COURT OF APPEALS
DECISION
DATED AND RELEASED

February 8, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

Nos. 94-1308
94-2758

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

RICHLAND SCHOOL DISTRICT,

Plaintiff-Respondent,

v.

GERALD CUMMER,
and RICHLAND CENTER
EDUCATION ASSOCIATION,

Defendants-Appellants.

APPEAL from a judgment and an order of the circuit court for Richland County: JAMES P. FIEDLER and KENT C. HOUCK, Judges. *Reversed and cause remanded with directions.*

Before Dykman, Sundby, and Vergeront, JJ.

PER CURIAM. Gerald Cummer and his union, the Richland Center Education Association (RCEA), appeal from a judgment and an order resolving an extended dispute over the Richland School District's 1990 decision

to fire Cummer. The order vacates an arbitrator's award of back pay and reinstatement. The judgment awards the District its actual attorney fees and costs incurred during part of the proceeding. We reverse both rulings and remand for entry of an order affirming the arbitrator's award.

Cummer taught at Richland Center High School. In May 1990, two female students accused him of touching private parts of their bodies, and he was suspended with pay. In August 1990, the state charged him with two counts of sexual contact with a child. In September, the trial court bound him over for trial on one count. The next day, the Richland Center School Board commenced a disciplinary action against him. Although Cummer waived his right to a hearing, the board held one anyway and, on the basis of the evidence presented in his absence, fired him.

Cummer then filed a grievance under the collective bargaining agreement between the District and the RCEA, which allows the board to fire teachers only for just cause. The District denied the grievance in late October. In December, Cummer was tried on the remaining criminal count. After less than twenty minutes of deliberation, the jury acquitted him.

In September 1991, the District commenced a declaratory judgment action for a ruling on the arbitrability of Cummer's grievance. (Case No. 91-CV-122). The trial court ruled that the grievance was subject to arbitration, but limited the scope of arbitration to whether Cummer received due process at the board's hearing and, if so, whether the evidence supported the board's finding of just cause for dismissal. The court's order also provided that the arbitrator could hold a *de novo* hearing on the discharge only if he determined that the board denied Cummer due process.

The matter proceeded to arbitration pursuant to that order. However, the arbitrator, Frederick Kessler, concluded that the trial court lacked the authority to determine the scope of his authority. Kessler determined, instead, that the collective bargaining agreement afforded Cummer the right to a *de novo* hearing on his firing, before the arbitrator, whether or not the board afforded him due process. Kessler, therefore, scheduled an evidentiary hearing several weeks later. On a contingent basis, he also ruled that the board did

provide Cummer with due process, and that the uncontested evidence presented at the board's hearing provided just cause to fire him.

The District returned to the trial court with a motion to enjoin the scheduled hearing on the grounds that it violated the court's order. The court denied relief, reasoning that it lacked the authority to interfere with the arbitration proceeding once it commenced. The hearing was held and Kessler subsequently determined that "[a]fter weighing all the evidence, I conclude that the District did not clearly and convincingly show that the indecent touching alleged in the statement of charges in fact took place." As a result, Kessler ordered Cummer's immediate reinstatement with back pay from the time of his firing.

The District then commenced a new action in the trial court (Case No. 93-CV-30) for an order vacating the arbitration award. Cummer filed a motion to confirm the award. The court ordered the award vacated after holding that Kessler exceeded his authority under the court's order limiting his scope of review. The court also held that he exceeded his authority under the collective bargaining agreement by holding a *de novo* hearing.

Cummer then appealed that order in appeal No. 94-1308. Meanwhile, the District filed a motion in case No. 91-CV-122, its declaratory judgment action, for an award of attorney fees and actual costs. The court granted the motion and awarded actual attorney fees and costs that the District incurred as a result of Kessler's violation of the court's order limiting his scope of review. Cummer and RCEA appeal that decision in appeal No. 94-2758.

An arbitration award is presumptively valid and the trial court exercises only a supervisory role in reviewing one. ***Fortney v. School District***, 108 Wis.2d 167, 171, 321 N.W.2d 225, 229 (1982). The court may vacate an award only if it was procured by corruption, fraud or undue means, or the arbitrator was evidently partial or corrupt, guilty of prejudicial misconduct in the proceeding, exceeded his or her powers, or so imperfectly executed them that a final and definite award was not made. Section 788.10(1), STATS.

The trial court erred in construing the bargaining agreement when it limited the scope of Kessler's authority. The agreement provided that "[i]f either party disputes the arbitrability of any grievance under the terms of this Agreement, the arbitrator shall have no jurisdiction to act until the matter has been determined by a court of competent jurisdiction." The court interpreted that provision as allowing it to limit the scope of arbitration. We disagree. Under its plain meaning, the "matter" to be determined by the court is "arbitrability." There is no additional grant of authority to determine the scope of arbitration. To construe an unambiguous contract, the court may look no further than its plain meaning. ***Estate of Logan v. Northwestern Nat'l Casualty Co.***, 144 Wis.2d 318, 336, 424 N.W.2d 179, 185 (1988).

Kessler determined that the agreement gave him authority to determine *de novo* whether the District had just cause to fire Cummer. We will uphold an arbitrator's interpretation of the bargaining agreement as long as it is within the bounds of the contract language, even if we would have interpreted that language differently. ***Fortney***, 108 Wis.2d at 179, 321 N.W.2d at 233. Here, the bargaining agreement provided that the arbitrator

> shall have no power to change any Policy, practice, or rule of the Board nor to substitute his/her judgment for that of the Board as to the reasonableness of any such Policy, practice, rule or action taken by the Board except where he/she finds said Policy, rule, practice, or action to be in violation of this Agreement.

One could reasonably interpret this language to limit review of the board's action to the procedures it used and the evidence it considered when it made its decision. Or one could reasonably construe this language, as Kessler did, to allow the arbitrator to review the board's action based on a new hearing and an independent, *de novo* review of the evidence. Because Kessler's is one of two reasonable interpretations, we must accept it. ***Id***.

In vacating the award, the trial court made no reference to the manner in which Kessler conducted the hearing. Nevertheless, on appeal, the District briefly cites numerous examples of what it identifies as Kessler's bias

and his prejudicial errors in conducting the proceeding. These include giving the District insufficient time to prepare for the evidentiary hearing, the improper admission of exhibits, his failure to consider certain inculpatory evidence, his unfounded speculation about the board's motives, his improper reliance on the jury's prompt acquittal of Cummer, and his use of the wrong burden of proof. These arguments are only superficially developed and, for the most part, are presented without reference to the record or to legal authority. We therefore choose not to address them. ***State v. Pettit***, 171 Wis.2d 627, 647, 492 N.W.2d 633, 642 (Ct. App. 1992); ***State v. Shaffer***, 96 Wis.2d 531, 545-46, 292 N.W.2d 370, 378 (Ct. App. 1980).

Despite our conclusion that the trial court improperly limited arbitration, the District would have us affirm the order vacating the award because the arbitrator knowingly conducted the arbitration in violation of the court's order and that vacating the award is therefore "essential to preserve the sanctity of court orders and the orderly adjudication of employment disputes." Even were we to accept that proposition, the result would be the same. The only alternative remedy would be to relieve the arbitrator of the court's erroneous limitation on his power, and order a new proceeding. Because arbitration has already proceeded to completion in a proper manner under the terms of the contract, that would be unreasonable.

We also reverse the order by awarding the District a portion of its attorney fees and costs, under § 806.04(8), STATS. The award was predicated on the order vacating the award, which we have reversed.

By the Court.—Judgment and order reversed and cause remanded with directions.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.