COURT OF APPEALS
DECISION
DATED AND RELEASED

JUNE 20, 1995

No. 94-2517

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

THOMAS O. MEYER and CATHERINE J. MEYER,

Plaintiffs-Respondents,

v.

THE BOARD OF EDUCATION OF THE KEWAUNEE SCHOOL DISTRICT and THE KEWAUNEE SCHOOL DISTRICT,

Defendants-Appellants.

APPEAL from a judgment of the circuit court for Kewaunee County: MICHAEL W. GAGE, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ.

MYSE, J. The Board of Education of the Kewaunee School District and the Kewaunee School District (collectively school district) appeal a judgment finding that the school district breached the terms of the collective bargaining agreement and awarding Thomas and Catherine Meyer $21,193. The school district contends that the trial court erred by considering the merits of Meyer's claim because Meyer was required to arbitrate the dispute before

filing his civil action. Alternatively, the school district contends that if the trial court properly considered the merits of Meyer's claim, it erred by finding that he was entitled to benefits under the 1990-92 collective bargaining agreement because he was not a member of the bargaining unit on the date the agreement became effective. Because we conclude that the grievance procedure in the collective bargaining unit does not apply to retired employees and that the parties to the 1990-92 agreement intended for teachers retiring on the effective date of the agreement to be covered by its terms, the judgment is affirmed.

The facts of this case are essentially undisputed. In the months preceding Meyer's retirement, the school district and the teacher's union were negotiating the 1990-92 collective bargaining agreement. The 1988-90 agreement was to expire on June 30, 1990, and the new agreement was to become effective on July 1. The 1988-90 agreement allowed union members to retire at the age of sixty-two with limited health insurance benefits. Meyer, who was active in negotiating the 1990-92 agreement, anticipated that the new agreement would reduce the early retirement age to fifty-eight and improve the health care benefits available to retirees.

Meyer ultimately spoke to John VanDalen, the union president, regarding the health care benefits that would be available under the new agreement and was told that he would be covered under the provisions in the agreement. Meyer then spoke to the school board president, Eugene Sladky, and the district superintendent, Roger Plantico, regarding the same topic. Both Sladky and Plantico told Meyer that he would be covered under the new agreement if he retired in July 1990.

Apparently relying on these representations, Meyer submitted a letter of intended retirement to the board on June 30, 1990. The letter stated that Meyer's retirement would be effective July 1, 1990. The letter further provided that Meyer was retiring with the understanding that he would be eligible for retirement benefits in accordance with the 1990-92 collective bargaining agreement. Meyer was fifty-eight years old at the time of his retirement.

The union and the school district eventually approved the new agreement on January 28, 1991. As Meyer expected, the new agreement, which was retroactive to July 1, 1990, reduced the eligibility age for retiree health

insurance benefits to fifty-eight. After the agreement was signed, Meyer approached Plantico regarding the health insurance benefits. Plantico advised Meyer to speak with the board. Over the course of the next several months, Meyer spoke with Sladky on several occasions regarding the health insurance benefits. Sladky assured Meyer that he would receive the benefits. In May 1991, however, the board held a meeting at which time it denied Meyer the new benefits. Meyer testified that after learning he would not receive the benefits, he spoke to the union officer about filing a grievance, but was told that the time for filing had expired. Approximately two years later, Meyer instituted this civil action in circuit court. At the conclusion of the trial, the court found that the school district was contractually obligated to provide Meyer with health insurance benefits under the 1990-92 agreement and awarded Meyer $21,193 in damages. The school district appeals.

The school district first contends that the trial court erred by considering the merits of Meyer's claim because Meyer was required to grieve his claim in accordance with the collective bargaining agreement before filing his civil suit. The trial court rejected the school district's argument, finding that because Meyer was a retiree at the time his grievance accrued, he was not subject to the collective bargaining agreement. Therefore, the trial court concluded that Meyer was not required to grieve before filing his civil claim. Whether Meyer was required to grieve his claim as a prerequisite to his civil suit is a question of law that we review without deference to the trial court. *See* ***Racine Educ. Ass'n v. Racine Unified Sch. Dist.***, 176 Wis.2d 273, 280-81, 500 N.W.2d 379, 382 (Ct. App. 1993).

