Nov. 12, 2015; see also Ex. QQ.

During this timeframe, Mayor Fung was approached by retirees as well as union representatives from the IBPO and the IAFF seeking to resolve the crisis. Trial Tr. 103:4–25, Nov. 12, 2015. In an attempt to negotiate in good faith, Mayor Fung suspended his efforts to seek passage of the ordinances. Trial Tr. 104:1–12, Nov. 12, 2015. He commenced a dialogue with the City pension system participants and beneficiaries. Id. Starting in January of 2013,

Mayor Fung met with Mr. Paul Valletta, president of the IAFF; Mr. Ken Rouleau, vice president of the IAFF; Mr. Stephen Antonucci, president of the IBPO; police retiree representatives, and others. Trial Tr. 106:17–107:20, Nov. 12, 2015. Meetings between Mayor Fung and interested parties occurred on January 11, 2013; January 29, 2013; February 14, 2013; February 26, 2013; March 4, 2013; and March 8, 2013. Id. at 108:17–109:11; see also Ex. TT. Mayor Fung testified that all of these meetings were designed to provide information to retirees and engage in an open dialogue. Trial Tr. 109:9–21, 110:4–18, Nov. 12, 2015. At the meetings, over twenty different scenarios were discussed with retirees, including alternative compounded COLA suspension scenarios. Id. at 112:6–11; see also Exs. XX, ZZ, AAA, DDD, III. Ironically, one goal of holding these meetings was to avoid a court challenge. Trial Tr. 110:11–18, Nov. 12, 2015. Ultimately, the stakeholders reached an agreement. Id. at 115:11–14.

The agreement resulted in the passage of two ordinances by the Cranston City Council on April 23, 2013 amending the Cranston City Code that governed police and firefighter retiree pensions to suspend the 3% compounded COLA for a period of ten years (2013 Ordinances).[9] Id.

[9] Ordinance 2013-5, concerning the police officer pension funds, states, in pertinent part:

> "22. Notwithstanding any language in Chapter 2.20 entitled Policeman's Pension fund or any other law or statute or ordinance or memorandum of agreement or settlement agreement or binding arbitration award or collective bargaining agreement provision or any other statutory or contractual provision or legislative enactment to the contrary, for any officer or member of the permanent police department who was hired prior to July 1, 1995 and in said plan who is still an active employee and for any such member so retired and for any beneficiaries receiving any retirement, disability or widow/widower benefit or any other benefit of any kind in said plan, any automatic annual escalation or pension cost-of-living adjustment (COLA) of the pension payment of the member or beneficiary in accordance with these sections shall be suspended for a period of ten (10) years beginning July 1, 2013.

> "23. Notwithstanding any language in Chapter 2.20 entitled Policeman's Pension fund or any other law or statute or ordinance or memorandum of agreement or settlement agreement or binding arbitration award or collective bargaining agreement provision or any other statutory or contractual provision or legislative enactment to the contrary, upon the expiration of the ten year period provided for above, for any officer or member of the permanent police department who was hired prior to July 1, 1995 and in said plan who is still an active employee and for any such member so retired and for any beneficiaries receiving any retirement, disability or widow/widower benefit or any other benefit of any kind in said plan the automatic annual escalation or pension cost-of-living adjustment (COLA) of the pension payment of the member or beneficiary shall automatically escalate in an amount fixed at three percent per annum, compounded, without any further escalation based on raises granted to active employees." Ex. HHHH.

Ordinance 2013-6, dealing with the firefighter pension funds, states, in pertinent part:

> "7. Notwithstanding any language in Chapter 2.28 entitled Fireman's Pension fund or any other law or statute or ordinance or memorandum of agreement or settlement agreement or binding arbitration award or collective bargaining agreement provision or any other statutory or contractual provision or legislative enactment to the contrary, for any officer or member of the permanent police department who was hired prior to July 1, 1995 and in said plan who is still an active employee and for any such member so retired and for any beneficiaries receiving any retirement, disability or widow/widower benefit or any other benefit of any kind in said plan, any automatic annual escalation or pension cost-of-living adjustment (COLA) of the pension payment of the member or beneficiary in accordance with these sections shall be suspended for a period of ten (10) years beginning July 1, 2013.
>
> "8. Notwithstanding any language in Chapter 2.28 entitled Fireman's Pension fund or any other law or statute or ordinance or memorandum of agreement or settlement agreement or binding arbitration award or collective bargaining agreement provision or any other statutory or contractual provision or legislative enactment to the contrary, upon the expiration of the ten year period provided for above, for any officer or member of the permanent fire department who was hired prior to July 1, 1995 and in said plan who is still an active employee and for any such

at 101:1–7, 116:17–117:1, Nov. 12, 2015; see also Exs. HHHH, IIII. In year eleven, the COLA is reinstated at a fixed 3% compounded amount. Trial Tr. 22:12–16, Nov. 13, 2015 (Mayor Fung); see also Exs. HHHH, IIII.

The implementation of these changes led the Cranston Police Department Retirees Association, Inc. and the Local 1363 Retirees Association to bring suit in April 2013 against the City, alleging that the 2013 Ordinances violated, inter alia, the contract clauses of the Rhode Island and United States Constitutions. See Joint Statement of Undisputed Facts at ¶ 31; see also Local 1363 Retirees Ass'n v. City of Cranston, PC-2013-1899. The parties negotiated and reached an agreement in the summer of 2013 (Settlement Agreement). Id. at ¶ 32. Paul Valletta Jr., President of the local IAFF, was the lead negotiator for the union. Trial Tr. 2:10–3:2, Nov. 17, 2015 (Mr. Valletta). Mr. Valletta was gravely concerned with the passage of RIRSA in 2011. Id. at 6:12–21. The purpose of the Settlement Agreement was to save the pension. Id. at 12:12–17. Prior to the Settlement Agreement, other options were explored, including increasing taxes, lay-offs, reductions in pay, and selling City assets. Id. at 13:4–15:17. It was concluded that these were not feasible or reasonable. Id.

The terms of the Settlement Agreement included a suspension of the 3% compounded COLA on alternating years for a period of ten years; in years eleven and twelve a compounded COLA is set at one and a half percent; and for years thirteen and forward the COLA returns to

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> member so retired and for any beneficiaries receiving any retirement, disability or widow/widower benefit or any other benefit of any kind in said plan the automatic annual escalation or pension cost-of-living adjustment (COLA) of the pension payment of the member or beneficiary shall automatically escalate in an amount fixed at three percent per annum, compounded, without any further escalation based on raises granted to active employees." Ex. IIII.

3% compounded. See Trial Tr. 115:15–116:3, Nov. 12, 2015 (Mayor Fung); Trial Tr. 23:11–19, Nov. 13, 2015 (Mayor Fung); see also Ex. JJJJ. During a fairness hearing, the Court found the Settlement Agreement fair and reasonable and approved it on December 13, 2013. Joint Statement of Undisputed Facts at ¶ 41.

Those dissatisfied with the Settlement Agreement were afforded the opportunity to elect to exclude themselves from the Settlement Agreement. Id. at ¶¶ 36, 40. Those individuals retained the right to sue the City. Id. CPRAC is comprised of those individuals who opted out of the Settlement Agreement. Trial Tr. 51:17–52:22, Nov. 9, 2015 (Mr. Gilkenson).

A non-jury trial was held over the course of six days, during which sixteen witnesses testified. At the close of CPRAC's evidence, the City moved for judgment as a matter of law pursuant to Super. R. Civ. P. 52(c). Trial Tr. 117:25–122:24, Nov. 17, 2015. The Court reserved on the City's motion. Id. at 127:19.

## II

## Standard of Review

Rule 52(a) of the Superior Court Rules of Civil Procedure (Rule 52(a)) provides that "[i]n all actions tried upon the facts without a jury . . . the court shall find the facts specially and state separately its conclusions of law . . . ." Super. R. Civ. P. 52(a). Accordingly, in a non-jury trial, "'[t]he trial justice sits as a trier of fact as well as of law.'" Parella v. Montalbano, 899 A.2d 1226, 1239 (R.I. 2006) (quoting Hood v. Hawkins, 478 A.2d 181, 184 (R.I. 1984)). In so doing, she "'weighs and considers the evidence, passes upon the credibility of the witnesses, and draws proper inferences.'" Id. (quoting Hood, 478 A.2d at 184). Additionally, "it is permissible for the trial justice to 'draw inferences from the testimony of witnesses, and such inferences, if reasonable, are entitled on review to the same weight as other factual determinations.'" Cahill v.

Morrow, 11 A.3d 82, 86 (R.I. 2011) (quoting DeSimone Elec., Inc. v. CMG, Inc., 901 A.2d 613, 621 (R.I. 2006)) .

However, "'extensive analysis'" is not required of the trial justice. Wilby v. Savoie, 86 A.3d 362, 372 (R.I. 2014) (quoting Connor v. Schlemmer, 996 A.2d 98, 109 (R.I. 2010)). Indeed, the "'trial justice's analysis of the evidence and findings in the bench trial context need not be exhaustive . . . if the decision reasonably indicates that [he or she] exercised [his or her] independent judgment in passing on the weight of the testimony and credibility of the witnesses . . . .'" Id. (quoting Notarantonio v. Notarantonio, 941 A.2d 138, 144–45 (R.I. 2008)). Brief findings of fact and conclusions of law are sufficient as long as they squarely address and resolve controlling factual and legal issues.[10] See Broadley v. State, 939 A.2d 1016, 1021 (R.I. 2008).

This Court, sitting without a jury, also possesses discretion "to grant or deny declaratory relief pursuant to the [Uniform Declaratory Judgments Act]" as well as discretion "to grant or

[10] Rule 52(c) of the Rhode Island Superior Court Rules of Civil Procedure (Rule 52(c)) permits a Court, in a non-jury trial, to enter judgment as a matter of law after a party has been fully heard on an issue. Rule 52(c) provides, in pertinent part, as follows:

> "If during a trial without a jury a party has been fully heard on an issue and the court finds against the party on that issue, the court may enter judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue, or the court may decline to render any judgment until the close of all the evidence. Such a judgment shall be supported by findings of fact and conclusions of law as required by subdivision (a) of this rule." Super. R. Civ. P. 52(c).

