COURT OF APPEALS
DECISION
DATED AND FILED

May 10, 2012

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2011AP1716 **Cir. Ct. No.** 2010CV617

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

WAUSAUKEE SCHOOL DISTRICT,

PLAINTIFF-RESPONDENT,

V.

WAUSAUKEE EDUCATION ASSOCIATION,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Marinette County: DAVID G. MIRON, Judge. *Reversed and cause remanded.*

Before Vergeront, Higginbotham and Blanchard, JJ.

¶1 BLANCHARD, J. The Wausaukee Education Association appeals a circuit court order vacating an arbitrator's award in which the arbitrator concluded that the Wausaukee School District violated the parties' collective bargaining agreement in partially laying off one teacher, Kurt Kostelecky. The

arbitrator found that the District's position that budgetary and curriculum-based considerations compelled the partial layoff was not credible and that, instead, the District's action was in fact motivated by a purpose not allowed under the collective bargaining agreement and carried out in bad faith.

¶2 The circuit court concluded that the arbitrator exceeded her authority because she failed to make findings that the District violated any of the provisions of the collective bargaining agreement submitted for arbitration, because the question of whether it was necessary to lay off teachers was not within the arbitrator's contracted authority, and because the decision to lay off teachers is not a proper subject of collective bargaining. The Association argues that the arbitrator acted within her authority and that the circuit court should have confirmed the award. We agree with the Association. We therefore reverse the circuit court's order and remand for the court to issue an order confirming the award.

BACKGROUND

¶3 Kurt Kostelecky was appointed by the District to a 62.5 percent full-time-equivalent teaching position. For the 2009-10 school year, the District issued Kostelecky a notice of layoff and offered him a contract reducing his appointment to 37.5 percent.

¶4 Kostelecky filed a grievance with the District challenging the reduction in his appointment. He asserted that, while it was labeled as a partial layoff, the reduction was in fact disciplinary in nature, and an attempt by the District to force him to resign without following the procedures for termination for cause contained in the collective bargaining agreement.

¶5 The District denied the grievance, stating that the reduction in Kostelecky's appointment was permitted under Article XI of the collective bargaining agreement. Article XI is titled "layoff provisions" and provides, in relevant part, as follows: "If necessary to decrease the number of teachers, in whole or in part, the [District] may lay off the necessary number of teachers, in whole or in part …."[1] The District rejected Kostelecky's assertion that the reduction in his appointment was for purposes of discipline. The District stated that the "reduction … was due solely to the District's attempt to balance its long-term financial obligation[s] and reduce costs while maximizing the educational offerings provided to the students of the District."

¶6 In order to resolve objections to the District's denial of the grievance, the parties made a joint request, pursuant to the procedures set forth in their collective bargaining agreement, for the Wisconsin Employment Relations Commission to assign an arbitrator to resolve their dispute. The parties stipulated that the issues submitted to the arbitrator were as follows:

> Did the District violate the collective bargaining agreement[,] … specifically, Articles [III, XI, XVI, or XVII], when it reduced [Kostelecky] from 62.5 percent full time equivalent teacher to 37.5 percent full time equivalent teacher for the 2009-2010 school year? If so, what is the appropriate remedy?

[1] Article XI refers to the Wausaukee School "Board" rather than the Wausaukee School "District." However, the District is the named party in this case and no party seeks to draw a meaningful distinction between board and district for purposes of this appeal. Therefore, we will refer to the "District" throughout this opinion.

As already noted, Article XI pertains to layoffs. The other articles pertain to "laws, rules and regulations" (III), "fair dismissal" (XVI), and "fair disclosure" (XVII). The only article at issue in this appeal is Article XI.[2]

¶7 In proceedings before the arbitrator, the Association argued that the District's asserted concerns—addressing financial obligations while maximizing educational offerings—were pretextual and that the real reason Kostelecky's appointment was reduced was the District's dissatisfaction with Kostelecky and his prior conduct. The District maintained that the reduction of Kostelecky's appointment was a result of the District's financial difficulties and curriculum needs.

¶8 Addressing the District's position regarding a financial motivation, the arbitrator found that this position lacked credibility. The arbitrator acknowledged that the District had a history of financial difficulties, but found that a recent referendum allowing the District to exceed revenue limits, along with a recent reduction in District transportation costs, had improved the District's financial situation before Kostelecky's appointment was reduced. The arbitrator also noted that Kostelecky was the only teacher to receive a layoff in the 2009-10 school year, a fact which the arbitrator believed further undermined the District's asserted financial justification.