The collective bargaining agreement in this case defines a grievance as "a complaint by an Aggrieved Party that there has been, as to the Aggrieved Party, a violation, or misinterpretation of any of the conditions of employment." The school district argues under the 1990-92 agreement, a retired teacher must file a grievance when challenging the retirement provisions of the collective bargaining agreement. We reject the school district's argument and conclude that Meyer was not required to comply with the grievance procedure for three reasons.

First, we note that in ***Allied Chem. & Alkali Workers v. Pittsburgh Plate Glass Co.***, 404 U.S. 157, 172 (1971), the Supreme Court held that retirees are not members of collective bargaining units covered by collective bargaining

agreements. In this case, Meyer was a retiree at the time his claim accrued and therefore was not a member of the collective bargaining unit covered by the agreement. Accordingly, Meyer was not obligated to comply with the grievance procedures outlined in the agreement.

Second, the grievance procedure contains no provisions, either express or implied, requiring retirees to file a claim in accordance with the grievance procedure as a prerequisite to a civil claim. As the school district points out, the agreement does state that an "*aggrieved party*" must file a grievance for any complaints relating to a violation or misinterpretation of a condition of employment. However, the agreement expressly defines an "aggrieved party" as a "teacher, a group of teachers, or the Association." Nowhere does the grievance procedure or the collective bargaining agreement include retired teachers as "aggrieved parties." In the absence of such a provision, we cannot conclude that retirees must grieve their claim as a prerequisite to a civil suit. Therefore, because Meyer was not among those defined as an "aggrieved party" in the collective bargaining agreement, he was not required to comply with the agreement's grievance procedure.

Finally, we note that while it may be argued that the term "teacher" includes both active and retired teachers, it is apparent from the language of the grievance procedure that the grievance requirement applies only to active teachers. Part (C)(1) of the grievance procedure provides: "The grievant shall first discuss the grievances informally with his/her principal or immediate supervisor. An Association representative may accompany the grievant if requested." Thus, to initiate the grievance process, a teacher must first discuss the grievance with his or her principal or supervisor. Retirees, however, do not have principals or supervisors. Consequently, they have no means of complying with the initial steps of the grievance procedure. Given these circumstances, we conclude that the grievance procedure was only intended to apply to active teachers. For the foregoing reasons, we conclude that the trial court properly determined that Meyer was not required to comply with the grievance procedures contained in the collective bargaining agreement.

Alternatively, the school district contends that if the trial court properly considered the merits of the case, it erred by concluding that Meyer was a member of the collective bargaining unit for the 1990-92 contract and therefore entitled to benefits under that agreement. To resolve this issue we

must engage in an interpretation and construction of the collective bargaining agreement. This is a question of law that we review without deference to the trial court. *See* ***Keane v. Auto-Owners Ins. Co.***, 151 Wis.2d 686, 688-89, 445 N.W.2d 715, 716 (Ct. App. 1989), *aff'd*, 159 Wis.2d 539, 547, 464 N.W.2d 830, 833 (1991) (interpretation of a contract is a question of law). Where the terms of a contract are unambiguous, the contract must be given its plain and ordinary meaning and construed as it stands. ***Ford Motor Co. v. Lyons***, 137 Wis.2d 397, 460, 405 N.W.2d 354, 379 (Ct. App. 1987). However, if the contract is ambiguous, parol evidence may be used to discern the parties' intent. ***Energy Complexes, Inc. v. Eau Claire County***, 152 Wis.2d 453, 468, 449 N.W.2d 35, 41 (1989). Whether a contract provision is ambiguous is a question of law. ***Moran v. Shern***, 60 Wis.2d 39, 46-47, 208 N.W.2d 348, 351 (1973).

