# Little Chute School District Prevails Against WEAC and Retirees Before the Wisconsin Court of Appeals in Case Involving Provision of WEA Long Term Care Insurance

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On January 18, 2017, the Wisconsin Court of Appeals issued a decision in favor of Little Chute Area School District (the "District") affirming the Circuit Court's ruling that dismissed the claims of Wisconsin Education Association Council ("WEAC") and thirty-seven retirees ("Retirees") of the District. *Little Chute Area Sch. Dist. v. Wisconsin Educ. Ass'n Council et al.*, No. 2015AP2033 (Wis. Ct. App. Jan. 18, 2017) (pending publication). Specifically, the Court of Appeals held that the District's decision to terminate its WEAIT group Long-Term Care ("LTC") policy in June of 2013, did not violate the terms of previous Collective Bargaining Agreements ("CBAs") between the District and the Little Chute Education Association ("LCEA") because all of the CBAs from 2001 and on "included clear anti-vesting language." *Id.* at ¶ 16.

**The Applicable CBAs**
The Court of Appeals separated the applicable CBAs into three separate groups: (1) CBAs between 1995 and 2001; (2) CBAs from 2001 until 2011; and (3) CBAs from 2011 until 2013.

The CBAs from 1995 to 2001 contained language that permitted early retirees the ability to elect to continue coverage under the LTC policy as long as WEAIT received the required premiums and continued to insure the active employees of the District. Retired employees could also elect an "accelerated paid-up" option that required a single, lump-sum payment if certain conditions were met. Once a person reached "paid up" status, their coverage was not subject to termination. Under the 1995 to 2001 CBAs, the District agreed that early retirees could remain covered by the LTC policy until age 65.

In the 2001-2003 CBA, the District and LCEA agreed to cap a retired employee's eligibility for coverage under the LTC policy at "a maximum of ninety-six (96) months." Likewise, the parties agreed to make early retirees' continued participation in the group LTC program subject to "any collectively bargained changes in those benefits and programs," in addition to being subject to the carrier's terms and conditions as before. Significantly, the following clause was bargained into the CBA: "The benefits, premiums, and contributions under this Article are established for the term of this collective bargaining agreement and subject to amendment, termination or extension through future collective bargaining." These changes remained in effect in all CBAs from 2001 through 2011.

On the eve of 2011 Wis. Act 10's effective date, the District and LCEA agreed to an extension of the 2009-2011 CBA, known as the 2009-2012 Master Agreement. The parties also bargained the elimination of all post-retirement insurance benefits, including group LTC insurance benefits, for early retirees. Additionally, Article 16 of the CBA, which had previously defined early retiree benefits, was deleted entirely from the Master Agreement.

In June of 2013, the District terminated the WEAIT group LTC policy and WEAC and the Retirees brought a lawsuit asserting the District breached the relevant CBAs by curtailing their vested benefits in the group LTC policy.

**WEAC's Arguments and the Court of Appeals' Analysis**
On appeal of the Circuit Court's decision dismissing the claims, WEAC and the Retirees raised the following arguments:

1. **Retirees have a vested right to participate in the District's group LTC policy until the Retirees achieved "paid-up" status under the policy or, alternatively, until the District made ninety-six months of group LTC premium contributions for the last early retiree under the 2009-2011 CBA.**

   The Court of Appeals expressly held that the CBAs' plain language conditioned receipt of the benefit on "any collectively bargained changes in those benefits and programs." *Id*. at ¶ 16. The court further stated that the most compelling evidence of the parties' intent not to vest the group LTC coverage benefit was the following provision within the 2001 to 2011 CBAs: "The benefits, premiums and contributions under this Article are established for the term of this collective bargaining agreement and subject to amendment, termination or extension through future collective bargaining." In other words, the court applied the clear language of the CBA in determining the parties' intent.

   The Court of Appeals asserted that the Retirees' reliance on *Roth v. Glendale*, 2000 WI 100, 237 Wis.2d 173, wherein the Supreme Court held that retirement health benefits are presumed to "vest" in the absence of contract language or extrinsic evidence suggesting otherwise, was entirely misplaced due to the clear anti-vesting language contained in the CBAs identified above. *Little Chute Area Sch. Dist.*, No. 2015AP2033, at ¶¶ 19, 25.

**2. The anti-vesting provision merely informs current employees contemplating retirement that the same early retirement benefits may not be available under a subsequent CBA.**

The Court of Appeals was quick to dismiss this argument, stating that such an interpretation would do no more than inform prospective retirees of what is already clear from the provision limiting the term of each CBA to two years. *Id*. at ¶ 21. Again, the court relied upon the plain language of the CBAs to discern the parties' intent.

**3. The District's interpretation of the purported anti-vesting language amounts to an "implied consent" theory, a theory which was rejected by the Wisconsin Supreme Court in *Roth*.**

The Court of Appeals rejected this argument, stating that, although in *Roth* the Wisconsin Supreme Court expressed wariness of employee unions' "unilaterally bargain[ing] away contractual promises made to retirees," there is no indication the Supreme Court intended to establish a substantive rule providing parties with an avenue for relief from an otherwise clear contract in existence before they retired. *Id*. at ¶¶ 22, 23.