Importantly, the Court must adhere to the same standard of review exercised under Rule 52(a). See Cathay Cathay, Inc. v. Vindalu, LLC, 962 A.2d 740, 745 (R.I. 2009); see also Broadley, 939 A.2d at 1021 ("[A] finding on a Rule 52(c) motion must comport with the requirements in Rule 52(a), which does not require extensive analysis and discussion of all the evidence presented in a bench trial."). The trial justice must therefore "assess the credibility of witnesses and weigh the evidence presented by the nonmoving party." Cathay Cathay, Inc., 962 A.2d at 745 (citing Broadley, 939 A.2d at 1020).

deny injunctive relief as a court of general equitable jurisdiction." R.I. Republican Party v. Daluz, 961 A.2d 287, 295 (R.I. 2008); see also §§ 9-30-1 to 9-30-16; see also § 8-2-13. The Uniform Declaratory Judgments Act grants the Superior Court "power to declare rights, status, and other legal relations whether or not further relief is or could be claimed . . . and such declarations shall have the force and effect of a final judgment or decree." Sec. 9-30-1. Furthermore, "[a] decision to grant or deny declaratory or injunctive relief is addressed to the sound discretion of the trial justice . . . ." Foster Glocester Reg'l Sch. Bldg. Comm. v. Sette, 996 A.2d 1120, 1124 (R.I. 2010).

## III

## Analysis

### A

### Contract Clause

The contract clause of the United States Constitution as well as the Rhode Island Constitution serves to limit the power of the state to modify and regulate contracts. See Brennan v. Kirby, 529 A.2d 633, 638 n.7 (R.I. 1987) (holding that Rhode Island courts "will rely on federal case authority in this area"); R.I. Const. art. I, § 12; U.S. Const. art. I, § 10. Although the contract clause appears to be an absolute bar to impairment of public and private contracts, the United States Supreme Court has not interpreted it as such. U.S. Trust Co. of N.Y. v. N.J., 431 U.S. 1, 20 (1977) (holding that the contract clause "'is not to be read with literal exactness like a mathematical formula.'") (quoting Home Bldg. & Loan Ass'n v. Blaisdell, 290 U.S. 398, 428 (1934)); see also Energy Reserves Grp., Inc. v. Kan. Power and Light Co., 459 U.S. 400, 410 (1983).

The apparent absolute prohibition of the contract clause has been "accommodated to the inherent police power of the State 'to safeguard the vital interests of its people.'" Energy Reserves Grp., Inc., 459 U.S. at 410 (quoting Blaisdell, 290 U.S. at 434). Central to the interpretation of the contract clause is the careful balance struck between retaining "any meaning at all" from the words of the text and "the exercise of [a state's] otherwise legitimate police power." Allied Structural Steel Co. v. Spannaus, 438 U.S. 234, 242 (1978); see also Patrick J. Rohan, 1 Zoning and Land Use Controls § 5.05[3] (1997) (noting the tension from the "conflict between the contracts clause of the United States Constitution and the necessary powers inherent in a sovereign state"). This balance furthers the "principle of harmonizing the constitutional prohibition with the necessary residuum of state power . . . ." City of El Paso v. Simmons, 379 U.S. 497, 508 (1965). Therefore, "state laws that impair an obligation under a contract do not necessarily give rise to a viable Contracts Clause claim." Buffalo Teachers Fed'n v. Tobe, 464 F.3d 362, 368 (2d Cir. 2006) (citing U.S. Trust Co., 431 U.S. at 16).

Determining whether a state law unconstitutionally impairs the obligations of contract requires this Court to conduct a three-prong analysis. See Energy Reserves Grp., 459 U.S. at 411–13; see also In re Advisory Op. to the Governor (DEPCO), 593 A.2d 943, 949 (R.I. 1991). The Court must consider the following:

> "[1] A court first must determine whether a contract exists. [2] If a contract exists, the court then must determine whether the modification results in an impairment of that contract and, if so, whether this impairment can be characterized as substantial. [3] Finally, if it is determined that the impairment is substantial, the court then must inquire whether the impairment, nonetheless, is reasonable and necessary to fulfill an important public purpose." Nonnenmacher v. City of Warwick, 722 A.2d 1199, 1202 (R.I. 1999) (internal citations omitted); see also Retired Adjunct Professors v. Almond, 690 A.2d 1342 (R.I. 1997) (applying the same three-part analysis).

Plaintiff bears the burden of production in establishing beyond a reasonable doubt that the ordinances in question constitute a substantial impairment of a contract. See Retired Adjunct Professors, 690 A.2d at 1344–45; see also Parella, 899 A.2d at 1233; see also Nonnenmacher, 722 A.2d at 1203–04. In the event that plaintiff fails to meet its burden, the case ends. Otherwise, the burden of production shifts to the City to provide sufficient credible evidence that the ordinances were reasonable and necessary to fulfill a "significant and legitimate . . . purpose[.]" Toledo Area AFL-CIO Council v. Pizza, 154 F.3d 307, 323 (6th Cir. 1998); see also Energy Reserves Grp., 459 U.S. at 411; see also "Credible Evidence," Black's Law Dictionary (10th ed. 2014) ("[e]vidence that is worthy of belief; trustworthy evidence."). Thereafter, plaintiff may rebut defendant's credible evidence on factor three, but it must do so beyond a reasonable doubt. See Donohue v. Mangano, 886 F. Supp. 2d 126, 160 (E.D.N.Y. 2012) ("A lack of reasonableness or necessity is an element of a Contract Clause claim which the Plaintiffs bear the burden of establishing.") (citations omitted). Although the burden of production shifts, plaintiff bears the burden of persuasion throughout. See also Dowd v. Rayner, 655 A.2d 679, 681 (R.I. 1995) ("[T]he party challenging the constitutional validity of a statute carries the burden of persuading the court beyond a reasonable doubt . . . ."); see also Parella, 899 A.2d at 1232–33 ("[E]very statute enacted by the Legislature is presumed constitutional and will not be invalidated by this Court unless the party challenging the statute proves beyond a reasonable doubt that the legislative enactment is unconstitutional.") (emphasis in original).

**1**

**Existence of a Contractual Obligation**

As a threshold matter, it must be determined whether a contract exists between the parties. See Nonnenmacher, 722 A.2d at 1202; see also Baltimore Teachers Union v. Mayor and

City Council of Baltimore, 6 F.3d 1012, 1015 (4th Cir. 1993). This analysis "goes not just to whether there is any contractual relationship between the parties, but to whether there is a 'contractual agreement regarding the specific . . . terms allegedly at issue.'" Cycle City, Ltd. v. Harley-Davidson Motor Co., Inc., 81 F. Supp. 3d 993, 1004 (D. Haw. 2014) (quoting Gen. Motors Corp. v. Romein, 503 U.S. 181, 187 (1992)). Plaintiff must prove the existence of a contractual obligation beyond a reasonable doubt. See Dowd, 655 A.2d at 681.

Here, CPRAC established through credible testimony beyond a reasonable doubt that its members made contributions to the City pension system through payroll deductions and that all its members retired under various CBAs that provided a 3% compounded COLA. See Trial Tr. 3:20–4:1, 9:16–17, 40:5–20 (Mr. Gilkenson), 104:9–12, 105:2–106:6, 107:16–23, 111:22–23 (Mr. Matrumalo), 153:22–154:14, 156:16–22, 157:9–24, 159:12–14 (Mr. Walsh), 175:9–176:10 (Mr. Lynch); 185:12–186:14, 191:23–192:5 (Mr. Greene), Nov. 9, 2015; see also Trial Tr. 3:10–19, 5:15—6:8 (Mr. Davies), 16:3–19, 20:14–21:3, 21:23–22:3, 22:24–23:12 (Mr. Galligan), 31:23–32:16, 36:9–21 (Mr. Evans), 45:5–46:6, 46:14–23, 47:14–16 (Mr. Maccarone), Nov. 10, 2015; see also Exs. 18, 35, 36, 37, 38. The evidence provided by CPRAC established that for firefighter retirees, Section 24(A)(3) of the 1997–1998 CBA, 1998–2001 CBA, 2001–2004 CBA, 2006–2007 CBA, 2007–2010 CBA, 2008–2011 CBA, and 2011–2013 CBA provide: "All retired employees' pension payments will automatically escalate based on any and all contractual increases received by active duty employees . . . . [T]he retired employee's escalation of pension payments will automatically increase by three (3%) percent compounded on July 1 of that year." Exs. 14, 15, 16, 17, 18, 19, 22. The plain and unambiguous language of the firefighter CBAs confers a 3% compounded COLA to the retired firefighter. See Local 369 Util. Workers v. NSTAR Elec. and Gas Corp., 317 F. Supp. 2d 69, 75–76 (D. Mass 2004) ("It is certainly

possible for an employer to 'oblige itself contractually to maintain benefits at a certain level . . . .'") (quoting Vasseur v. Halliburton Co., 950 F.2d 1002, 1006 (5th Cir. 1992)).

In addition, it was demonstrated that for police officer retirees, Section 24-1 of the 1997–1999 CBA, 1999–2002 CBA, and 2002–2005 CBA, and Section 23-1 of the 2006–2008 CBA and 2009–2012 CBA specifically incorporate the 1996 Ordinances.[11] See Rotelli v. Catanzaro, 686 A.2d 91, 94 (R.I. 1996) ("[I]nstruments referred to in a written contract may be regarded as incorporated by reference and thus may be considered in the construction of the contract.") (citing 17A Am. Jur. 2d Contracts § 400 (1991)). Our Supreme Court considered a related issue in Arena v. City of Providence, 919 A.2d 379, 392 (R.I. 2007). There, the City of Providence applied new, less generous COLA calculations to police and fire department employees who had retired before the effective dates of the ordinances providing the new calculations. Id. at 384. The Arena Court held that the plaintiff had a vested interest in the COLA provided by the ordinance, noting that it was "a municipality's duty to carefully craft an ordinance granting a pension benefit so that it is clear whether the benefit is gratuitous or vested . . . ." Id. at 394. A determination of whether the COLA benefits are vested thus requires a "look to the applicable pension ordinance." Id. at 393.

