IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT IN AND FOR LEON COUNTY, FLORIDA

GEORGE WILLIAMS, *et al.*,

Plaintiffs,

vs. CASE NO.: 2011 CA 1584

RICK SCOTT, *et al.*,

Defendants.
_____/

ORDER ON MOTIONS FOR SUMMARY JUDGMENT

This cause came before the Court on the parties' cross motions for summary judgment filed pursuant to Rule 1.510 of the Florida Rules of Civil Procedure. Upon consideration of the motions, responses, legal memoranda, notices of adoption, and other materials filed by the parties, having heard argument of counsel, and being otherwise fully advised, the Court finds, as the parties have stipulated, that there is no genuine issue as to any material fact.

SUMMARY OF RULING

At the outset let me state clearly, the role of the Judiciary is to interpret the law before it; not to make new law. This Court has to determine the meaning of section 121.011(3)(d), Florida Statutes, in light of the Florida Supreme Court's opinion *in Florida Sheriffs Association v. Department of Administration*, 408 So.2d 1033 (Fla. 1981). Defendants urge this Court to ignore the plain language of the law as set forth in section 121.011(3)(d), Florida Statutes and the unambiguous opinion of the Florida Supreme Court in the *Sheriffs* case. This Court cannot set aside its constitutional obligations because a budget crisis exists in the State of Florida. To do so would be in direct contravention of this Court's oath to follow the law. This is one of the fundamental principles of our system of justice.

In 1974, the Florida Legislature created a mandatory pension plan for state employees, in which the employees were required to make no contribution and which provided for a cost-of-

living adjustment. The 1974 Legislature declared that the rights to the members in the noncontributory pension plan were of a "contractual nature" and that "such rights *shall be legally enforceable* as *valid contract rights* and *shall not be abridged in any way*." Ch. 74-302, § 1, Laws of Fla. (emphasis added). In 1981, in its opinion in the *Sheriffs* case, the Florida Supreme Court said that section 121.011(3)(d) did not preclude the legislature from "altering benefits which accrue for future state service." *Id.* At 1037. The Florida Supreme Court did *not*, however, say it was acceptable for the legislature to completely gut and create a new form of pension plan. This Court is not permitted to re-write Chapter 121, Florida Statutes. Moreover this Court is bound to follow a decision of the Florida Supreme Court. Only the Florida Supreme Court is at liberty to reconsider its prior holding. In this order, this Court upholds the work of the 1974 Legislature and follows the law as set forth in the *Sheriffs* case.[1]

The 2011 Legislature, when faced with a budget shortfall, turned to the employees of the State of Florida and ignored the contractual rights given to them by the Legislature in 1974. Considering the entire record before it, this Court finds that certain provisions of Senate Bill 2100 constitute an unconstitutional impairment of plaintiffs' contract with the State of Florida, an unconstitutional taking of private property without full compensation, and an abridgment of the rights of public employees to collectively bargain over conditions of employment. For these reasons, Plaintiffs are entitled to judgment as a matter of law.

To find otherwise would mean that a contract with our state government has no meaning, and that the citizens of our state can place no trust in the work of our Legislature. Those are findings this Court refuses to make.

[1] The Court would note that it passes no judgment on what the 2011 Legislature tried to accomplish. There was certainly a lawful means within which they could have achieved the same result. But it is not the function of this Court to choose the means by which the Legislature does its work. This Court's sole function is to determine, if a challenge is brought, that the law has been followed.

PROCEDURAL HISTORY OF CASE

Plaintiffs brought this action shortly before Senate Bill 2100 was to go into effect. They initially sought a preliminary injunction to segregate and preserve salary deductions until final disposition of the action. This Court denied the injunction, finding there was no irreparable harm or lack of adequate remedy at law because the Court must assume the State of Florida would ultimately comply with any court order to refund any funds wrongfully deducted from employees' salary. The Court noted the State's stipulation that if it was ordered to refund the employee contributions, it was not a matter of whether refunds would be given, but only a matter of determining from what source it would make the refunds.

Following denial of the injunction, the parties stipulated that the issues could be resolved by dispositive motion. They agreed to an expedited discovery and summary judgment briefing schedule. The final hearing was conducted October 26, 2011. Following said final hearing, this Court conducted a thorough review of the record and legal authority on the issues presented.