¶9 Regarding the purported curriculum-based motivation, the arbitrator found that this reason also lacked credibility. The arbitrator observed that the District had failed to provide each of its specific curriculum-based reasons until

[2] As discussed further below, the arbitrator's decision focused on Article XI. The arbitrator did not address other articles.

the "litigation" phase of the grievance procedures, making those reasons suspect and subject to closer scrutiny. The arbitrator also made additional findings, based on the evidence before her, as to why the asserted curriculum-based reasons were not credible.[3]

¶10 Having found that each of the District's asserted reasons for reducing Kostelecky's appointment lacked credibility, the arbitrator turned to evidence suggesting that the reduction was based on hostility toward Kostelecky or on concerns with his performance. Based on that evidence, the arbitrator concluded that the District's reduction of Kostelecky's appointment was "for improper reasons and in bad faith and therefore violated the collective bargaining agreement." The arbitrator awarded Kostelecky compensation for back pay equivalent to the fraction of his job reduction.[4]

¶11 Proceeding under WIS. STAT. § 788.10 (2009-10)[5] and related provisions in WIS. STAT. ch. 788 ("Arbitration"), the District filed a complaint in

[3] The curriculum-based reasons included the District's assertions that: (1) the District reduced Kostelecky's appointment as a technology education teacher based on his own emailed suggestions that the District did not need to offer certain technology education courses, (2) Kostelecky lacked the necessary certification to teach certain advanced technology education courses, and (3) the District planned to "reinvent" its vocational education programs by collaborating with a technical college. Among the arbitrator's findings were that: (1) the District "misrepresented" to the arbitrator the meaning of Kostelecky's emails, (2) the testimony of a District administrator and other evidence showed that Kostelecky's lack of certification, which had been known since at least December 2008, was not the real reason for the reduction in his appointment, initiated in April 2009, and (3) the District's plans for collaborating with the technical college were only "preliminary and incomplete" and occurred in relevant part after the decision was made to reduce Kostelecky's appointment.

[4] There is no dispute on appeal that the arbitrator chose an appropriate remedy, assuming she correctly found a violation of the collective bargaining agreement.

[5] All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

circuit court, and moved for an order vacating the award.[6] The District argued that the arbitrator exceeded her authority. The Association disagreed and moved to confirm the award.

¶12 The circuit court granted the District's motion, denied the Association's motion, and vacated the arbitrator's award. The court concluded that the arbitrator exceeded her authority in three respects. First, the arbitrator failed to make any findings that the District violated Article XI, or the other articles submitted for arbitration, and therefore went beyond the issues submitted for arbitration. Second, the question of whether it was necessary to lay off teachers was not within the arbitrator's contracted authority. Third, the decision to lay off teachers is not a proper subject of collective bargaining and, therefore, not an issue the arbitrator had authority to address.

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[6] WISCONSIN STAT. § 788.10 provides, in part, as follows:

> **Vacation of award, rehearing by arbitrators. (1)** In either of the following cases the court in and for the county wherein the award was made must make an order vacating the award upon the application of any party to the arbitration:
>
> (a) Where the award was procured by corruption, fraud or undue means;
>
> (b) Where there was evident partiality or corruption on the part of the arbitrators, or either of them;
>
> (c) Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced;
>
> (d) Where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final and definite award upon the subject matter submitted was not made.

¶13 We reference additional facts as needed below.

DISCUSSION

¶14 The law in Wisconsin favors agreements to use final and binding arbitration in order to resolve municipal labor disputes. ***City of Oshkosh v. Oshkosh Pub. Library Clerical & Maint. Emps.: Union Local 796-A***, 99 Wis. 2d 95, 102, 299 N.W.2d 210 (1980). Judicial review of an arbitration award is limited. *See* ***Sands v. Menard, Inc.***, 2010 WI 96, ¶48, 328 Wis. 2d 647, 787 N.W.2d 384. An arbitration award is "presumptively valid and the court exercises only a supervisory role in reviewing an arbitration award." ***Fortney v. School Dist. of West Salem***, 108 Wis. 2d 167, 171, 321 N.W.2d 225 (1982). We set aside an arbitrator's award only if the award is shown to be invalid by "clear and convincing evidence." ***City of Oshkosh***, 99 Wis. 2d at 102-03 (citation omitted).

