AFSCME, COUNCIL 4, LOCAL 1303-325 *v.* TOWN OF WESTBROOK
(SC 18969)

Rogers, C. J., and Norcott, Palmer, Zarella and Eveleigh, Js.

Argued December 5, 2012—officially released August 20, 2013

J. William Gagne, Jr., with whom, on the brief, was *Kimberly A. Cuneo*, for the appellant (plaintiff).

Gabriel J. Jiran, for the appellee (defendant).

Opinion

NORCOTT, J. The determinative question in this appeal[1] is whether the trial court properly limited the scope of its review when it denied an application, filed by the plaintiff, AFSCME, Council 4, Local 1303-325 (union), to vacate an arbitration award (award), which concluded that a grievance challenging the decision of the defendant, the town of Westbrook (town), not to reappoint its assessor, Ivan Kuvalanka, to a successive term of office was not arbitrable. Specifically, the union claims on appeal that the trial court improperly limited its scope of review and incorrectly concluded that the town's decision to terminate Kuvalanka's employment upon the expiration of his term of office was not governed by the terms of the applicable collective bargaining agreement (agreement). We disagree and conclude that the trial court properly limited the scope of its review when considering the union's application to vacate the award and properly determined that the union did not establish grounds to vacate the award. Accordingly, we affirm the judgment of the trial court.

The parties stipulated the following underlying facts. The town's Board of Selectmen (board) appointed Kuvalanka to the position of town assessor for an initial term beginning March 2, 2000, and ending July 1, 2000. The board voted to reappoint Kuvalanka to this position annually for the following eight fiscal years pursuant to § 17-1 of the Code of Ordinances of Westbrook (town ordinances),[2] the provision which governed the appointment of the town assessor. In June, 2008, however, the board unanimously voted not to reappoint Kuvalanka as assessor for the following fiscal year and, accordingly, terminated his employment with the town effective June 30, 2008.

During his employment, Kuvalanka was a member of the union, which had entered into the agreement with the town. This agreement remained in effect through June 30, 2009. Following the termination of his employment, Kuvalanka filed a timely grievance arguing that the town had violated article XVI of the agreement[3] by terminating his employment without just cause. Thereafter, the grievance was duly processed through the procedures set forth in the agreement. When those efforts failed to resolve the dispute, the parties submitted the following questions for arbitration: (1) "Is the grievance arbitrable?"; (2) "If so, did the [town] violate [a]rticle XVI of the . . . agreement by choosing not to reappoint [Kuvalanka]?"; and (3) "If so, what shall the remedy be, consistent with the agreement?" The town challenged the arbitrability of the grievance during arbitration, arguing that the nonreappointment of an assessor upon the expiration of his term of office was not a discharge requiring just cause under the agreement.

The arbitrators considered the question of the arbitra-

bility of the grievance before addressing the other two questions and, on September 17, 2009, based on the facts as stipulated by the parties solely for the purpose of determining that issue, the arbitrators determined that the grievance was not arbitrable. Specifically, the arbitrators concluded that the position of assessor was a political position for which, pursuant to General Statutes (Rev. to 2007) § 9-198,[4] the town had the sole discretion to set the length of the term of office. The arbitrators noted that, under this authority, the town had established a one year term for the assessor position pursuant to § 17-1 of its ordinances. See footnote 2 of this opinion. Given that there was no evidence that Kuvalanka had a right to reappointment, the arbitrators concluded that the board's decision not to reappoint Kuvalanka upon the expiration of his term of office was not subject to review under the grievance and arbitration procedures of the agreement and, therefore, the grievance was not arbitrable. The arbitrators then issued an award in accordance with that finding.

Thereafter, the union filed an application in the trial court to vacate the award pursuant to General Statutes § 52-418.[5] In its application, the union claimed that, because the arbitrators referenced § 17-1 of the town ordinances, rather than confining their review exclusively to the language of the agreement, when they decided the question of arbitrability, they: (1) exceeded their powers; (2) were guilty of misconduct; and (3) the award violated public policy. The trial court denied the union's application to vacate the award, concluding that, "[b]ased on the court's limited scope of review when a submission [to the arbitrators], as in this case, is unrestricted, [the union's] claims of errors of law are not reviewable, and, in any event, do not provide a basis for vacating the award." This appeal followed.