Because the 2001-2011 CBAs contained clear anti-vesting provisions, the Court of Appeals stated that all Retirees who retired under those CBAs were expressly put on notice that there may come a day when their early retirement benefits would be terminated through collective bargaining, including after they retired. *Id*. at ¶ 23. The Court of Appeals further stated that the Retirees' argument that active employees had "whittled away" their retiree benefits was misplaced, which was demonstrated by the Retirees' acknowledgment that LCEA had served as the exclusive bargaining unit for all current and former members, including the Retirees. *Id*.

**4. The District's termination of the group LTC policy was unilateral and, therefore, not in compliance with the CBAs' directive that any changes were to occur only pursuant to collective bargaining.**

The Court of Appeals also rejected this argument, stating that the Retirees failed to acknowledge that the LCEA and the District mutually agreed to eliminate all post-retirement benefits in the new CBA effective July 1, 2011. Therefore, as of that date, the District had no obligation to continue providing group LTC benefits to the Retirees and, as a result, the District's decision to terminate the policy was within the scope of the agreed-to CBA. *Id*. at ¶ 24.

**5. Reading the CBAs "as a whole" leads to the conclusion that the Retirees have a vested right to continuing group LTC coverage.**

The court held that, to the extent the 1995-2001 CBAs gave rise to a vested right to LTC insurance benefits, it is undisputed that the District performed its obligations by making group LTC insurance coverage available and paying the premiums of retired employees under those agreements until they reached age 65. *Id*. at ¶ 26. The court further rejected the Retirees' argument by highlighting language within the 2001-2011 CBAs, which clearly qualified the retired employee's "right" to participate in group LTC coverage for a maximum of 96 months. The court stated that the use of the word "maximum" clearly established a ceiling beyond which the District's obligations did not extend. Likewise, the term "maximum," according to the court, failed to create a floor that obligated the District to offer coverage for the full 96 months. *Id*. at ¶ 27. Thus, the Retirees were contractually entitled to the potential of LTC coverage for up to 96 months, but the language clearly established the District's right to eliminate that coverage at any point prior to the 96 month threshold.

The Retirees next pointed to a survivorship provision, providing for continuation of premium contributions to a surviving spouse/dependents upon a retiree's death, within CBAs from 2001 to 2007, which, according to the Retirees, reflected an intent to vest them with a continuing right to WEAIT insurance coverage.

The Court of Appeals rejected the Retirees' reliance on the survivorship provision, stating that the Retirees failed to explain how the inclusion of such provision demonstrated the parties' intent to vest group LTC insurance benefits. The court further stated that the survivorship provision is fully compatible with non-vesting, as survivorship benefits would be available if, for example, an individual retiree died during the term of the relevant CBA under which he or she retired, or during a longer period if the parties chose to carry over the survivorship benefit in subsequent CBAs. *Id*. at ¶ 29.

**6. The terms of the WEAIT group LTC policy must be considered by the court in determining if the LCEA and the District intended early retirees to have vested rights in the group LTC policy because, according to the Retirees, the terms of the policy showed that the parties contemplated that early retirees would have a right to participate in the policy until they received "paid-up" status.**

Once again, the court rejected this argument, stating that it is not clear that the WEAIT group LTC policy was "part" of the relevant CBAs such that it could give rise to a legally enforceable right on the part of the Retirees against the District.

The court also made clear that it did not buy the Retirees' argument that the terms of the group LTC policy had been incorporated into the CBAs simply because the CBA referenced the LTC insurance policy, as neither party mutually agreed to such incorporation, a requirement that must occur for the terms of a document to be incorporated by reference into a CBA. *Id*. at ¶ 31.

**7. The CBAs should be examined in light of the relevant industry-specific "customs, practices, usages, and terminology."**

The court rejected this argument, stating that the Retirees failed to identify what relevant "industry-specific" customs and practices shed light on the parties' CBAs but, instead, only presented evidence related to the parties' customs and practices. *Id*. at ¶ 35. The court further noted that, even if the Retirees had presented the proper industry-specific customs and practices, such customs and practices are only relevant when a CBA's language is ambiguous; however, the language of the CBAs before the court were anything but ambiguous, rendering the consideration of industry-specific customs and practices irrelevant. *Id*.

**8. Even if they did not have a vested right to continue to participate in the group LTC policy, the Retirees' counterclaim for breach of the duty of good faith and fair dealing should have survived dismissal.**

The court, once again, rejected this argument, holding that the District did no more than that authorized by the CBAs from 2001 and on, as those CBAs contained clear anti-vesting language. Thus, according to the court, the Retirees could not prevail on their claim for breach of the duty of good faith and fair dealing.

**Conclusion**

The Court of Appeals applied simple contract interpretation principles to the plain language of the CBAs. According to the court, despite WEAC and the Retiree's earnest attempts, the law will not allow parties to circumvent clear contractual language.

This decision confirms that school districts are legally justified in relying upon contract language to support modifications of benefit plans. However, it is important to note that decisions surrounding modification of benefit plans can be tricky depending upon the CBA or policy language at issue. Therefore, school districts are strongly encouraged to consult with legal counsel before implementing changes that impact benefits previously made available to employees and retirees.

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