

City of Providence

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

COMMITTEE OF MAYOR & MEMBERS
RECEIVED
JUL 26 2013
CLERK

RESOLUTION OF THE CITY COUNCIL

No. 325

Approved July 26, 2013

RESOLVED, that the Providence City Council endorses and ratifies this amended consent judgment dated ~~June 7~~ _____, 2013, a copy of which is attached, resolving certain pension issues related to the Rhode Island Laborers' District Council acting for and on behalf of Public Service Employees' Local Union 1033, Providence, Rhode Island, of the Laborers' International Union of North America, AFLCIO and certain retirees of the City of Providence's Public Employees' Local Union 1033 of the Laborers' International Union of North America as set forth in the attached Consent Judgment.

IN CITY COUNCIL

JUL 18 2013

READ AND PASSED




PRES.



CLERK
ACTING

I HEREBY APPROVE.



Mayor

Date: 7/26/13

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

MICHAEL A. ACETTA, ROSE P. BROCK,
LAWRENCE CALO, ROBERT S. CAREW,
MAURICE L. CLEMENT, PEARL GAILLOUX,
JULIO MAINELLI, WILLIAM S. MATHEWSON,
ANN T. MCCRINK, MANUEL ROSA, AND
GERTRUDE SARITELLI, individually and on behalf
of all Retirees of the City of Providence's Public
Employees' Local Union Local 1033 of the Laborers'
International Union of North America, AFL-CIO,

C.A. No. 13-0964

Plaintiffs,

vs.

THE CITY OF PROVIDENCE, by and through its
Treasurer, JAMES J. LOMBARDI,

Defendant.

AMENDED FINAL AND CONSENT JUDGMENT

This matter came before the Court for hearing on July ____, 2013 and for entry of this Amended Final and Consent Judgment. In connection therewith, the Court makes the following findings of fact:

A. On or about February 27, 2013, this action was commenced against the City of Providence (the "City") by the Plaintiffs, individually and on behalf of all retirees of the City of Providence's Public Employees' Local Union 1033 of the Laborers' International Union of North America, AFL-CIO Group, including those assigned to the Providence School District (the "Retirees").

B. In their complaint, the Plaintiffs sought declaratory judgment, injunctive relief and damages.

C. More specifically, the Plaintiffs alleged that the City's enactment of Chapter 2011-32 Ordinance No. 422 (the "Medicare Ordinance") resulted in the unilateral change of healthcare benefits for the Retirees notwithstanding the City's obligations created under any other statute, ordinance, interest arbitration award or collective bargaining agreement to the contrary. Plaintiffs also alleged that the City's enactment of Ordinance 2012-20, No. 276 (the "Pension Ordinance"), amending the Providence Code of Ordinances, Art. VI, Chapter 17

dealing with its retirement system (the "Retirement Ordinances") resulted in the substantial changes to the pensions of present and future Retirees notwithstanding the City's obligations created under any other statute, ordinance, interest arbitration award or collective bargaining agreement to the contrary. Changes include: changes on the methodology for calculation of benefits based upon years of service, the amount of contributions required of employees, the amount of disability pensions and the standard and methodology for determining whether a person qualifies as disabled.

D. In response, the City alleged that the Medicare Ordinance and the Pension Ordinance were a valid exercise of the police power of the City and comported with the requirements of the State of Rhode Island and United States Constitutions.

E. On or about April 3, 2013, this Court certified this action as a class action pursuant to Superior Court Rule of Civil Procedure 23 with respect to the following sub-classes of plaintiffs:

- (a) retired from employment as City municipal employees, as defined in the Municipal Employees' Arbitration Act ("MEAA"), RIGL Title 28, Chapter 9.4 or who were assigned to the Providence School District as a Teacher Assistant, Bus Monitor, or member of the Business, Educational, Specialists, Technical Staff (B.E.S.T.), retiring on or after July 1, 1986 and who are 65 years of age or older on July 1, 2012 and are entitled to City-paid health benefits for life under a collective bargaining agreement ("CBA" or "CBAs") as a result of that employment;
- (b) were married to a person who retired as a City municipal employee, on or after July 1, 1986 and who are 65 years of age or older on July 1, 2012 and are entitled to City-paid health benefits for life under a CBA as a result of that marriage;
- (c) retired from employment as City municipal employees on or before December 18, 1991 and are entitled to a City-paid pension with mandatory cost of living adjustments ("COLA" or "COLAs") for the remainder of his/her life of three percent (3%) compounded annually pursuant to the Consent Decree entered by the Superior Court of Rhode Island in C.A. No. 90-2119 on December 18, 1991 (the "Consent Decree"); or
- (d) were married to a person who retired as a City municipal employee on or before December 18, 1991 and is entitled to a City-paid pension with mandatory COLAs for the remainder of his/her life under the Consent Decree.