On appeal, the union claims that the trial court improperly limited its review to determining solely whether the award conformed to the submission. Specifically, the union asserts that its claims before the trial court, namely, that the award was inherently inconsistent with the agreement, was rendered in excess of the arbitrators' authority and violated public policy, required the trial court to apply a less deferential standard than traditionally used to by courts to review questions that the parties have committed to arbitration for a final and binding decision. Furthermore, the union claims that, had the trial court applied a broader scope of review, it would have concluded that the provisions of the agreement—including the inclusion of the assessor position in the list of positions covered by the agreement, the just cause requirement for discharge and the grievance and arbitration procedures—control. Therefore, the union claims that the trial court improperly refused to vacate the award.

In response, the town claims that the trial court

appropriately limited its review of the award because the parties gave the arbitrators the "broad authority" to decide the question of arbitrability in the first instance, and the award clearly reveals that the arbitrators decided only that question. Thus, the town argues that the union had the burden to establish, to the trial court, that the arbitrators issued an award that was contrary to or beyond the issue submitted, and that the union failed to meet that burden. Furthermore, the town argues that the union's claims regarding the reasons that the trial court should have applied a broader standard of review are merely disagreements with the arbitrators' analysis and are not appropriate grounds for vacating the award.

We conclude that the parties committed the question of arbitrability to the authority of the arbitrators for their full and final consideration and were, therefore, bound by the arbitrators' decision on that issue. Furthermore, we conclude that the union failed to establish grounds to apply a broader standard of review or to vacate the award. Accordingly, we conclude that the trial court appropriately limited its scope of review when considering the union's application to vacate the award and, because the award conformed to the submission, properly denied the union's application.

I

To begin our analysis, we note that the question of whether the trial court properly limited the scope of its review of the arbitrators' determination that the grievance was not arbitrable and, on that basis, denied the union's application to vacate the award, is a question of law that we review de novo. *Bacon Construction Co.* v. *Dept. of Public Works*, 294 Conn. 695, 707–708, 987 A.2d 348 (2010). Turning to the scope of review that the trial court should have applied when considering the union's application to vacate the award in the present case, we first acknowledge that "[i]t is well established that, *absent the parties' contrary intent*, it is the court that has the primary authority to determine whether a particular dispute is arbitrable, not the arbitrators. . . . Thus, courts generally review challenges to an arbitrator's determination of arbitrability de novo." (Citation omitted; emphasis added.) *New Britain* v. *AFSCME, Council 4, Local 1186*, 304 Conn. 639, 647, 43 A.3d 143 (2012). "[A]rbitration is a creature of contract"; (internal quotation marks omitted) *MBNA America Bank, N.A.* v. *Boata*, 283 Conn. 381, 386, 926 A.2d 1035 (2007); however, and "[i]t is [similarly] well established . . . that parties may agree to have questions concerning the arbitrability of their disputes decided by a[n] . . . arbitrator." (Internal quotation marks omitted.) *New Britain* v. *AFSCME, Council 4, Local 1186*, supra, 648. "The intention to have arbitrability determined by an arbitrator can be manifested by an express provision or through the use of broad terms to describe the scope

of arbitration, such as 'all questions in dispute and all claims arising out of' the contract or 'any dispute that cannot be adjudicated.' " *Board of Education* v. *Frey*, 174 Conn. 578, 581, 392 A.2d 466 (1978); see also *White* v. *Kampner*, 229 Conn. 465, 472, 641 A.2d 1381 (1994). "Courts should not assume [however] that the parties agreed to arbitrate arbitrability unless there is [clear] and unmistakabl[e] evidence that they did so." (Internal quotation marks omitted.) *First Options of Chicago, Inc.* v. *Kaplan*, 514 U.S. 938, 944, 115 S. Ct. 1920, 131 L. Ed. 2d 985 (1995).

In the present appeal, both parties have expressly indicated that they agreed to arbitrate the question of arbitrability and to be bound by the arbitrators' decision in that regard. See *Bacon Construction Co.* v. *Dept. of Public Works*, supra, 294 Conn. 710 (party waives right to judicial review by agreeing to vest arbitrator with authority to decide question of arbitrability); see also *Rent-A-Center, West, Inc.* v. *Jackson*, U.S. , 130 S. Ct. 2772, 2783, 177 L. Ed. 2d 403 (2010) (Stevens, J., dissenting) ("[c]lear and unmistakable 'evidence' of agreement to arbitrate arbitrability might include, as was urged in *First Options* [*of Chicago, Inc.*], a course of conduct demonstrating assent"). For example, in its brief to this court, the union acknowledged that the parties committed the question of arbitrability to the arbitrators and "[w]hen the parties have . . . delineated the authority of the arbitrator, they must be bound by those limits." Thus, although the union claims, on appeal, that the trial court should have applied a broader scope of review when deciding the application to vacate the award, this argument is presented in the context of the union's concession that the parties had agreed to vest in the arbitrators the authority to decide, fully and finally, whether the grievance was arbitrable.