¶15 Here, the parties' dispute centers on whether the arbitrator exceeded her authority. While our reviewing role is limited, we must vacate or modify the award if the arbitrator exceeds the arbitrator's authority. *See* ***Orlowski v. State Farm Mut. Auto. Ins. Co.*** 2012 WI 21, ¶14, 339 Wis. 2d 1, ___ N.W.2d ___; *see also* WIS. STAT. § 788.10(1)(d) (court must vacate award "[w]here the arbitrators exceeded their powers"). Whether the arbitrator exceeded her authority is a question of law for de novo review. ***Sands***, 328 Wis. 2d 647, ¶48.

¶16 An arbitrator's authority "is circumscribed by the terms of the contractual agreement to arbitrate and any other issues that the parties agree to submit to arbitration." ***Orlowski***, 339 Wis. 2d 1, ¶31. In addition, "[a]n arbitrator exceeds his or her powers when the arbitrator demonstrates either 'perverse misconstruction' [of the contract] or 'positive misconduct,' when the arbitrator manifestly disregards the law, when the award is illegal, or when the award

violates a strong public policy." ***Id.***, ¶14 (quoting ***Racine Cnty. v. International Ass'n of Machinists & Aerospace Workers Dist. 10***, 2008 WI 70, ¶11, 310 Wis. 2d 508, 751 N.W.2d 312).

¶17 Because the District has the burden to show that the arbitrator's award is invalid, we focus on the District's arguments. *See* ***Fortney***, 108 Wis. 2d at 171; ***City of Oshkosh***, 99 Wis. 2d at 102-03. So far as we have been able to discern, those arguments correspond to three of the standards summarized above: (1) whether the arbitrator went beyond the issues submitted for arbitration, (2) whether the arbitrator's decision was within the scope of her contracted authority or instead was a "perverse misconstruction" of the collective bargaining agreement, and (3) whether the arbitrator's award manifestly disregards the law.[7] We explain in the sections that follow why we are not persuaded by the District's arguments and agree with the Association that the arbitrator acted within her authority.

1. Issues Submitted for Arbitration

¶18 It is undisputed that, if the arbitrator went beyond the issues the parties submitted for arbitration, then the arbitrator exceeded her authority. *See* ***Orlowski***, 339 Wis. 2d 1, ¶31. The District argues that the arbitrator's award went beyond those issues because the arbitrator's decision does not address whether the

[7] The District's arguments do not suggest that it would add anything to our analysis to separately consider whether the arbitrator exceeded her authority because she made an award that was "illegal" or that "violates a strong public policy." As noted above, these are standards that courts apply, in addition to the "manifestly disregards the law" standard, for vacating an arbitration award. *See* ***Orlowski v. State Farm Mut. Auto. Ins. Co.*** 2012 WI 21, ¶14, 339 Wis. 2d 1, ___, N.W.2d ____. We see no reasons why the application of the "illegal" or "violates a strong public policy" standards to the facts in this case would produce a result that would differ from the result when applying the "manifestly disregards the law" standard.

District violated Article XI or the other three articles submitted for arbitration. Similarly, as indicated above, the circuit court concluded that the arbitrator failed to make any findings that the District violated Article XI or the other articles.

¶19 The Association, in contrast, argues that the arbitrator in effect found a violation of Article XI. We agree.

¶20 The arbitrator's decision does not contain an explicit statement to the effect, "I conclude that the District violated Article XI." However, when we read the arbitrator's decision as a whole, and in the context of the arguments the parties put before the arbitrator, it is apparent that this is what the arbitrator found. The arbitrator began the discussion section of her decision by citing Article XI and explaining how she interpreted it:

> Article XI – Layoff Provisions, provides the District the management right to "decrease the number of teachers, in whole or in part." That right is limited only by seniority and certification. It was therefore within the District's prerogative to determine when and if layoffs were necessary and further, who would be laid off and to what degree. I accept the legal standard set forth by the District wherein the Union bears the burden of producing evidence establishing that the District's decision was unreasonable either because it was not supported by the facts or because it was based on an improper motive…. Lacking this and provided the District's decision was based on justifiable reasons free of improper motive or bad faith, it will stand.

This explanation by the arbitrator, along with her findings on credibility and related matters as described in the Background section of this opinion, persuade us that the arbitrator applied Article XI and found that the District violated that article because the District purported to lay off Kostelecky even though there was no credible reason to believe that the District acted based on budgetary needs,

curriculum needs, or any other reason making it, in the terms of Article XI, "necessary to decrease the number of teachers, in whole or in part."