All such putative members shall hereinafter be collectively referred to as the "Class" and the members thereof as the "Class Members."

F. The parties hereto have negotiated a settlement of their disputes as embodied in this Amended Final and Consent Judgment (the "Settlement").

G. By Order dated April 12, 2013 (the "Order of Notice"), the Court approved and directed two forms of notice to the Class Members, the first consisting of a Notice of Class Action Lawsuit and Proposed Settlement of Claims and of Hearing Thereon (the "First Notice"), and the second consisting of a Notice of Approved Settlement, Deadline For Exclusion From Class, and Hearing on Entry of Final and Consent Judgment (the "Second Notice").

H. Based upon an Affidavit of Compliance of William M. Dolan III filed prior hereto, the First Notice was timely mailed to the Class Members on April 24, 2013 in accordance with the terms of the Order of Notice.

I. The Court held a hearing (the "Fairness Hearing") on May 15, 2013 to consider the Settlement and any objections thereto and, for the reasons stated on the record at the hearing, the Court overruled any objections and found the Settlement fair and reasonable.

J. Based upon an Affidavit of Compliance of William M. Dolan III filed prior hereto, the Second Notice was timely mailed to the Class Members on May 17, 2013 in accordance with the terms of the Order of Notice.

K. As evidenced by an Affidavit of William M. Dolan III filed simultaneously herewith, no Class Members have opted-out and excluded themselves from the Class as hereinafter identified.

L. On June 7, 2013, this Court previously entered a Final and Consent Judgment. This Amended Final and Consent Judgment amends certain decretal provisions of the prior Final and Consent Judgment.

Accordingly, it is thereby:

ORDERED, ADJUDGED AND DECREED as follows:

General Provisions Applicable to Medicare Ordinance and Pension Ordinance Settlements

1. The Court has jurisdiction over the subject matter of this Class Action and over all parties, including all Class Members. The Court is a proper and convenient venue for the consideration, approval, and administration of the Settlement.

2. The findings and decrees contained in the previous Order of the Superior Court in this case certifying the Class, is incorporated herein by reference as if fully set forth.

3. The First Notice and the Second Notice were disseminated in accordance with the Order of Notice. The notice given thereby was the best notice to the Class practicable under the circumstances, and provided due and adequate notice of the terms of the Settlement, the hearings

thereon and the terms and conditions of this Amended Final and Consent Judgment, and all other matters set forth herein to all persons entitled to notice, and satisfied the requirements of Rule 23 of the Superior Court Rules of Civil Procedure and the requirements of due process.

4. A full opportunity having been offered to Class Members to participate in the Fairness Hearing, it is hereby determined that all Class Members are bound by this Amended Final and Consent Judgment. No member of the Class has opted-out of the Class and elected to be bound by the Medicare Ordinance and the Pension Ordinance.

5. The Court grants final approval of the Settlement set forth herein and, as the Court ruled at the Fairness Hearing, finds and determines that the Settlement is fair, adequate and reasonable in all respects to the City and Class Members, and hereby orders the parties to consummate the Settlement in accordance with the terms of this Amended Final and Consent Judgment.

6. Upon the entry of this Amended Final and Consent Judgment, without any further action by anyone, each of the Class Members who has not duly requested exclusion from the Class, for good and sufficient consideration, by operation of this Amended Final and Consent Judgment, shall be deemed to have released and forever discharged all of the claims against the City in respect to the Medicare Ordinance and the Pension Ordinance.

7. Upon entry of this Amended Final and Consent Judgment, the Class Members who have not timely requested exclusion from the Class, by operation of this Amended Final and Consent Judgment, shall be severally and permanently barred and enjoined from instituting, maintaining, prosecuting or enforcing against the City any of the claims settled hereby, in respect to the Medicare Ordinance and the Pension Ordinance, except for enforcement of this Amended Final and Consent Judgment. Further, in no event shall any such Class Member materially, financially or otherwise assist any person in the commencement or maintenance of any lawsuit against the City to challenge the Medicare Ordinance and the Pension Ordinance.