[11] Section 24-1 of the 1997–1999 CBA, 1999–2002 CBA, and 2002–2005 CBA and Section 23-1 of the 2006–2008 CBA and 2009–2012 CBA provides:

> "All City ordinances, state statutes and current benefits now in existence as evidenced by a memorandum of understanding signed by [the] city and IBPO, providing the various forms of retirement benefits in existence upon the execution of the Agreement for members of the bargaining unit are hereby incorporated by reference as if fully stated herein and shall inure to all members of the bargaining unit for the duration of this Agreement. No changes shall be made to said benefits without the written agreement between the City and the I.B.P.O." Exs. 34, 35, 36, 37, 38.

Here, the plain language of the 1996 Ordinances provides a 3% compounded COLA with an escalator clause: "Retired members pension payments will automatically escalate in an amount equal to all contractual increases received by active duty members . . . . [If there is no increase for active members] retired members shall receive a three (3%) percent escalation of said pension payment on June 30 of that year." Ex. 88A, Sec. 2-24-23(A)(20); see also Arena, 919 A.2d at 394 (finding an ordinance conferred a vested compounded COLA to retirees based on the "plain language" of the ordinance).[12] Additionally, the collective bargaining origins of the 3% compounded COLA weigh in favor of vesting. See Arena, 919 A.2d at 394 ("[W]e are further persuaded that this is the correct interpretation because the COLA provisions in question were negotiated during the collective bargaining process . . . ."). The Court therefore finds that the plain and unambiguous language of the 1996 Ordinances, as referenced by the police officer CBAs, confers a 3% compounded COLA to the retired police officers.

As such, the Court is satisfied that CPRAC has shown beyond a reasonable doubt that members of CPRAC have a vested right to a 3% compounded COLA in accordance with the respective CBAs under which they retired. Accordingly, the 3% compounded COLAs are contractual obligations, the impairment of which is subject to contract clause scrutiny. See Buffalo Teachers Fed'n, 464 F.3d at 368 (analyzing impairment of union labor contracts under the contract clause).

[12] For police officers who retired under the 2006–2008 CBA or the 2009–2012 CBA, the compounded COLA was fixed at 3% annually, without an escalator clause: "the pension cost-of-living adjustments (COLAs) will be fixed at 3.0% per annum, compounded . . . ." Exs. 37, Sec. 23-1; 38, Sec. 23-1 (emphasis added).

**2**

**Substantial Impairment**

The contract clause is only invoked if the state law's impairment of the contractual obligation is sufficiently "substantial." See Nonnenmacher, 722 A.2d at 1202; see also Liberty Mut. Ins. Co. v. Whitehouse, 868 F. Supp. 425, 431 (D.R.I. 1994). Underlying this analysis is a respect for the important role of contract:

> "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." Spannaus, 438 U.S. at 245.

The United States Supreme Court has not specifically indicated what constitutes a "substantial" contractual impairment. The Supreme Court has indicated that not all impairments are substantial for contract clause purposes. For example, "technical" impairments are unlikely substantial. See Spannaus, 438 U.S. at 245 ("Minimal alteration of contractual obligations may end the inquiry at its first stage."); see also U.S. Trust Co., 431 U.S. at 21 ("[A] finding that there has been a technical impairment is merely a preliminary step in resolving the more difficult question whether that impairment is permitted under the Constitution."). However, "[t]otal destruction of contractual expectations is not necessary for a finding of substantial impairment." Energy Reserves Grp. Inc., 459 U.S. at 411; see also U.S. Trust Co., 431 U.S. at 26. As the Fourth Circuit has noted, "[t]he ground between these spectral ends, though, has yet to be charted with any precision." Baltimore Teachers Union, 6 F.3d at 1017.

It is clear, however, that two key factors are to be examined: (1) whether the impaired right was the one that "substantially induced" the parties to contract in the first place, City of El

Paso, 379 U.S. at 514, and (2) whether the abridged right is one that was reasonably and especially relied on by the complaining party. Spannaus, 438 U.S. at 246. Either factor may be independently sufficient for a finding of substantial impairment. See Buffalo Teachers Fed'n, 464 F.3d at 368 (finding substantial impairment based on reasonable reliance alone).

In examining inducement, it has been concluded that no substantial impairment exists where the abridged right "was not the central undertaking of the seller nor the primary consideration for the buyer's undertaking." City of El Paso, 379 U.S. at 514. Only rights that are "important," "basic," or "central" to the underlying contract are sufficient to find a substantial impairment based on inducement. See U.S. Trust Co., 431 U.S. at 19; see also Spannaus, 438 U.S. at 246; see also Baltimore Teachers Union, 6 F.3d at 1018; see also City of Charleston v. Pub. Serv. Comm'n of W. Va., 57 F.3d 385, 394 (4th Cir. 1995).

Reliance on the contractual expectation requires that the complaining party "relied heavily, and reasonably, on th[e] legitimate contractual expectation . . . ." Spannaus, 438 U.S. at 246; see also U.S. Trust Co., 431 U.S. at 31 (noting that in City of El Paso, a statute impairing contracts was upheld where it "'restrict[ed] a party to those gains reasonably to be expected from the contract[.]'") (quoting City of El Paso, 379 U.S. at 515). Thus, a plaintiff must demonstrate reasonable reliance on the impaired contractual provision to prove substantial impairment. See Baltimore Teachers Union, 6 F.3d at 1018 (noting that a finding of substantial impairment requires evidence of especial reliance); see also Buffalo Teachers Fed'n, 464 F.3d at 368 ("[T]he wage freeze so disrupts the reasonable expectations of Buffalo's municipal school district workers that the freeze substantially impairs the workers' contracts with the City.").

It is clear that, "at the very least, where the contract right or obligation impaired was one that induced the parties to enter into the contract and upon the continued existence of which they

have especially relied, the impairment must be considered 'substantial' for purposes of the Contract Clause." Baltimore Teachers Union, 6 F.3d at 1018 (emphasis in original). Plaintiff must prove these factors beyond a reasonable doubt. See Dowd, 655 A.2d at 681; see also Parella, 899 A.2d at 1232–33.

Here, despite the fact that the compounded COLA suspension is temporary and not a complete repudiation, the length of the suspension of the COLA is not so sufficiently minimal as to be a technical deprivation. See Energy Reserves Grp. Inc., 459 U.S. at 411, ("Total destruction of contractual expectations is not necessary for a finding of substantial impairment."); cf. Spannaus, 438 U.S. at 245 ("Minimal alteration of contractual obligations may end the inquiry at its first stage."). A more searching look at the inducement and reliance of CPRAC on the 3% compounded COLA is therefore warranted. See Baltimore Teachers Union, 6 F.3d at 1018.

Testimony from members of CPRAC lacks any description of what, precisely, induced them to enter the police force or fire department in the first place. See generally, Trial Tr. Nov. 9–10, 2015. Indeed, not one member of CPRAC testified that the 3% compounded COLA induced him or her to enter into a contract with the City. See id. This is almost certainly due to the fact that all members of CPRAC who testified were hired prior to the enactment of the 1996 Ordinances, which first introduced the 3% compounded COLA. See Exs. 88A, 89A; see also Trial Tr. 89:6–90:6, Nov. 10, 2015 (Mayor Traficante). Nevertheless, based on the testimony presented, the Court must conclude that the 3% compounded COLA was not a "central undertaking" of the employment contract. See City of El Paso, 379 U.S. at 514. With no testimony as to the inducement of the employment contract presented, CPRAC has not done the necessary lifting required to prove its burden beyond a reasonable doubt. See Dowd, 655 A.2d at 681; see also Parella, 899 A.2d at 1233.

Notwithstanding, CPRAC has presented credible evidence beyond a reasonable doubt that its members especially and reasonably relied on the 3% compounded COLA. Members of CPRAC testified that the compounded COLA suspension's impact was substantial. See Trial Tr. 135:6–9, 136:8–14 (Mr. Matrumalo), 161:2–162:18 (Mr. Walsh), 180:12–19 (Mr. Lynch), 189:11–23 (Mr. Greene), Nov. 9, 2015; see also Trial Tr. 9:17–23 (Mr. Davies), 40:4–8 (Mr. Evans), 47:23–48:20 (Mr. Maccarone), Nov. 10, 2015. Members of CPRAC testified almost uniformly, and credibly, that if they had known of the forthcoming changes to the compounded COLA, they would not have retired when they did. See Trial Tr. 48:25–49:7 (Mr. Gilkenson), 132:21–24, 134:20–135:5 (Mr. Matrumalo), 160:9–16 (Mr. Walsh), 175:9–19 (Mr. Lynch), Nov. 9, 2015; see also Trial Tr. 8:12–14 (Mr. Davies), 24:2–15 (Mr. Galligan), 39:24–40:13 (Mr. Evans), 48:21–49:3 (Mr. Maccarone), Nov. 10, 2015. Indeed, many members of CPRAC testified that they based their financial plans on the continued indefinite availability of the 3% compounded COLA. See Trial Tr. 132:20–133:11 (Mr. Matrumalo), 161:2–162:18 (Mr. Walsh), Nov. 9, 2015. Many cited to the fact that there was an impact on their family, including an inability to assist family members as well as the need to rearrange retirement plans. See, e.g., Trial Tr. 135:6–9, 136:8–14 (Mr. Matrumalo), 161:2–162:18 (Mr. Walsh), 180:12–19 (Mr. Lynch), Nov. 9, 2015. For example, Mr. Greene credibly testified that the suspension of the COLA had an immediate financial impact on his family. See Trial Tr. 189:9–190:23, Nov. 9, 2015. Mr. Lynch testified that the compounded COLA suspension impacted his ability to pay for his children's college education. See id. at 179:5–180:2. Although most testified that the annual loss amount was nominal, the Court finds that the evidence credibly demonstrated that the cumulative impact to the individual was substantial. See id. at 137:20–138:7 (Mr. Matrumalo), 164:21–23 (Mr. Walsh), 180:12–19 (Mr. Lynch); see also Trial Tr. 27:25–28:3 (Mr. Galligan),

52:15–22 (Mr. Maccarone), Nov. 10, 2015; see also Cahill, 11 A.3d at 86 (holding that reasonable inferences are entitled to the same weight as factual determinations).