The collective bargaining agreement provides that only those parties who are members of the collective bargaining unit are covered by the terms of the agreement. Relying on this provision, the school district argues that because Meyer's retirement was effective on the day the 1990-92 contract went into effect, Meyer was not a member of the bargaining unit and therefore was not covered under the new contract. The collective bargaining agreement, however, does not address the issue whether a teacher is covered by the terms of the agreement where the teacher retires on the same day the agreement becomes effective. Rather, it states only that the bargaining unit shall include "all certified personnel." Thus, whether a teacher who retires on the day the bargaining agreement becomes effective is a member of the collective bargaining unit covered by the agreement is not clear from the contract. Accordingly, we conclude that the collective bargaining agreement is ambiguous.

Where a provision of a contract is ambiguous, the question of the parties' intent is a question of fact. ***Patti v. Western Mach. Co.***, 72 Wis.2d 348, 351, 241 N.W.2d 158, 160 (1976). However, where the evidence is undisputed, the issue of intent may be determined as a matter of law. ***Kellar v. Lloyd***, 180 Wis.2d 162, 176, 509 N.W.2d 87, 92 (Ct. App. 1993). Because there is no dispute as to the evidence in this case, we are presented with a question of law.

The evidence shows that in the months preceding his retirement, Meyer spoke to Sladky, the school board president, Plantico, the district superintendent, and VanDalen, the union president, to determine whether he

would be eligible for health care benefits under the 1990-92 agreement. All three advised Meyer that he would be eligible for the new retirement benefits if he retired in July. Believing he would be eligible for retirement benefits under the new agreement, Meyer submitted a letter of resignation to the Kewaunee School Board. The letter stated in pertinent part:

> On Friday, June 28, 1990, I made a verbal agreement with Mr. Plantico to resign my position as a social studies teacher at Kewaunee High School as of July 1, 1990. I have been assured that retiring on this date will include me in any retirement benefits negotiated for the 1990-91 school year.

The letter was received by the school board and was read into the minutes at the July 9, 1990, board meeting. Plantico stated that the letter was read into the minutes to indicate the board's acceptance of Meyer's resignation.

Based on this evidence, we conclude that the board's actions in response to Meyer's letter of resignation manifested its understanding and intent that Meyer would be covered under the 1990-92 agreement if he retired on July 1. Meyer explicitly stated that he was retiring with the understanding that he would receive retirement benefits under the 1990-92 agreement and the board accepted these terms. Moreover, Sladky, Plantico and VanDalen assured Meyer that he would be covered by the new agreement if he retired in July. Based on this evidence, we conclude that the board intended that those teachers who retired on the effective date of the 1990-92 agreement would be members of the collective bargaining unit. Therefore, because Meyer was a member of the collective bargaining unit at the time he retired, the trial court properly concluded that Meyer was entitled to retirement benefits under the 1990-92 agreement.[1]

[1] Although it is not clear, it appears that the trial court found that the school board's acceptance of Meyer's letter created an independent contract, which entitled Meyer to retirement benefits in accordance with the new agreement. There is sufficient evidence in the record to support the trial court's conclusion. However, because we conclude that Meyer was a member of the collective bargaining unit when he retired, we need not address this issue.

Finally, the school district contends that the trial court erred by selectively applying the terms of the 1990-92 agreement to Meyer. Specifically, the school district argues that if Meyer is considered a member of the collective bargaining unit for purposes of receiving retirement benefits under the new agreement, he must also be required to follow the grievance procedure contained in the agreement.

As we previously noted, the board's actions in response to Meyer's letter of resignation indicated its intent that teachers retiring on the effective date of the 1990-92 agreement would be considered members of the collective bargaining unit covered by the terms of that agreement. Thus, when Meyer retired on July 1, he was a member of the collective bargaining unit, and therefore entitled to benefits under that agreement. Meyer's grievance against the school district, however, did not accrue until May 1991. At that point in time, Meyer was a retiree. The terms of the collective bargaining agreement do not require retirees to grieve as a prerequisite to filing a civil claim. Thus, contrary to the school district's assertion, the trial court did not selectively enforce the 1990-92 agreement. Rather, the trial court's conclusion was consistent with the parties' intent and the terms of the collective bargaining agreement. Therefore, we conclude that the trial court properly determined that while Meyer was eligible for benefits under the new agreement, he was not required to follow the grievance procedure.

By the Court.—Judgment affirmed.

Not recommended for publication in the official reports.