In this action plaintiffs, public workers who were members of the Florida Retirement System (FRS) as of June 30, 2011, challenge the provisions of Senate Bill 2100 (Chapter 2011-68, Laws of Florida), that mandate the deduction of three percent (3%) of the gross compensation of employees in the FRS to serve as contributions toward the employees' retirement benefits under the plan. Plaintiffs also challenge the provisions of Senate Bill 2100 that eliminate any cost-of-living adjustment for service credit earned after July 1, 2011. Plaintiffs assert that these changes to the FRS violate contractual rights conferred upon them by section 121.011(3)(d), Florida Statutes, and thus constitute an impairment of contract in violation of Article I, Section 10 of the Florida Constitution (Count I). Plaintiffs also assert the changes constitute a taking in violation of Article X, Section 6 of the Florida Constitution (Count II). Finally, Plaintiffs assert the changes violate their right to engage in effective collective bargaining protected by Article I, Section 6 of the Florida Constitution (Count III).

UNDISPUTED FACTS

In 1974, the Florida Legislature changed the FRS to a mandatory, noncontributory pension system. Ch. 74-302, §§ 3, 4, Laws of Fla. At the same time, the legislature added section 121.011(3)(d), Florida Statutes, which states:

> The rights of members of the retirement system established by this chapter shall not be impaired by virtue of the conversion of the Florida Retirement System to an employee noncontributory system. As of the effective date of this Act, *the rights of members of the retirement system established by this chapter are declared to be of a contractual nature, entered into between the member and the state, and such rights shall be legally enforceable as valid contract rights and shall not be abridged in any way.*

Ch. 74-302, § 1, Laws of Fla. (emphasis added). Throughout the 37 years since the adoption of this provision, the FRS has remained a noncontributory system. It has also provided retirees an annual cost-of-living adjustment throughout their retirement.

Senate Bill 2100, passed during the 2011 legislative session and effective July 1, 2011, makes numerous significant changes to the FRS. Most of the changes apply only to employees initially enrolled in the FRS after the bill's effective date, and are not challenged in this action. However, the two significant changes to the FRS brought by Senate Bill 2100 that do apply to employees who were FRS members prior to July 1, 2011—the mandatory 3% employee contribution and the elimination of the cost-of-living adjustment—are the changes at issue in this case. (Ch. 2011-68, §§ 5, 7, 11, 13, 17, 24, 26, 29, 32, 33, 39, 40, Laws of Fla.). Senate Bill 2100 does not provide any increased or improved retirement benefits under the FRS.

Senate Bill 2100 significantly decreases the amount employers must contribute to the FRS for the benefit of their employees by more than half for nearly every membership class. *See* § 121.71(3), Fla. Stat. (2010); § 121.71(3), Fla. Stat. (2011).

It is undisputed that the FRS has been operating well above the 80% funding ratio recommended by experts. According to the State Board of Administration, which is responsible for investing the funds deposited in the FRS, the FRS is one of the "most well-funded and healthiest public pension funds in the United States."

The record evidence showed that Florida faced a budget shortfall of $3.6 billion at the start of the 2011 legislative session. The legislature calculated the savings to be achieved from the challenged portions of Senate Bill 2100 to be approximately $861 million. There was also record evidence, unrebutted, that the legislature's appropriations for 2011-2012 left nearly $1.2 billion in general revenue unspent for the year.

IMPAIRMENT OF CONTRACT CLAIM

Plaintiffs contend that the challenged provisions of Senate Bill 2100 constitute an unconstitutional impairment of the plaintiffs' contract with the state created by section 121.011(3)(d), Florida Statutes.

The parties agree that any analysis of this issue must begin with the Florida Supreme Court's opinion in *Florida Sheriffs Association v. Department of Administration*, 408 So. 2d 1033 (Fla. 1981). *Sheriffs* involved a special risk credit for a certain limited number of FRS members. The special risk credit was a benefit earned through years of service. The legislature increased the credit from 2% to 3% of the employee's monthly income and then returned the credit to 2%. Based upon the facts before it, the Florida Supreme Court found that the legislature did not impair its contract with FRS members by returning the credit to 2% because the contract created by section 121.011(3)(d) did not preclude the legislature from "altering benefits which accrue for future state service." *Id.* at 1037.