Buttressing the position that the loss was substantial was the testimony of CPRAC's expert, William Fornia. Mr. Fornia rendered an opinion to a reasonable degree of actuarial certainty that the loss to the retiree was material. See Trial Tr. 38:20–39:12, 42:17–43:4, Nov. 13, 2015 (Mr. Fornia); see also Exs. 91, 93. His testimony on the issue of impairment was given weight.[13]

Therefore, CPRAC has established an especial reliance on the 3% compounded COLA. See Spannaus, 438 U.S. at 246 (finding substantial impairment where a party "relied heavily, and reasonably, on this legitimate contractual expectation"); see also Welch v. Brown, 551 F. App'x. 804, 810 (6th Cir. 2014) (finding substantial impairment where "most of the Plaintiffs live on fixed incomes, and the proposed changes are material"). This reliance is considered by the Court to be reasonable. See Arena, 919 A.2d at 395 ("[P]lantiffs had a reasonable expectation at the time they retired that they would receive a . . . compounded COLA that would vest upon their retirement.").

Accordingly, the Court finds that CPRAC has demonstrated beyond a reasonable doubt that members of CPRAC especially and reasonably relied on the 3% compounded COLA. See Baltimore Teachers Union, 6 F.3d at 1018; see also Dowd, 655 A.2d at 681. As such, the Court finds that the 2013 Ordinances constitute a substantial impairment of the contract between

[13] Mr. Fornia calculated the actual loss per retiree resulting from the suspension of the compounded COLA to be $210,000. See Trial Tr. 40:22–42:2, 42:17–43:4, 55:15–21, Nov. 13, 2015 (Mr. Fornia); see also Ex. 91. However, this specific number was given little weight because it was based upon assumptions related to the consumer price index (CPI). See id. at 59:13–60:8. For instance, the CPI is currently lower than 3%, and a lower CPI would affect the outcome of the calculation. See id. at 60:9–61:4.

members of CPRAC and the City. See, e.g., Buffalo Teachers Fed'n, 464 F.3d at 368 ("Contract provisions that set forth the levels at which union employees are to be compensated are the most important elements of a labor contract."); see also Baltimore Teachers Union, 6 F.3d at 1018 n.8 ("[B]ecause individuals plan their lives based upon their salaries, we would be reluctant to hold that any decrease in an annual salary beyond one that could fairly be termed de minimis could be considered insubstantial.").

**3**

**Significant and Legitimate Public Purpose**

Notwithstanding a finding of substantial impairment, a contract modification remains constitutionally valid if the City produces sufficient credible evidence that the modification was done to further a significant and legitimate public purpose and if doing so was reasonable and necessary. See Buffalo Teachers Fed'n, 464 F.3d at 368; see also Nonnenmacher, 722 A.2d at 1202. CPRAC may rebut the credible evidence by establishing beyond a reasonable doubt that there was no significant and legitimate public purpose behind the City's actions. See Donohue, 886 F. Supp. 2d at 160.

A significant and legitimate public purpose is "one 'aimed at remedying an important general social or economic problem rather than providing a benefit to special interests.'" Buffalo Teachers Fed'n, 464 F.3d at 368 (quoting Sanitation and Recycling Indus. v. City of N.Y., 107 F.3d 985, 993 (2d Cir. 1997)). It may not be one "for the mere advantage of particular individuals . . . ." Blaisdell, 290 U.S. at 445. "'[A]dressing a fiscal emergency is a legitimate public interest' however, 'the purpose may not be simply the financial benefit of the sovereign.'" Kent v. N.Y., No. 1:11-CV-1533, 2012 WL 6024998, at *21 (N.D.N.Y. Dec. 4, 2012) (quoting Buffalo Teachers Fed'n, 464 F.3d at 368). "Although economic concerns can give rise to the

City's legitimate use of the police power, such concerns must be related to 'unprecedented emergencies . . . .'" Am. Fed'n of State, Cnty., and Mun. Emps. v. City of Benton, Ark., 513 F.3d 874, 882 (8th Cir. 2008) (quoting Spannaus, 438 U.S. at 242).

Since the 3% compounded COLA was added in 1996, the City pension system has faced a significant unfunded liability. See Trial Tr. 100:13–101:4, Nov. 10, 2015 (Mayor Traficante). By 1999, the total unfunded liability reached $169 million. See id. at 100:13–15. Mayor Michael Traficante and Mayor John O'Leary credibly testified that their respective administrations were unable to address this crisis. See id. at 101:11–25 (Mayor Traficante), 120:8–21, 122:24–123:12 (Mayor O'Leary).

The imposition of the compounded COLA alone did not create the severe economic issues resulting in the passage of the 2013 Ordinances. Rather, the City pension system's unfunded liability problems were compounded by the Great Recession. The Great Recession had far reaching and devastating economic and general social consequences that affected the entire City. Mayor Fung, as well as Mr. Strom, credibly testified as to the seriousness of this fiscal emergency. See Trial Tr. 10:23–12:1, 13:9–17, 19:25–20:3, 27:7–10, Nov. 12, 2015 (Mayor Fung); see also Trial Tr. 9:4–8, 10:3–10, 11:1–8, Nov. 13, 2015 (Mr. Strom). Their testimony is given great weight. The Great Recession resulted in profound devastation, including the devaluation of the assessed values of property. See Trial Tr. 13:9–17, 17:10–20, Nov. 12, 2015 (Mayor Fung); see also Exs. YYY, ZZZ. The uncontroverted evidence demonstrates that in Cranston the devaluation amounted to more than one billion dollars between 2008 and 2009. See Trial Tr. 13:9–17, 17:10–20, Nov. 12, 2015 (Mayor Fung); see also Exs. YYY, ZZZ; see also William C. Burnham, Public Pension Reform and the Contract Clause: A Constitutional Protection for Rhode Island's Sacrificial Economic Lamb, 20 Roger Williams U. L. Rev. 523,

526 (2015) ("While every state felt the ripple effect of the [Great Recession] . . . few were as dramatically impacted as Rhode Island."). In addition, two natural disasters in March of 2010 cost the City in excess of $1.4 million. See Trial Tr. 24:17–25:5, Nov. 12, 2015. Moreover, state aid to the City decreased by over $18 million from fiscal year 2007 to fiscal year 2011. See id. at 27:7–10; see also Exs. H, I, J, K, L. According to the credible testimony of Mr. Strom, the decrease in state aid between 2010 and 2011 created a nearly five percent gap in the City's budget. See Trial Tr. 14:5–12, Nov. 13, 2015. As a result, the City's general obligations bonds were downgraded to a negative outlook in 2010 and 2012 by Moody's Investors Services. See Trial Tr. 23:20–24:14, 27:25–28:14, Nov. 12, 2015 (Mayor Fung); see also Exs. R, X.

These events resulted in the unfunded accrued liability of the City's pension system increasing to $256 million. See Trial Tr. 30:6–15, 39:5–21, Nov. 12, 2015 (Mayor Fung); see also Exs. U, Y. In addition, there was only $35 million in assets. See Trial Tr. 30:6–15, 39:5–21, Nov. 12, 2015; see also Exs. U, Y. The unfunded liability was estimated to increase to approximately $271 million. See Trial Tr. 46:11–21, Nov. 12, 2015; see also Ex. Y. The City pension system was 16.9% funded. See Trial Tr. 61:16–20, Nov. 12, 2015.

Compounding that were the requirements imposed upon the City pursuant to RIRSA. See id. at 5:22–6:5, 35:22–36:19, 85:16–86:8; see also Trial Tr. 17:13–18:5, Nov. 13, 2015 (Mr. Strom); see also Ex. VVV. RIRSA's provisions were clear: any municipality designated as being in critical status had to rectify the funding of its pension system to at least sixty percent funded or that municipality would face severe cuts in state aid. See Trial Tr. 5:22–6:5, 35:22–36:19, 85:16–86:8, Nov. 12, 2015 (Mayor Fung); see also Ex. VVV. Plaintiff characterized the twenty-year guideline for emerging from critical status created by the Pension Study Commission as "toothless." This interpretation ignores the clear language in the statute that threatens to withhold

funds for non-complying municipalities. See Trial Tr. 85:16–86:8, 95:4–6, 102:17–25, Nov. 12, 2015 (Mayor Fung); see also Ex. VVV. The Pension Study Commission produced the twenty-year guideline, and the Pension Study Commission was also responsible for reviewing and certifying that critical status municipalities had created a "reasonable alternative funding improvement plan to emerge from critical status." Sec. 45-65-6(2), Ex. VVV. It was reasonable for the City to have believed that the twenty-year timeline was an important target. Indeed, City officials credibly testified that they believed that the twenty-year deadline was controlling. See Trial Tr. 85:16–86:8, Nov. 12, 2015 (Mayor Fung); see also Trial Tr. 17:13–18:5, 23:13–25, Nov. 13, 2015 (Mr. Strom); see also Ex. LL. Furthermore, CPRAC President Mr. Gilkenson agreed that it was in the best interest for the City to develop a reasonable alternative funding improvement plan to emerge from critical status. See Trial Tr. 61:2–18, Nov. 9, 2015 (Mr. Gilkenson). Mr. Gilkenson also agreed that it is equally important to comply with state law. See id. at 61:10–18; see also Ex. HHHH. With 16.9% of its pension plan funded, the City was required to undertake significant and painstaking actions to comply with state law. See Trial Tr. 61:16–20, 85:16–86:8, Nov. 12, 2015 (Mayor Fung). The failure of the City to do so would result in dire consequences.