¶21 The District appears to argue that the arbitrator could not have found a violation of Article XI because, in the District's view, portions of the arbitrator's decision show that she interpreted Article XI to give the District sole and absolute discretion to decide to lay off one or more teachers in whole or in part. The District points to the arbitrator's statements that, under the agreement, layoffs are limited "only by seniority and certification," that layoffs are the District's "prerogative" to make, and that the District has "final authority" over layoffs. This argument by the District is not persuasive because it takes portions of the arbitrator's statements out of context. Read in context, it is clear that the arbitrator interpreted Article XI as acknowledging the District's significant discretion to make layoffs but limiting that discretion to those layoffs that are "necessary" as described in Article XI.

2. Scope of Contracted Authority; "Perverse Misconstruction"

¶22 As noted above, an arbitrator's authority is circumscribed by the terms of the contractual agreement under which the arbitrator has been engaged to operate. *See* ***Orlowski***, 339 Wis. 2d 1, ¶31. The District argues, as the circuit court concluded, that the question of whether it is necessary to lay off teachers is not within the arbitrator's contracted authority.

¶23 The basis for this argument, and for this part of the circuit court's decision, is unclear. The District does not suggest that the arbitrator lacked authority under the terms of the collective bargaining agreement to interpret and apply Article XI. Rather, the District's argument seems to be that, to the extent

that arbitrator was interpreting Article XI, her interpretation was a "perverse misconstruction" of its terms.

¶24 When reviewing an arbitrator's interpretation of contract terms, we do not choose among competing reasonable interpretations. ***Baldwin-Woodville Areas Sch. Dist. v. West Cent. Educ. Ass'n-Baldwin Woodville Unit***, 2009 WI 51, ¶22, 317 Wis. 2d 691, 766 N.W.2d 591. Rather, we uphold the arbitrator's interpretation if there is "'some reasonable foundation for the interpretation of the contract offered in the decision.'" ***Id.*** (quoting ***Lukowski v. Dankert***, 184 Wis. 2d 142, 153, 515 N.W.2d 883 (1994)). If there is not such a foundation, then the arbitrator engaged in a "perverse misconstruction" of the contract and exceeded her authority. ***Id.***, ¶23.

¶25 Applying these standards, we agree with the Association that the arbitrator's interpretation has a reasonable foundation in the contract language and is, therefore, not a "perverse misconstruction." In addition to having a reasonable basis in the Article XI language requiring that layoffs be "necessary to decrease the number of teachers," the arbitrator's interpretation of Article XI comports with that article's use of the term "layoffs." The term "layoffs" in itself reasonably implies a reduction in teacher employment for reasons such as lack of financial resources or curriculum needs. The term does not necessarily imply that the District is permitted to "lay off" a teacher simply because the District is dissatisfied with that teacher's conduct. If the teacher's conduct would rise to the level of termination or non-renewal for "cause," then other provisions in the collective bargaining agreement apply, and it is undisputed that the District did not

in this case invoke those provisions or assert that it followed the corresponding procedures.[8]

¶26 The District's apparent argument that the arbitrator perversely misconstrued the collective bargaining agreement reads language out of Article XI, contrary to a basic canon of contract construction. *See* ***Maryland Arms Ltd. P'ship v. Connell***, 2010 WI 64, ¶45, 326 Wis. 2d 300, 786 N.W.2d 15 (contract language generally should be "construed to give meaning to every word, avoiding constructions which render portions of a contract meaningless, inexplicable, or mere surplusage"). Article XI plainly pertains to "layoffs" and limits layoffs to those "necessary to decrease the number of teachers." If the District had intended for the collective bargaining agreement to impose no limitation at all on what the District could legitimately term a "layoff," or on the District's ability to have

[8] Among the potentially relevant provisions in the collective bargaining agreement when the District seeks to terminate or non-renew a teacher for cause are the following:

> No teacher shall be non-renewed unless there is a reasonable basis in fact, and the reason is supported by substantial evidence.
>
> No teacher shall be non-renewed unless the [District] or its designee conducted an investigation of the reasons for non-renewal.
>
> If a teacher has successfully completed his/her probationary period, s/he shall not be terminated, non-renewed, suspended, disciplined, reprimanded[, or] reduced in rank or compensation except for cause.
>
> When the [District] determines that it will consider the possible non-renewal of a teacher it shall give the teacher notice as defined in Wisconsin State Statute 118.22.
>
> The [District] shall at the time of notice also supply the rationale and all facts supporting the reasons for the non-renewal.

absolute and final say on whether layoffs are "necessary to decrease the number of teachers," then the District should have bargained for different contract language. The District cannot seriously suggest that the arbitrator gave terms such as "necessary to decrease the number of teachers" and "layoff" something other than reasonable meanings in the context of the parties' collective bargaining agreement.