The defendants contend that the *Sheriffs* case governs the present case and requires that summary judgment be entered in their favor. The plaintiffs contend that *Sheriffs* does not address the issues raised in this case. This Court finds that the facts upon which the *Sheriffs* decision was based differ substantially from the facts of this case. Unlike the special risk credit at issue in *Sheriffs*, the changes imposed by Senate Bill 2100 are not benefits which accrue for future state service. The changes at issue here, a complete change of the plan from a noncontributory to a contributory plan, and the elimination of entitlement to a cost-of-living adjustment, are qualitative changes to the plan, not changes to individual components of future accruals within the plan. FRS members have had continuous, unconditional rights to a noncontributory plan with a cost-of-living adjustment since the inception of FRS; these elements are not related to future state service. Because the *Sheriffs* case did not reach or contemplate changes such as these, this Court is bound to follow the express language of section 121.011(3)(d), Florida Statutes. This provision cannot be read as allowing the legislature to redefine established, unconditional contractual rights under Chapter 121 as suddenly tied to years of service and thereby altogether eliminated in the future. Such a reading would render the express contract created by section 121.011(3)(d) wholly illusory.

While *Sheriffs* does authorize the legislature to make prospective alterations to benefits which accrue for future state service *within* the "mandatory, noncontributory retirement plan," absolutely nothing in it can be read as authorizing the legislature to change the fundamental nature of the plan itself. The legislature is precluded by section 121.011(3)(d), Florida Statutes, from "abridg[ing] in any way" the unconditional contract rights of the plaintiffs. The changes challenged in this case plainly abridge the plaintiffs' unconditional contract rights to a noncontributory retirement plan that includes a cost-of-living adjustment. Although defendants

contend that this reading of section 121.011(3)(d) improperly allows one legislature to bind the hands of future legislatures, Florida law is clear that a legislature can, as part of its power to contract, authorize a contract that grants vested rights which a future legislature cannot impair. *State v. Gadsden County*, 229 So. 2d 587 (Fla.-1969). The Florida Legislature clearly did so when it adopted section 121.011(3)(d), Florida Statutes.

This Court's determination that Senate Bill 2100 impairs plaintiffs' contract with the state does not end its impairment inquiry. For an impairment of contract to be unconstitutional, it also must be substantial. *U.S. Trust Co. of New York v. New Jersey*, 431 U.S. 1, 19-21 (1977); *see also Pompanio v. Claridge of Pompano Condo.*, 378 So. 2d 774, 779-80 (Fla. 1980) (adopting approach to contract clause analysis similar to United States Supreme Court). The unrebutted evidence presented by the plaintiffs through their expert Charlette Moore demonstrates the substantiality of impairment at issue in this case. The costs of the changes to the individual plaintiffs range from $12,445.81 to $329,683.56 over the span of their working years and retirement if they receive no further salary raises. The costs increase if their salaries increase. The elimination of the future cost-of-living adjustment alone will result in a 4 to 24% reduction in the plaintiffs' total retirement income. These costs are substantial as a matter of law. *See Oregon State Police Officers' Ass'n v. State*, 918 P.2d 765 (Or. 1996); *Calabro v. City of Omaha*, 531 N.W. 2d 541 (Neb. 1995); *Booth v. Sims*, 456 S.E. 2d 167 (W.Va. 1995). The defendants' attempt to characterize the detrimental effects to plaintiffs as insubstantial are unavailing and without legal support.

The final step of the impairment analysis is a determination of whether the impairment is both reasonable and necessary to serve an important public purpose. *U.S. Trust*, 431 U.S. at 25. The Florida Supreme Court directs that in order for the state to justify impairment of its

contractual obligations, it must demonstrate a "compelling state interest." *Chiles v. United Faculty of Fla.*, 615 So. 2d 671, 673 (Fla. 1993). This requires a showing that there was "no other reasonable alternative means of preserving its contract with public workers, either in whole or in part. . . . that the funds are available from no other reasonable source." *Id.*

Defendants failed to meet this burden. They merely produced evidence that the state faced a significant budget shortfall; this is not enough. Although ordinarily courts give deference to the legislature regarding its policy determinations, where the state violates its own contract, "complete deference to a legislative assessment of reasonableness and necessity is not appropriate because the State's self-interest is at stake." *U.S. Trust*, 431 U.S. at 26. The undisputed record indicates that other reasonable alternatives existed to preserve the state's contract with FRS members: Senate Bill 2100 significantly reduced employer contributions to the FRS, and the legislature preserved $1.2 billion in unspent general revenue funds for the 2011-12 fiscal year. All indications are that the Florida Legislature chose to effectuate the challenged provisions of Senate Bill 2100 in order to make funds available for other purposes. This constitutes an unconstitutional impairment of plaintiffs' contract, for "[i]f a State could reduce its financial obligations whenever it wanted to spend the money for what it regarded as an important public purpose, the Contract Clause would provide no protection at all." *Id.*

TAKINGS CLAIM

Article X, section 6 of the Florida Constitution precludes the government from taking private property for a public use without full compensation being paid to the owner of the property. Plaintiffs contend that the mandatory 3% contribution to the FRS and the elimination of the cost-of-living adjustment instituted by Senate Bill 2100 violates this constitutional provision. This Court agrees.