CPRAC presented William Fornia in rebuttal to discuss the issue of a significant and legitimate public purpose. Mr. Fornia opined that the pension funding problem was in large part the City's own creation. See Trial Tr. 46:9–47:19, Nov. 13, 2015 (Mr. Fornia); see also Ex. 93. Mr. Fornia also opined that the City was given clear information years ago that there was a funding problem that needed to be addressed. See Trial Tr. 25:2–11, 28:11–19, Nov. 17, 2015 (Mr. Fornia); see also Ex. 93. Mr. Fornia's testimony is given little weight, and as a result, CPRAC has not established beyond a reasonable doubt that the modification failed to further a

significant and legitimate purpose. Mr. Fornia noted that the City's historical underfunding of the pension since 1999 created a $96 million accumulated shortfall; however, he admitted that his calculations did not include fiscal years 2004 and 2007. See Trial Tr. 81:1–82:2, Nov. 13, 2015 (Mr. Fornia); see also Ex. 93. Furthermore, he conceded that by excluding those two fiscal years, his calculations may have double counted figures to some extent. See Trial Tr. 85:10–88:14, Nov. 13, 2015. Indeed, the City's expert, Daniel Sherman, credibly testified and refuted Mr. Fornia on the issue of the calculation of the shortfall. See Trial Tr. 25:21–27:11, Nov. 17, 2015 (Mr. Sherman); see also Exs. UUUU, VVVV. Mr. Sherman opined that the shortfall was a much smaller figure—$37.9 million. See Trial Tr. 25:21–27:11, Nov. 17, 2015 (Mr. Sherman); see also Exs. UUUU, VVVV. In addition, Mr. Fornia acknowledged that his expert opinion did not take into account the decline in state aid or the decline in the City's taxable property values or levy, and therefore, he had no opinion as to whether alternate courses of action would comply with RIRSA. See Trial Tr. 68:10–25, 69:23–70:5, 95:22–25, 96:21–97:8, Nov. 17, 2015 (Mr. Fornia). These two items were significant in the fiscal issues confronting the City. Accordingly, the Court finds that CPRAC has not rebutted the City's credible evidence beyond a reasonable doubt. See Donohue, 886 F. Supp. 2d at 160.

Rather, the Court is satisfied that the City has produced sufficient credible evidence through the testimony of Mayor Fung, Mr. Strom, and Mr. Sherman that the Great Recession, the decline in state aid, and RIRSA's requirements created an unprecedented fiscal emergency neither created nor anticipated by the City. See Exs. HHHH, IIII; see also Buffalo Teachers Fed'n, 464 F.3d at 368 (finding a legitimate public purpose in actions attempting to remedy a fiscal crisis); see also Donohue v. Paterson, 715 F. Supp. 2d 306, 320 (N.D.N.Y. 2010) ("Broadly speaking, a [] government's interest in addressing a fiscal emergency constitutes a

legitimate public interest."). Additionally, there is no indication that the 2013 Ordinances sought to benefit one particular group or individual over others. See Blaisdell, 290 U.S. at 445. Rather, the 2013 Ordinances sought to remedy the fiscal emergency and keep at bay threatened cuts in state aid which would inexorably worsen the fiscal situation. See Buffalo Teachers Fed'n, 464 F.3d at 369 ("[T]he legislature passed the law 'for the protection of a basic interest of society.'") (quoting Blaisdell, 290 U.S. at 445). As such, the Court finds that the City presented sufficient credible evidence that the 2013 Ordinances were passed for a significant and legitimate public purpose.

**4**

**Reasonable and Necessary**

The Court's inquiry continues to ensure that the 2013 Ordinances are "specifically tailored to 'meet the societal ill [they are] supposedly designed to ameliorate.'" Kent, 2012 WL 6024998, at *21 (quoting Spannaus, 438 U.S. at 243). Essentially, this next step "reads like a form of intermediate scrutiny." Jack M. Beermann, The Public Pension Crisis, 70 Wash. & Lee L. Rev. 3, 48 (2013). The "reasonable and necessary" analysis "involves a consideration of whether the adjustment of the rights and responsibilities of contracting parties is based upon reasonable conditions and is of a character appropriate to the public purpose justifying the legislation's adoption." Id.

Crucial to this analysis is the level of judicial deference afforded to a state, and thus a municipality, in establishing that the statute was reasonable and necessary. See Buffalo Teachers Fed'n, 464 F.3d at 369. When a state law impairs a private contract, the state is accorded substantial deference. See Baltimore Teachers Union, 6 F.3d at 1018. Notwithstanding, public contracts are scrutinized by a heightened level of judicial inquiry. See id. Indeed, "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 Co., 431 U.S. at 26. Providing complete deference to a state on a public contract would eviscerate the meaning of the contract clause. See Spannaus, 438 U.S. at 242 ("If the Contract Clause is to retain any meaning at all, however, it must be understood to impose some limits upon the power of a State to abridge existing contractual relationships . . . ."). Municipalities, as subdivisions of the state, are treated as states in contract clause jurisprudence. See Nonnenmacher, 722 A.2d at 1202 (citing N. Pac. Ry. Co. v. Minn. ex rel. Duluth, 208 U.S. 583, 590 (1908)). This case involves a public contract, and therefore, the Court will afford the City less deference.

However, "less deference does not imply no deference." Buffalo Teachers Fed'n, 464 F.3d at 370. The discerning lens applicable here "does not require courts to reexamine all of the factors underlying the legislation at issue and to make a de novo determination whether another alternative would have constituted a better statutory solution to a given problem." Id. Surely, this Court will not revert to the strict scrutiny employed during the Lochner era. See Lochner v. N.Y., 198 U.S. 45 (1905), overruled; see Day-Brite Lighting, Inc. v. State of Mo., 342 U.S. 421 (1952); see also Laurence H. Tribe, Constitutional Choices 182 (1985) (arguing that heightened scrutiny under the contract clause is a reversion to Lochner-era ideology).

Rather, this Court will use "less deference scrutiny" in evaluating the City's position that the legislation was reasonable and necessary. See Buffalo Teachers Fed'n, 464 F.3d at 371 (utilizing "less deference scrutiny" to assess whether the state's impairment of the contract was reasonable and necessary). To prove that the legislation was reasonable and necessary, the City must make a sufficient showing of credible evidence on three criteria: that it "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 Fed'n, 464 F.3d at 371 (quoting U.S. Trust Co., 431 U.S. at 30–31).

**a**

**Other Policy Alternatives**

The Fourth Circuit noted:

> "[i]t is not enough to reason . . . that [t]he City could have shifted the burden from another governmental program or that it could have raised taxes . . . [w]ere these the proper criteria, no impairment of a governmental contract could ever survive constitutional scrutiny . . . ." Baltimore Teachers Union, 6 F.3d at 1019–20 (internal quotations omitted) (emphasis in original).

Indeed, as a means of determining reasonableness of a government action, the subject action must have been imposed "only after other alternatives had been considered and tried." Buffalo Teachers Fed'n, 464 F.3d at 371. Such efforts must be genuine and not merely for "political expediency." Ass'n of Surrogates & Supreme Court Reporters v. State of N.Y., 940 F.2d 766, 773 (2d Cir. 1991).

Here, the City presented sufficient credible evidence that it adequately considered and tried other policy alternatives. Mayor Fung credibly testified to the significant cuts in City spending he pursued before enacting the 2013 Ordinances. See Trial Tr. 12:8–19, 70:20–73:15, Nov. 12, 2015 (Mayor Fung); see also Ex. JJ. In 2009, Mayor Fung implemented cuts to personnel in his own office, a multi-year pay freeze for City employees, and a plan to reduce energy costs. See Trial Tr. 12:8–19, 70:20–73:15, Nov. 12, 2015. In addition, he credibly testified to the effect on the City in the event that there was an elimination of City services to fill the $14 million shortfall in ARC funding. See id. at 57:3–58:15. The result was described as decimating City services. See id. If $14 million were cut, parks and recreation services,

emergency services, library services, and trash services would be eliminated. See id. The impact to the citizens of the City would encompass not only the elimination of the services but also a substantial reduction in federal aid. See id. These services are critical for a livable and safe City.

The Court gives great weight to Mayor Fung and Mr. Strom's repeated statements that City residents were already overtaxed and overburdened. See id. at 59:2–5, 76:13–23, 80:11–15 (Mayor Fung); see Trial Tr. 18:6–16, Nov. 13, 2015 (Mr. Strom). Increased taxation, as CPRAC suggests, was not a feasible option. See Buffalo Teachers Fed'n, 464 F.3d at 372 ("[I]t is always the case that to meet a fiscal emergency taxes conceivably may be raised. It cannot be the case, however, that a legislature's only response to a fiscal emergency is to raise taxes."). Indeed, the City raised taxes at least fifteen times between 1985 and 2013, with tax increases every year between 2009 and 2012. See Trial Tr. 74:13–25, 76:13–16, 130:9–14, Nov. 12, 2015 (Mayor Fung); see also Ex. XXX. Moreover, with the property tax cap imposed on municipalities, the City could not look only to taxpayers to increase revenue. See Trial Tr. 37:10–23, Nov. 13, 2015 (Mr. Strom); see also Buffalo Teachers Fed'n, 464 F.3d at 372 ("[D]efendant ha[s] shown that [the City] had already increased City taxes to meet its fiscal needs, and it is reasonable to believe that any additional increase would have further exacerbated [the City's] financial condition.").