8. None of the terms in this Amended Final and Consent Judgment, nor any of the negotiations or proceedings connected with it, nor any of the documents or statements referred to therein shall be: (a) offered or received against the City as evidence of or construed as or deemed to be evidence of any presumption, concession, or admission by the City with respect to the truth of any fact alleged by the Plaintiffs or the validity of any claim that had been or could have been asserted in the Class Action or in any litigation, or of any liability, negligence, fault, or wrongdoing of the City; (b) be offered or received against the City as evidence of a presumption, concession or admission of any fault, misrepresentation or omission with respect to any statement or written document approved or made by the City or against the Plaintiffs or any member of the Class as evidence of any infirmity in the claims of the Plaintiffs or any member of the Class; (c) be offered or received against the City or against the Plaintiffs or any member of the Class as evidence of a presumption, concession or admission with respect to any liability, negligence, fault or wrongdoing, or in any way referred to for any other reason as against any of the parties hereto, in any other civil, criminal or administrative action or proceedings; (d) be construed against the City, the Plaintiffs or any member of the Class as an admission or concession that the consideration to be given hereunder represents the amount that could be or

would have been recovered after trial; or (e) be construed as, or received in evidence as, an admission, concession or presumption against the Plaintiffs or any member of the Class or any of them that any of their claims are without merit or that relief sought under the Complaint would not have exceeded the value of the Settlement effectuated hereby.

9. The Court retains jurisdiction over the Plaintiffs, the Class and the City for all matters relating to the Class Action, including the administration, interpretation, effectuation or enforcement of the Settlement and the Amended Final and Consent Judgment.

Specific Provisions Pertaining to the Medicare Ordinance

10. Except as modified by the terms of this Amended Final and Consent Judgment, the Medicare Ordinance shall remain in full force and effect.

11. Bargaining unit employees who retired on or after July 1, 1982 but prior to July 1, 1986 shall continue to receive for life the healthcare plan that they have heretofore been provided, with all premium payments for said plan borne by the City.

12. Excluding those persons identified in paragraph 12, Class Members turning age 65 shall enroll in Medicare during their initial enrollment period (three months prior to their birth month and 3 months after their birth month).

13. Any Class Member not eligible to enroll in Medicare shall continue to receive fully paid healthcare benefits as they presently exist with the full cost of said healthcare benefits being paid for by the City as such costs are currently paid for by the City with any current co-pays remaining extant. Any such Class Member shall provide to the City's Benefits Department a copy of the official denial letter. Any person who has opted-out of the Class Action and Settlement shall continue to receive healthcare benefits as they presently exist until said person becomes Medicare eligible at age 65 at which time he/she would be bound by the Medicare Ordinance subject to their right to challenge the Medicare Ordinance. This provision shall not prohibit the City from effecting changes to the healthcare benefits of the retirees who opt-out of the Class and Settlement and who are not Medicare eligible, subject to such retiree's right to challenge any such changes.

14. Whether a Class Member is eligible to enroll in Medicare shall be determined by whether that individual qualifies under Medicare Part A without paying a premium and is at least sixty-five (65) years of age.

15. Pursuant to current City policy, "spouses" shall include same sex domestic partners.

16. Class Members who have enrolled in Medicare shall be responsible to pay the monthly premium for Medicare Part B.

17. The City is responsible for providing eligible retirees Plan 65 Medicare Supplement coverage or a Health Advantage Plan acceptable to the City and Union with all premium payments borne by the City.

18. In the event that a receiver is appointed for the City or if the City files any insolvency proceedings, and in either event there is an attempt to change any of the terms of this Amended Final and Consent Judgment, then any Class Member shall have the option to have this Amended Final and Consent Judgment vacated as it applies to him/her and then be able to contend that all previous healthcare benefits that were in place on or before June 29, 2011 be available to him/her, with full reservation by the City of its rights, claims and defenses in any such case, including, without limitation, the right to reject, impair or otherwise modify any executory or other form of contract under applicable federal or state law; except that the defenses of laches or the statute of limitations shall not be available to the City. The remedy set forth in this paragraph is not intended to be the sole and exclusive remedy of the parties, but shall be in addition to any other remedy that may be available to the parties under law.

19. The City also agrees that in the event that it files any insolvency proceedings, then any plan with respect to the Class Members' healthcare benefits until there is a formal Plan of Adjustment, shall be governed by this Amended Final and Consent Judgment. In addition, and to the extent allowable by law, this Amended Final and Consent Judgment shall be deemed to be the Plan of Adjustment with respect to Class Members' benefits during any insolvency proceedings.