As found by this Court under the impairment analysis, the plaintiffs have a contract right to a noncontributory retirement plan with a cost-of-living adjustment. Contract rights are property rights within the meaning of Article X, section 6. *U.S. Trust*, 431 U.S. at 19 n.16. The state, by adopting Senate Bill 2100, has taken the plaintiffs' property rights for the public purpose of balancing the state budget. There is no evidence that the integrity of the FRS was the basis for the legislature's actions. Instead, Senate Bill 2100 was proposed and passed to free up funds for the budget shortfall the state was experiencing. This is exactly the type of taking that Article X, section 6 is designed to prevent. *See Armstrong v. United States*, 364 U.S. 40, 49 (1960) (stating that the Takings Clause is intended to prevent the government "from forcing some people alone to bear public burdens which, in all fairness and justice should be borne by the public as a whole"). Senate Bill 2100 does not compensate the plaintiffs for the taking of their property and in fact, expressly prohibits the payment of interest on the contributions made by the Plaintiffs if the Plaintiffs decide to leave state employment and request the return of the amount they contributed.

Consequently, this Court finds that the challenged provisions of Senate Bill 2100 violate Article X, section 6 of the Florida Constitution. *See Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155 (1980); *Bailey v. State*, 500 S.E. 2d 54 (N.C. 1998).

COLLECTIVE BARGAINING CLAIM

The right of public employees to collectively bargain over wages, hours and other terms or conditions of employment is constitutionally protected in Article I, section 6 of the Florida Constitution which prohibits the abridgement or denial of the right. Retirement pensions and benefits are mandatory subjects of bargaining. *City of Tallahassee v. Pub. Empl. Relations Comm'n*, 410 So. 2d 487 (Fla. 1981). Subsumed in the right to collectively bargain is the right to effective collective bargaining. *Hillsborough Governmental Employees Ass'n v. Hillsborough*

Aviation auth., 522 So. 2d 358 (Fla. 1988). Senate Bill 2100 abridges Article I, section 6 by effectively removing the subject of retirement from the collective bargaining process and rendering negotiations after the fact futile.

This Court finds *State of Florida v. Florida Police Benevolent Association*, 613 So. 2d 415 (Fla. 1992), inapplicable to the issue before the Court. While *PBA* stands for the proposition that the legislature lawfully may change or negate provisions in a collective bargaining agreement negotiated with public employee unions in an appropriations act, it does not and could not authorize the legislature to unilaterally change a mandatory subject of bargaining in substantive legislation. The power over appropriations does not allow the legislature to excuse negotiation. Otherwise, the fundamental right to collectively bargain in Florida's Constitution would be meaningless. The defendants have failed to prove a compelling state interest justifying the unilateral action in Senate Bill 2100. *See Chiles v. State Employees Attorneys Guild*, 734 So. 2d 1030 (Fla. 1999). Therefore, this Court finds that Senate Bill 2100 violates Article I, section 6 by abridging the right to engage in effective collective bargaining.

Accordingly, it is **ORDERED**:

The Motion for Summary Judgment by Plaintiffs and Intervening Plaintiffs Park and Haire is **GRANTED.** The Defendants' Motion for Summary Judgment is **DENIED**.

The portions of Senate Bill 2100 imposing a 3% mandatory employee contribution and eliminating the cost-of-living adjustment for future service (Ch. 2011-68, §§ 5, 7, 11, 13, 17, 24, 26, 29, 32, 33, 39, 40, Laws of Fla.) are unconstitutional as applied to individuals who were members of the FRS prior to July 1, 2011, and defendants are permanently enjoined from implementing these provisions as to such individuals.

Defendants are further ordered to reimburse with interest the funds deducted or withheld, pursuant to the challenged provisions of Senate Bill 2100, from the compensation or cost-of-living adjustments of employees who were members of the FRS prior to July 1, 2011.

DONE and ORDERED this 6th day of March, 2012, in Leon County, Florida.

Jackie L. Fulford
Circuit Judge

Copies to: Counsel of Record