Furthermore, numerous credible witnesses testified to the other alternatives considered by the City. See Trial Tr. 89:1–11, 94:9–15, 112:6–11, Nov. 12, 2015 (Mayor Fung); see also Trial Tr. 14:19–15:17, Nov. 17, 2015 (Mr. Valletta); see also Trial Tr. 25:25–26:11, Nov. 13, 2015 (Mr. Strom); see also Exs. MM, QQ, XX, ZZ, AAA, DDD. Specifically, Mayor Fung presented four options for consideration at a meeting of the Cranston City Council Finance Committee on October 25, 2012. See Trial Tr. 93:19–94:24, Nov. 12, 2015 (Mayor Fung); see also Ex. MM. On November 11, 2012, Mayor Fung sent a letter to the Pension Study Commission containing four

options for emerging from critical status. See Trial Tr. 98:9–19, Nov. 12, 2015 (Mayor Fung); see also Ex. QQ. Over twenty different scenarios were shared with retirees at open meetings on September 13, 2012; January 11, 2013; January 29, 2013; February 14, 2013; February 26, 2013; March 4, 2013; and March 8, 2013. See Trial Tr. 108:17–109:11, Nov. 12, 2015 (Mayor Fung); see also Exs. TT, XX, ZZ, AAA, DDD, III. Paul Valletta Jr., President of the local IAFF, discussed numerous options with the City, including further tax increases, a pay freeze, selling buildings, and closing fire stations. See Trial Tr. 13:4–15:17, Nov. 17, 2015 (Mr. Valletta). Mr. Strom considered over thirty scenarios with consultants from Buck Consulting to more sustainably fund the City pension system. See Trial Tr. 25:25–26:11, Nov. 13, 2015 (Mr. Strom). Indeed, the fact that the 2013 Ordinances were not considered until 2012—years after the fiscal crisis brought on by the Great Recession, after the City was designed as critical status under RIRSA, and after Mayor Fung pulled his initial proposed ordinances to negotiate with the City pension system's participants and beneficiaries—demonstrates that the 3% compounded COLA suspension was genuinely a last resort measure. See Trial Tr. 104:1–12, Nov. 12, 2015 (Mayor Fung); see also Trial Tr. 27:15–23, Nov. 13, 2015 (Mayor Fung); see also Buffalo Teachers Fed'n, 464 F.3d at 371 (finding the government's actions reasonable and necessary in part because it was "a last resort measure"). The Court therefore finds that the City presented sufficient credible evidence that it did consider other policy alternatives on par with the chosen course of action.

**b**

**More Moderate Course Available**

The government action is also examined to determine whether or not a more moderate course was available. See, e.g., Buffalo Teachers Fed'n, 464 F.3d at 371. In analyzing this factor,

courts have looked to whether the government action was "no greater than [] necessary" to remedy the problem, impaired only a portion of the contractual obligation, or was less drastic than at least one alternative. See Baltimore Teachers Union, 6 F.3d at 1020.

The City presented sufficient credible evidence that a more moderate course was not available. First, the government action was narrowly tailored to remedy the problem. Id. The City's expert, Mr. Sherman, credibly testified that lowering the 3% compounded COLA to one percent compounded or two percent compounded, as opposed to suspending it, would not have complied with RIRSA. See Trial Tr. 28:19–30:3, 30:8–31:3, Nov. 17, 2015 (Mr. Sherman); see also Exs. WWWW, XXXX. Additionally, there is no indication that by suspending the 3% compounded COLA for ten years, the 2013 Ordinances over-remedied the situation; Mr. Sherman testified that the plan ultimately pursued by the City does not actually get the City out of critical status until 2038, several years after the twenty-year deadline. See Trial Tr. 42:4–9, 45:18–20, Nov. 17, 2015 (Mr. Sherman); see also Ex. JJJJ.

Furthermore, the 2013 Ordinances impaired only a portion of the contractual obligation. See Baltimore Teachers Union, 6 F.3d at 1020. Without minimizing the impact the 2013 Ordinances have on members of CPRAC, the Court notes that the 2013 Ordinances did not modify the pension base payment, the health benefits, or other aspects of the pension, only affecting the 3% compounded COLA for a temporary period. See Trial Tr. 115:17–116:3, Nov. 12, 2015 (Mayor Fung); see also Baltimore Teachers Union, 6 F.3d at 1020 (finding only a portion of the contractual obligation modified where "the plan did not alter pay-dependent benefits, overtime pay, hourly rates of pay, or the orientation of pay scales") (citing U.S. Trust Co., 431 U.S. at 27).

Moreover, the ten-year suspension of the 3% compounded COLA was less drastic than numerous alternatives. See Baltimore Teachers Union, 6 F.3d at 1020. Other more drastic alternatives—such as cutting the pension base payments or suspending the 3% compounded COLA indefinitely—were not pursued. See Trial Tr. 28:19–30:3, 30:20–31:3, Nov. 17, 2015 (Mr. Sherman); see also Baltimore Teachers Union, 6 F.3d at 1020 ("Indeed, the plan was less drastic than at least one alternative, additional layoffs, which could have been more detrimental to appellees.").

CPRAC's expert, Mr. Fornia, opined that the City did not choose the least drastic alternative in suspending the 3% compounded COLA for ten years. See Trial Tr. 42:8–43:12, Nov. 17, 2015 (Mr. Fornia); see also Ex. 93. Without calculating the impact of any plausible alternatives, Mr. Fornia opined that the City could have done something different in its spending to achieve the required savings. See Trial Tr. 42:15–24, 94:13–95:21, 97:9–22, 107:15–108:6, Nov. 17, 2015; see also Ex. 93. The Court does not give this testimony weight. Mr. Fornia's opinion did not consider the feasibility of raising taxes, the decline in state aid, or RIRSA's requirements. See Trial Tr. 70:6–22, 68:1–25, 95:22–25, 96:21–97:8, Nov. 17, 2015. As such, this opinion is unsupported. See Baltimore Teachers Union, 6 F.3d at 1019 ("It is not enough to reason . . . that [t]he City could have shifted the burden from another governmental program . . . .") (internal quotations omitted) (emphasis in original). Rather, the Court finds credible the corroborated testimony of Mayor Fung, Mr. Strom, and Mr. Sherman that a more moderate course was not available given the unprecedented fiscal emergency and RIRSA's requirements. See Trial Tr. 27:15–23, Nov. 13, 2015 (Mayor Fung); see also Trial Tr. 18:6–16, Nov. 13, 2015 (Mr. Strom); see also Trial Tr. 28:19–30:3, 30:20–31:3, Nov. 17, 2015 (Mr. Sherman).

Therefore, the Court finds that the City presented sufficient credible evidence that "the City clearly sought to tailor the plan as narrowly as possible" to address the City's fiscal crises. Baltimore Teachers Union, 6 F.3d at 1020. The Court is satisfied that the City did not "'impose a drastic impairment when an evident and more moderate course would serve its purpose equally well . . . .'" Buffalo Teachers Fed'n, 464 F.3d at 371 (quoting U.S. Trust Co., 431 U.S. at 30–31).

**c**

**Acting Reasonably in Light of Surrounding Circumstances**

The last consideration in determining whether the challenged government action was reasonable and necessary is whether the government acted reasonably in light of surrounding circumstances. Buffalo Teachers Fed'n, 464 F.3d at 371 (quoting U.S. Trust Co., 431 U.S. at 30–31). The Supreme Court has noted that "[t]he extent of impairment is certainly a relevant factor in determining its reasonableness." U.S. Trust Co., 431 U.S. at 27. Additionally, "the existence of an emergency and the limited duration of a relief measure are factors to be assessed in determining the reasonableness of an impairment . . . ." Id. at 22 n.19; see also Energy Reserves Grp., Inc., 459 U.S. at 418–19 (finding contractual impairment justified where regulation is temporary). Courts have also found impairments reasonable if they operate prospectively. See Buffalo Teachers Fed'n, 464 F.3d at 371–72.

Here, the City demonstrated through credible evidence that the 2013 Ordinances were circumscribed, temporary, precipitated by a fiscal emergency, and prospective. See U.S. Trust Co., 431 U.S. at 22 n.19, 27, 30–31; see also Buffalo Teachers Fed'n, 464 F.3d at 371–72. As noted, the 2013 Ordinances affect only the 3% compounded COLA and leave intact all other components of the pension. See Trial Tr. 115:17–116:3, Nov. 12, 2015 (Mayor Fung); see also

Exs. HHHH, IIII; see also U.S. Trust Co., 431 U.S. at 27. The 2013 Ordinances are also a temporary ten-year suspension. See Trial Tr. 101:1–7, 116:17–117:1, Nov. 12, 2015 (Mayor Fung); see also Exs. HHHH, IIII; see also U.S. Trust Co., 431 U.S. at 23 n.19. The Court has already noted that the City acted in response to an unprecedented fiscal emergency. See Trial Tr. 13:9–17, 27:7–10, 85:16–86:8, 95:4–6, Nov. 12, 2015 (Mayor Fung); see also Trial Tr. 9:4–8, 10:3–10, 11:1–4, Nov. 13, 2015 (Mr. Strom). Additionally, the 2013 Ordinances operate prospectively, only impairing future compounded COLAs. See Trial Tr. 101:1–7, 116:17–117:1, Nov. 12, 2015 (Mayor Fung); see also Exs. HHHH, IIII; see also Buffalo Teachers Fed'n, 464 F.3d at 372 (finding impairment reasonable where "[t]he impairment [] does not affect past salary due for labor already rendered or money invested. It only suspends temporarily the two percent increase in salary for services to be rendered.").