¶27 The District also argues that Article XI, when read as a whole, shows that the article is meant only to describe the "procedures" the District must follow when making layoffs, not to place any substantive limit on the District's completely discretionary ability to lay off employees. We disagree. Although some of the provisions in Article XI address procedural topics, such as notice requirements, that fact does not alter the plain language of Article XI, which conditions layoffs on whether they are "necessary to decrease the number of teachers." In addition, the District fails to explain how these other provisions of Article XI contradict or undermine the arbitrator's construction of the provisions addressed by the arbitrator.[9]

3. Manifest Disregard of the Law

¶28 The third and final asserted ground for vacating the arbitrator's award relates to whether the arbitrator's decision constituted a manifest disregard of the law. *See* ***Orlowski***, 339 Wis. 2d 1, ¶14. The District argues that, as the

[9] The Association correctly notes that the arbitrator's interpretation of Article XI is consistent with how other arbitrators have interpreted similar layoff provisions in other collective bargaining agreements. *See* ***CUNA Mut. Ins. Soc'y v. Office & Profess'l Emps. Int'l Union, Local 39***, 443 F.3d 556, 559, 562 (7th Cir. 2006); *Wisconsin Fed'n of Teachers v. Wisconsin Indianhead Tech. Coll.*, Case 64, No. 58083, MA-10837, at 3, 8 (WERC grievance award, July 7, 2000) (available at http://www.wisbar.org/res/wercg/2000p/6099.pdf). The District points to no arbitrator decisions to the contrary.

circuit court concluded, the arbitrator's decision violates the law because the District's decision to lay off teachers is not a mandatory bargaining subject and, therefore, is an issue that the arbitrator lacks authority to address. The District also argues that the arbitrator's decision irreconcilably conflicts with state statutes that describe school district powers and duties. For the following reasons, we disagree with the District and the circuit court that the arbitrator exceeded her authority because her decision manifestly disregards the law.

¶29 The District's argument begins with the Municipal Employment Relations Act (MERA), WIS. STAT. §§ 111.70-.77, which governs collective bargaining between a municipality and its employees who are members of a collective bargaining unit.[10] *See* ***City of Menasha v. WERC***, 2011 WI App 108, ¶2, 335 Wis. 2d 250, 802 N.W.2d 531. Under MERA, there are three categories of bargaining subjects: (1) "mandatory" subjects, which *must* be bargained and primarily relate to wages, hours, and work conditions; (2) "permissive" subjects, which *may* be bargained and primarily relate to the management and direction of the municipality; and (3) "prohibited" subjects, which are *prohibited from* being bargained by law. ***Id.***

¶30 The District relies on ***City of Brookfield v. WERC***, 87 Wis. 2d 819, 275 N.W.2d 723 (1979), in arguing that the District's decision to lay off teachers is not a "mandatory" bargaining subject and, therefore, is an issue the arbitrator

[10] We assume without deciding for purposes of resolving this appeal that these statutes relating to municipal powers apply to a school district under the circumstances presented in this case. We separately observe that this case is governed by the law as it existed prior to 2011 Wis. Act 10, which repealed and modified various provisions in MERA and in other statutes pertaining to the collective bargaining rights of public employees. *See* 2011 Wis. Act 10, §§ 210-260 (MERA-specific provisions).

lacks authority to address. The court in ***City of Brookfield*** held that "economically motivated" layoffs of public employees resulting from "budgetary restraints" is not a mandatory subject of bargaining because such layoffs are a "matter primarily related to the exercise of municipal powers and responsibilities and the integrity of the political processes of municipal government." ***Id.*** at 830. The court relied, in part, on statutes relating to certain municipal powers, including the power to dismiss police officers "because of [a] need for economy, lack of work or funds, or for other just causes." *See* ***id.*** at 830-31 (citing WIS. STAT. §§ 62.11(5) and 62.13(5m)(a); quoting § 62.13(5m)(a)).

¶31 We are not persuaded by the District's reliance on ***City of Brookfield*** for at least two reasons. First, ***City of Brookfield*** explains that an initial decision to make a layoff for budgetary reasons is not a "mandatory" subject of bargaining, but does not address whether such a decision is a "permissive" or a "prohibited" bargaining subject. As we understand the logic of the District's argument, what is important is whether the layoff decision is a "prohibited" bargaining subject, and therefore, according to the District, a subject that is off limits as a matter of law to an arbitrator purporting to construe a labor agreement.