Specific Provisions Pertaining to the Pension Ordinance

20. Except as modified by the terms of this Amended Final and Consent Judgment, the Pension Ordinance shall remain in full force and effect.

21. Pursuant to current City policy, "spouses" shall include same sex domestic partners.

22. For purposes of calculating any future pensions, final compensation shall mean the average of the highest four (4) consecutive years of compensation within the last ten (10) years of service, excluding payments made for overtime or payments made for temporary or extra duties beyond the normal or regular work day.

23. Class Members are required to contribute to the pension system for as long as they earn credit toward a pension pursuant to Section 17-185 of the Pension Ordinance.

24. COLAs shall be suspended between January 1, 2013 and December 31, 2022.

25. On January 1, 2023, COLAs will be restored to the Class Members at the rate of 3% compounded annually. The resumption of the calculation and payment of the COLA as of January 1, 2023 shall be irrespective of the funding level of the pension fund.

26. Once restored, COLAs shall not be paid to anyone whose pension—as a result of the COLA payment—would exceed the lesser of 150% of the State of Rhode Island median

household income (as determined by the American Community Survey of the United States Census Bureau in that year) or the compensation of a current employee holding the same classification that the Class Members held at the time of his/her retirement. In all events, the cap provided herein shall not be lower than 150% of the State Median Household Income (as defined above) as of 2011.

27. In FY 12, the City shall fund no less than 80% of the pension's Annual Required Contribution ("ARC"). For the period of 2013-2033, the City will use its best efforts to fully fund the ARC, but in no event shall it be less than 95%. Thereafter, the City shall be required to fund the ARC no less than 95% whenever the pension fund is less than 80% funded as determined by the City's actuary.

28. At the end of the 10-year suspension of the COLAs, Local 1033 or another representative group on behalf of the Class Members may enter into negotiations with the City. The City may, at its sole option and discretion, agree to make an upward adjustment to the base of the Class Members' pensions depending on the financial stability of the pension plan, to compensate the Class Members for the suspension of the COLA or the rate of inflation.

29. Notwithstanding any provision in the Pension Ordinance to the contrary, disability pensions shall be awarded at a rate of Sixty Six and Two Thirds Percent (66 $\frac{2}{3}$ %) of each such person's final compensation.

30. The provisions of Section 17-196 of the Pension Ordinance shall apply to Class Members except that the cap provided therein of One Hundred Fifty Percent (150%) of the state median household income shall not, in all events, be lower than One Hundred Fifty Percent (150%) of the state median household income (as defined above) as of 2011.

31. In the event that a receiver is appointed for the City or if the City files any insolvency proceedings, and in either event there is an attempt to change any of the terms of this Amended Final and Consent Judgment, then any Class Members shall have the option to have this Amended Final and Consent Judgment vacated as it applies to him/her and then be able to contend that all previous pension benefits (including, but not limited to, COLAs) that were in place on or before April 29, 2012 be available to him/her with full reservation by the City of its rights, claims and defenses in any such case, including, without limitation, the right to reject, impair or otherwise modify any executing or other form of contract under applicable state or federal law; except that the defenses of laches or the statute of limitations shall not be available to the City. The remedy set forth in this paragraph is not intended to be the sole and exclusive remedy of the Class Members, but shall be in addition to any other remedy that may be available to the Class Members under law.

32. The City also agrees that in the event that it files any insolvency proceedings, then any plan with respect to the Class Members' pension benefits until there is a formal Plan of Adjustment, shall be governed by this Amended Final and Consent Judgment. In addition, and to the extent permitted by law, this Amended Final and Consent Judgment shall be deemed to be the Plan of Adjustment with respect to a Class Member's benefits during any insolvency proceedings.

33. The terms of this Amended Final and Consent Judgment have been approved by the Providence City Council prior to its submission to the Court for entry.

ENTER:

ORDER:

Dated: _____, ___, 2013

MICHAEL A. ACETTA, et al., individually and
on behalf of all Retirees of the City of
Providence's Public Employees' Local Union
Local 1033 of the Laborers' International Union
of North America, AFL-CIO,

By their Attorneys,

THE CITY OF PROVIDENCE, by and
through its Treasurer, JAMES J. LOMBARDI,

By its Attorneys,

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