CPRAC, in its post-trial memorandum, relies heavily on the recent Rhode Island Superior Court case, Hebert, to argue that the 2013 Ordinances were not reasonable in light of the surrounding circumstances.[14] See Hebert v. City of Woonsocket, No. PC-2013-3287, 2016 WL 493215, at *1 (R.I. Super. Feb. 4, 2016). The Court is mindful that the quantum of proof necessary to prove or disprove a violation of the contract clause is considerable. As a result, cases involving contract clause claims are fact-intensive and fact-specific. See Stephen F. Belfort, Unilateral Alteration of Public Sector Collective Bargaining Agreements and the Contract Clause, 59 Buff. J. Int'l L. 1 (2011) ("Contract clause analysis under the United States Trust [Co.] standard is a fact-intensive endeavor.").

CPRAC's reliance on Hebert is misplaced. Hebert concerned the City of Woonsocket's unilateral alteration of health insurance for retired police officers. Hebert, 2016 WL 493215, at

[14] As a Superior Court case, Hebert does not operate as binding authority on this Court.

*1–5. The Hebert Court found that the extreme modification of the health insurance of retired police officers was likely a violation of the contract clause of the Rhode Island Constitution. See id. at *15. Unlike the instant matter, Hebert was decided at the preliminary injunction stage, a procedural posture that requires a different, and more relaxed, standard of review than a decision following a bench trial. See id. at *1; see also Iggy's Doughboys, Inc. v. Giroux, 729 A.2d 701, 705 (R.I. 1999) (holding that a preliminary injunction requires a "reasonable likelihood of success on the merits"); cf. Parella, 899 A.2d at 1239 (holding that after a bench trial the trial justice sits as the trier of fact as well as of law). Additionally, Hebert concerned the City of Woonsocket's "indefinite" unilateral alteration of health insurance for retired police officers, distinguishable from the temporary 3% compounded COLA suspension here. See Hebert, 2016 WL 493215, at *9. Furthermore, the City of Woonsocket based its authority to act on the Fiscal Stability Act, § 45-9-1. The Court in Hebert found that the Fiscal Stability Act did not "provide the authority for . . . the City of Woonsocket to avoid the[ir] binding contractual obligations." Id. at *15. Here, the Fiscal Stability Act is not at issue, and the City does not base its authority to act solely on RIRSA. As such, the instant matter is not analogous to Hebert.

The Court is satisfied—"[i]n light of the magnitude and timing of the [] cuts in state funding that prompted the City's [2013 Ordinances], . . . the City's concerted efforts to exhaust numerous alternative courses of cost reduction before resorting to the challenged reductions, [and] the circumscribed nature of the [] plan . . ."—that the 2013 Ordinances were reasonable under the circumstances. Baltimore Teachers Union, 6 F.3d at 1022. Indeed, CPRAC concedes that it is in the best interest of the residents, employees, and retirees of the City to maintain a viable and sustainable pension system. See Trial Tr. 61:2–18, Nov. 9, 2015 (Mr. Gilkenson); see also Ex. HHHH. The Court "find[s] no need to second-guess the wisdom of picking the [ten-year

compounded COLA suspension] over other policy alternatives . . . ." Buffalo Teachers Fed'n, 464 F.3d at 372 (citing Blaisdell, 290 U.S. at 447–48 ("Whether the legislation is wise or unwise as a matter of policy is a question with which we are not concerned.")).

Accordingly, the Court finds that the City presented sufficient credible evidence that the 2013 Ordinances were reasonable and necessary. See Buffalo Teachers Fed'n, 464 F.3d at 371; see also U.S. Trust Co., 431 U.S. at 22. The Court also finds that CPRAC has not rebutted this credible evidence beyond a reasonable doubt. See Donohue, 886 F. Supp. 2d at 160. The Court's conclusion comports with federal case law. See Ronald D. Rotunda, John E. Nowak, Treatise of Constitutional Law: Substance and Procedure (5th ed. 2012) § 15.8 ("Within the last 100 years, however, the [Supreme] Court rarely has relied on the [Contract] Clause as a reason to invalidate state legislation which retroactively affected contractual rights or obligations."). As such, the 2013 Ordinances do not violate the contract clauses of either the Rhode Island or United States Constitutions.[15]

**B**

**Breach of Contract**

Having ruled on CPRAC's contract clause claim, the Court now turns to CPRAC's breach of contract claim. Even assuming, arguendo, that the Court did not find the 2013 Ordinances justified, CPRAC's breach of contract claim fails because CPRAC lacks organizational standing to bring the claim.

The City raised CPRAC's lack of standing as an affirmative defense in its answer. See Answer at 9. The City notes that the CPRAC itself did not have any contract with the City and

[15] Following the non-jury trial of this case, the Court elects to make its findings of fact and conclusions of law and render judgment under Rule 52(a). It would reach the same conclusion were it to decide the case as a matter of law pursuant to Rule 52(c). See Broadley, 939 A.2d at 1021 (noting that Rule 52(c) and Rule 52(a) motions require the same standard of review).

that CPRAC failed to present sufficient evidence setting forth the identity of the CPRAC's members or whether each of CPRAC's members has a contract with the City. CPRAC maintains that it has standing to bring its breach of contract claim. Because the question of whether the CPRAC had a contract with the City is "a threshold inquiry into whether the party seeking relief is entitled to bring suit[,]" the Court will treat the argument as a standing inquiry. Narragansett Indian Tribe v. State, 81 A.3d 1106, 1110 (R.I. 2014).[16]

"Standing is an access barrier that calls for the assessment of one's credentials to bring suit." Blackstone Valley Chamber of Commerce v. Pub. Utils. Comm'n, 452 A.2d 931, 932 (R.I. 1982). Accordingly, standing is a threshold inquiry that this Court must consider before reaching the merits of the claim. See id. at 933. As the Rhode Island Supreme Court has noted, "[t]he essence of the question of standing is whether the party seeking relief has alleged such a personal stake in the outcome of the controversy as to ensure concrete adverseness that sharpens the presentation of the issues upon which the court depends for an illumination of the questions presented." Id. (citing Baker v. Carr, 369 U.S. 186, 204 (1962)). A party must demonstrate an invasion of a legally protected interest which is (1) concrete and particularized and (2) actual or imminent, not hypothetical or conjectural. See Pontbriand v. Sundlun, 699 A.2d 856, 862 (R.I. 1997).

This requirement of a personalized injury does not act as a wholesale bar to organizations bringing claims on behalf of their members; organizational standing may be found where three

[16] In its January 27, 2014 Bench Decision, the Court previously addressed the issue of organizational standing with respect to CPRAC's constitutional claims, civil rights claim, and breach of fiduciary duty claim. See Cranston Police Rets. Action Comm. v. The City of Cranston, et al., KC-2013-1059, Bench Decision, Jan. 27, 2014. There, the Court found that CPRAC had organizational standing to pursue its contract clause, takings clause, and facially unconstitutional claims but lacked organizational standing to pursue its civil rights and breach of fiduciary duty claims. See Trial Tr. 7:18–19; 13:14–20; 15:7–16:12, Jan. 27, 2014. The Court did not address CPRAC's standing to bring its breach of contract claim. See id.

factors are met: (1) "'when [the organization's] members would otherwise have standing to sue in their own right[;]'" (2) when "'the interests at stake are germane to the organization's purpose[;]'" and (3) when "'neither the claim asserted nor the relief requested require the participation of individual members in the lawsuit.'" In re Town of New Shoreham Project, 19 A.3d 1226, 1227 (R.I. 2011) (mem.) (quoting Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc., 528 U.S. 167, 181 (2000)); see also Hunt v. Wash. State Apple Adver. Comm'n, 432 U.S. 333, 343 (1977) (articulating identical test for federal organizational standing).[17] Importantly, a party must demonstrate standing for each claim sought. See Blackstone Valley Chamber of Commerce, 452 A.2d at 932–33; see also Baur v. Veneman, 352 F.3d 625, 641 n.15 (2d Cir. 2003).

The first prong of the organizational standing test—whether the organization's members have standing to sue in their own right—is evaluated by examining the injury in fact to the individual members of the organization. See 13A Fed. Prac. & Proc. Juris. § 3531.9.5 Rights of Others–Organizational Standing (3d ed. 2016) ("Standing is regularly recognized once member injury is shown."). Importantly, "'[t]he line is not between a substantial injury and an insubstantial injury. The line is between injury and no injury.'" Pontbriand, 699 A.2d at 862 (quoting Matunuck Beach Hotel, Inc. v. Sheldon, 121 R.I. 386, 396, 399 A.2d 489, 494 (1979)).

[17] Although the state and federal tests for organizational standing employ identical language, they differ in premise in that the federal test stems from Article III of the United States Constitution. See Lujan v. Defenders of Wildlife, 504 U.S. 555, 559–60 (1992). However, given that the language of the two tests is identical, "[w]hen our own . . . case law [is] silent on a particular issue, '[i]t makes eminent good sense to consider the experience and the reasoning of the judges in other jurisdictions . . . .'" Kedy v. A.W. Chesterton Co., 946 A.2d 1171, 1182 (R.I. 2008) (quoting Ciunci, Inc. v. Logan, 652 A.2d 961, 962 (R.I. 1995)). The Court also notes that the Rhode Island Supreme Court articulated the state organizational standing test by quoting federal case law. See In re Town of New Shoreham Project, 19 A.3d at 1227 (quoting Friends of the Earth, Inc., 528 U.S. at 181). As such, the Court will look to federal case law for guidance.

Here, members of CPRAC have presented evidence of a current, concrete, and particularized injury. See id. Members of CPRAC testified that the passage of the 2013 Ordinances suspended their 3% compounded COLAs for a period of ten years. See Trial Tr. at 9:24–10:19. 11:5–6, 12:7–13:1, Nov. 9, 2015 (Mr. Gilkenson). For example, Mr. Matrumalo testified that the loss of his 3% compounded COLA was approximately $2200 in 2013. See id. at 137:20–138:7 (Mr. Matrumalo). The Court therefore finds that members of CPRAC have established injury in fact and thus have standing to sue in their own right. Accordingly, CPRAC has met the first prong of the organizational standing test. See In re Town of New Shoreham Project, 19 A.3d at 1227.