¶32 Second, even if we were to assume, without deciding, that the District's decision to layoff teachers for budgetary reasons is a "prohibited" subject of bargaining under the rationale of ***City of Brookfield***, we would still see no reason to conclude that the arbitrator lacked authority, under ***City of Brookfield***, to reach the decision she made. Even if initial layoff decisions for budgetary reasons are a prohibited subject of bargaining, the arbitrator's interpretation of Article XI in the parties' collective bargaining agreement does not interfere with the District's broad discretion to lay off teachers for budgetary reasons. Rather, the arbitrator's decision precludes the District from using an

alleged budgetary "layoff" as a *pretext* for terminating a teacher or reducing that teacher's appointment when the District has failed to show that its action was in fact based on a budgetary reason, and the evidence instead points to improper motives or an attempt to avoid procedures in the collective bargaining agreement that would have required the District to show "cause." To succeed in its argument, the District would need to point to authority for the proposition that a declared "layoff" that is in reality something else is a prohibited subject of bargaining, or that the District's decision to label any action a "layoff" is in all instances unreviewable. The District points to no such authority to this effect, and we are aware of none.[11]

¶33 Finally, we are not persuaded by the District's separate argument that the arbitrator's award irreconcilably conflicts with state statutes that describe school district powers and duties in general terms, which the District argues give it unlimited discretion to make layoffs for any curriculum-based reason.[12] The

[11] Because we are not persuaded by the District's reliance on ***City of Brookfield v. WERC***, 87 Wis. 2d 819, 275 N.W.2d 723 (1979), for the reasons stated above, we need not reach the Association's argument that use of a layoff provision such as the one here is a mandatory bargaining subject under other case law. *See* ***Mack v. Joint Sch. Dist. No. 3***, 92 Wis. 2d 476, 481, 488-89, 285 N.W.2d 604 (1979); ***City of Beloit v. WERC***, 73 Wis. 2d 43, 59-60 & n.25, 242 N.W.2d 231 (1976).

[12] The District relies primarily on the following statutes:

WISCONSIN STAT. § 118.01 ("Each school board should provide curriculum, course requirements and instruction consistent with the goals and expectation established under [a separate subsection].").

WISCONSIN STAT. § 120.12(1) and (14) (Subject to certain qualifications, school boards have "the possession, care, control and management of the property and affairs of the school district …."; School boards shall "[d]etermine the school course of study.").

WISCONSIN STAT. § 120.13 ("The school board of a … high school district may do all things reasonable to promote the cause of education ….").

arbitrator's decision does not preclude the District from exercising its statutory powers or fulfilling its statutory duties to provide curricula, or more generally to promote education. Rather, based on the terms of the agreement, the arbitrator's decision reasonably precludes the District from using an alleged curriculum-based "layoff" as a pretext for terminating a teacher or reducing that teacher's appointment when the District has failed to show that its action was in fact based on a curriculum-based reason.

CONCLUSION

¶34 For all of the reasons stated above, we conclude that the arbitrator did not exceed her authority. We therefore reverse the circuit court's order vacating the arbitrator's award, and we remand for the court to issue an order confirming the award.[13]

By the Court.—Order reversed and cause remanded.

Not recommended for publication in the official reports.

[13] In the conclusion section of its brief-in-chief, the Association requests an "award of the statutory rate of interest and attorney's fees." The Association cites to ***CUNA Mutual***, 443 F.3d 556, and ***Madison Teachers Inc. v. WERC***, 115 Wis. 2d 623, 340 N.W.2d 571 (1983), but provides no explanation or argument on the topic. The District responds with a developed argument as to why neither case is applicable: ***CUNA Mutual*** involves federal Rule 11 sanctions for a frivolous claim, and ***Madison Teachers Inc.*** involves a refusal to comply with an arbitration award and an allowance of pre-judgment interest but no attorney's fees. *See* ***CUNA Mutual***, 443 F.3d at 558, 560-61; ***Madison Teachers Inc.***, 115 Wis. 2d at 625-26, 629-30. The Association does not reply to the District's argument. Accordingly, we consider the Association's request to be insufficiently briefed and do not address it further for that reason, other than to note that it is far from apparent how the cited cases might support that request. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (court need not address insufficiently developed arguments).