The second prong of the organizational standing test—whether the suit is germane to the organization's purpose—"addresses the basic justification for organizational standing to represent members' interests." 13A Fed. Prac. & Proc. Juris. § 3531.9.5 Rights of Others–Organizational Standing (3d ed. 2016). Courts have noted that "[t]oo restrictive a reading of the [germane] requirement would undercut the interest of members who join an organization in order to effectuate 'an effective vehicle for vindicating interests that they share with others.'" Humane Soc'y of the U.S. v. Hodel, 840 F.2d 45, 56 (D.C. Cir. 1988) (quoting Int'l Union, United Auto., Aerospace, and Agric. Implement Workers of Am. v. Brock, 477 U.S. 274, 275–76 (1986)). Indeed, "[g]ermaness is often found without difficulty." 13A Fed. Prac. & Proc. Juris. § 3531.9.5 Rights of Others–Organizational Standing (3d ed. 2016). The Court must only find that the "lawsuit would, if successful, reasonably tend to further the general interests that individual members sought to vindicate in joining the association and whether the lawsuit bears a reasonable connection to the association's knowledge and experience." Bldg. and Constr. Trades

Council of Buffalo, N.Y. and Vicinity v. Downtown Dev., Inc., 448 F.3d 138, 149 (2d Cir. 2006).

The Court has little trouble concluding that the present lawsuit is germane to the CPRAC's purpose. All members of CPRAC opted out of the Settlement Agreement and did so because they believed that the City had an obligation to pay the 3% compounded COLA. See Trial Tr. 9:24–10:19, 11:5–6, 12:7–13:1, Nov. 9, 2015 (Mr. Gilkenson). The CPRAC was specifically formed to fight the 2013 Ordinances. See id. at 9:24–10:19. The present lawsuit thus clearly furthers the organization's purpose. See Bldg. and Constr. Trades Council of Buffalo, N.Y. and Vicinity, 448 F.3d at 149. As such, the Court finds that CPRAC has met the second prong of the organizational standing test. In re Town of New Shoreham Project, 19 A.3d at 1227.

The third prong of the organizational standing test "asks whether individual participation is required by the nature of the underlying claim[.]" 13A Fed. Prac. & Proc. Juris. § 3531.9.5 Rights of Others–Organizational Standing (3d ed. 2016). The United States Supreme Court has held that "so long as the nature of the claim . . . does not make the individual participation of each injured party indispensable to proper resolution of the cause, the association may be an appropriate representative of its members, entitled to invoke the court's jurisdiction." Warth v. Seldin, 422 U.S. 490, 511 (1975); see also Hunt, 432 U.S. at 343; see also Brock, 477 U.S. at 275–76. This prong is not met in "situations in which it is necessary to establish 'individualized proof[.]'" Retired Chicago Police Ass'n v. City of Chicago, 7 F.3d 584, 602 (7th Cir. 1993) (quoting Hunt, 432 U.S. at 344); see also Mid-Hudson Catskill Rural Migrant Ministry, Inc. v. Fine Host Corp., 418 F.3d 168, 174 (2d Cir. 2005) ("[A] plaintiff normally lacks associational standing to sue on behalf of its members where 'the fact and extent of injury would require individualized proof.'") (quoting Bano v. Union Carbide Corp., 361 F.3d 696, 714 (2d Cir.

2004)). Such individualized proof is commonly found in cases seeking damages. See Warth, 422 U.S. at 515 (finding no organizational standing where "damages claims are not common to the entire membership, nor shared by all in equal degree" and where "whatever injury may have been suffered is peculiar to the individual member concerned[.]"). Additionally, "[s]ome substantive claims may seem inherently so personal that individual participation should be required simply because of the nature of the claim." 13A Fed. Prac. & Proc. Juris. § 3531.9.5 Rights of Others–Organizational Standing (3d ed. 2016).

The Court must therefore consider the nature of CPRAC's breach of contract claim. See In re Town of New Shoreham Project, 19 A.3d at 1227. A breach of contract claim is distinct from a constitutional contract clause claim in that a breach of contract claim requires "'the availability of a remedy in damages.'" See TM Park Ave. Assocs. v. Pataki, 214 F.3d 344, 349 (2d Cir. 2000) (quoting E&E Hauling, Inc. v. Forest Preserve Dist. of Du Page Cnty., III, 613 F.2d 675, 679 (7th Cir. 1980)); see also Horwitz-Matthews, Inc. v. City of Chicago, 78 F.3d 1248, 1251 (7th Cir. 1996) ("The essence . . . of a breach of contract is that it triggers a duty to pay damages . . . ."). A breach of contract claim requires CPRAC to prove the following elements: "a valid contract between the parties; the plaintiffs' performance under the contract; the defendant's nonperformance; and resulting damages." See 17B C.J.S. Contracts § 824; see also Petrarca v. Fidelity and Cas. Ins. Co., 884 A.2d 406, 410 (R.I. 2005). Importantly, CPRAC must prove the damages "'with a reasonable degree of certainty, and [] [CPRAC] must establish reasonably precise figures and cannot rely upon speculation.'" Guzman v. Jan-Pro Cleaning Sys., Inc., 839 A.2d 504, 508 (R.I. 2003) (quoting Mktg. Design Source, Inc. v. Pranda N. Am., Inc., 799 A.2d 267, 273 (R.I. 2002)).

Therefore, the nature of CPRAC's breach of contract claim requires individualized proof of damages. See Guzman, 839 A.2d at 508; see also Sanner v. Bd. of Trade of City of Chicago, 62 F.3d 918, 923 (7th Cir. 1995) ("Such a suit would apparently require the calculation of damages for each of the individual [members of CPRAC]."); see also 13A Fed. Prac. & Proc. Juris. § 3531.9.5 Rights of Others–Organizational Standing (3d ed. 2016) ("[The] calculation of damages requires proof of the extent of individual injuries."). The ten-year suspension of the 3% compounded COLA impacted every member of CPRAC differently. See Trial Tr. 137:20–138:7 (Mr. Matrumalo) (estimating yearly loss of the 3% compounded COLA to be $2200), 164:21–23 (Mr. Walsh) ($1500), Nov. 9, 2015; see also Trial Tr. 27:25–28:3 (Mr. Galligan) ($1000), 52:15–22 (Mr. Maccarone) ($1200), Nov. 10, 2015. Thus, the damages sustained from the breach of contract are "not common to the entire membership, nor shared by all in equal degree . . . ." Warth, 422 U.S. at 515. Indeed, "whatever injury may have been suffered is peculiar to the individual member concerned, and both the fact and extent of injury would require individualized proof." Id. at 515–16.

As such, CPRAC's breach of contract claim "make[s] the individual participation of each injured party indispensable to proper resolution of the cause[.]" Id. at 511. Therefore, CPRAC cannot satisfy the third prong of the organizational standing test for its breach of contract claim. See In re Town of New Shoreham Project, 19 A.3d at 1227. Accordingly, the Court finds that CPRAC lacks standing to bring its breach of contract claim, and therefore, the Court need not reach the merits of CPRAC's breach of contract claim. See Blackstone Valley Chamber of Commerce, 452 A.2d at 934 ("As we conclude that [] [CPRAC] lacks standing to maintain this action, we do not reach any other questions raised by the petition.").

## C

## Injunction

The decision to grant or deny injunctive relief rests within the sound discretion of the trial justice. See Cullen v. Tarini, 15 A.3d 968, 981 (R.I. 2011). The moving party must "'demonstrate that it stands to suffer some irreparable harm that is presently threatened or imminent and for which no adequate legal remedy exists to restore that plaintiff to its rightful position.'" Nye v. Brousseau, 992 A.2d 1002, 1010 (R.I. 2010) (quoting Nat'l Lumber & Bldg. Materials Co. v. Langevin, 798 A.2d 429, 434 (R.I. 2002)). To grant a permanent injunction, the Court must find that (1) the plaintiff demonstrates success on the merits; (2) the plaintiff will suffer irreparable harm if the injunction is not granted; and (3) a balance of the equities and hardships, including the public interest, weighs in favor of the plaintiff. See Nat'l Lumber & Bldg. Materials Co., 798 A.2d at 434; see also Nye, 992 A.2d at 1010; see also Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 32 (2008) (noting that permanent injunctions require a showing of actual success on the merits).

Having found that CPRAC's contract clause claim fails as a matter of law and that CPRAC lacks standing to bring its breach of contract claim, the Court finds that CPRAC has not demonstrated actual success on the merits of any claim. See Nat'l Lumber & Bldg. Materials Co., 798 A.2d at 434 ("A party seeking an injunction must also demonstrate likely success on the merits . . . ."). Accordingly, CPRAC's request for a permanent injunction is denied.

## IV

## Conclusion

After due consideration of all the evidence and arguments advanced by counsel before the Court and in their memoranda, the Court finds that CPRAC failed to meet its burden of

demonstrating its claims. Thus, this Court denies and dismisses Counts I, III, and V in CPRAC's Complaint. Counsel shall confer and present to this Court forthwith for entry an agreed upon form of Order and Judgment that is reflective of this Decision.

**RHODE ISLAND SUPERIOR COURT**

***Decision Addendum Sheet***

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| **TITLE OF CASE:** | **Cranston Police Retirees Action Committee v. The City of Cranston, et al.** |
| **CASE NO:** | **KC-13-1059 (formerly PC-13-3212)** |
| **COURT:** | **Kent County Superior Court** |
| **DATE DECISION FILED:** | **July 22, 2016** |
| **JUSTICE/MAGISTRATE:** | **Taft-Carter, J.** |
| **ATTORNEYS:** | |
| **For Plaintiff:** | **Marisa A. Desautel, Esq.**<br>**Patrick J. Sullivan, Esq.** |
| **For Defendant:** | **William M. Dolan, III, Esq.**<br>**William K. Wray, Jr., Esq.**<br>**Nicholas L. Nybo, Esq.** |