Furthermore, the union's arguments on appeal also demonstrate that it intended and expected to be bound by the arbitrators' decision regarding arbitrability. For example, when asked, at oral argument before this court, to address the question of whether the arbitrators or the trial court should have decided the issue of arbitrability in the first instance, although the union initially stated that the arbitration clause in the agreement was not sufficiently broad to empower the arbitrators to decide arbitrability in all cases, it went on to say that whether the trial court should have decided the arbitrability of the dispute in the first instance and, thus, performed de novo review from the outset, was *irrelevant* to this case. Specifically, the union argued that, in *Bacon Construction Co.* v. *Dept. of Public Works*, supra, 294 Conn. 710 n.13, this court held that agreeing to arbitrate the question of arbitrability, and agreeing that the arbitration will be final and binding, does not prevent a defendant from attacking the arbitrators' decision on the basis of any grounds set forth in § 52-418, which was precisely what the union was attempting to do on

appeal. Thus, the union emphasized at oral argument that it was not challenging the fact that the parties gave the arbitrators the *authority* to decide, fully and finally, the question of arbitrability, but rather it was only challenging the *manner in which the arbitrators executed* that authority.

The town's position, both in opposition to the union's application to vacate the award and in this appeal, also is framed in the context of a concession that the parties vested the arbitrators with the authority to decide the question of the arbitrability of the dispute. In its brief to this court, the town unequivocally stated that "[t]his issue did not place any restriction on the arbitrators' authority to determine the arbitrability of the dispute. . . . [T]he arbitrators had the authority to decide factual and legal questions [regarding arbitrability] . . . ." The town, therefore, argued that "this court cannot review those conclusions even if they are incorrect . . . [because] [w]hen the parties agreed that the arbitrators could determine the issue of arbitrability, they *assumed the risk that the arbitrators might come to a conclusion that one party believed to be wrong.*" (Citations omitted; emphasis added.)

We, therefore, conclude that there is "clear and unmistakable evidence" that the parties agreed to arbitrate the question of arbitrability, and that both parties fully intended and expected that the arbitrators' decision in that regard would be final and binding. When a party that has agreed to arbitrate the question of arbitrability wishes to challenge the arbitrators' determination regarding that issue, the court's review of that determination, like its review of any other issue that parties empowered the arbitrators to decide, is limited. See *First Options of Chicago, Inc.* v. *Kaplan*, supra, 514 U.S. 943 (when parties agree to submit question of arbitrability to arbitration, "the court's standard for reviewing the arbitrator's decision about *that* matter should not differ from the standard courts apply when they review any other matter that parties have agreed to arbitrate" [emphasis in original]). "Judicial review of arbitral decisions is narrowly confined. . . . When the parties agree to arbitration and establish the authority of the arbitrator through the terms of their submission, the extent of our judicial review of the award is delineated by the scope of the parties' agreement. . . . When the scope of the submission is unrestricted, the resulting award is not subject to de novo review even for errors of law so long as the award conforms to the submission." (Internal quotation marks omitted.) *McCann* v. *Dept. of Environmental Protection*, 288 Conn. 203, 213–14, 952 A.2d 43 (2008). "Where the submission does not otherwise state, the arbitrators are empowered to decide factual and legal questions and an award cannot be vacated on the grounds that . . . the interpretation of the agreement by the arbitrators was erroneous." (Internal quotation marks omitted.)

Id., 214.

Because the parties clearly and unmistakably agreed to arbitrate the question of arbitrability, intending and expecting to be bound by the arbitrators' decision in that regard, we conclude that the trial court appropriately applied a limited scope of review. We further conclude that the trial court properly denied the union's application to vacate the arbitration award because the award finding that the grievance was not arbitrable conformed to the parties' submission seeking a determination of that precise question. "Such a limited scope of judicial review is warranted given the fact that the parties voluntarily bargained for the decision of the arbitrator [as to the question of arbitrability] and, as such, the parties . . . have assumed the risks of and waived objections to that decision. . . . It is clear that a party cannot object to an award which accomplishes precisely what the arbitrators were authorized to do merely because that party dislikes the results." (Citations omitted.) *American Universal Ins. Co.* v. *DelGreco*, 205 Conn. 178, 186–87, 530 A.2d 171 (1987).

II

We have, however, recognized certain grounds for vacating an award even when the parties have committed a particular question to the authority of an arbitrator, including that: "(1) the award rules on the constitutionality of a statute . . . (2) the award violates clear public policy . . . or (3) the award contravenes one or more of the statutory proscriptions of § 52-418." (Citations omitted.) *Garrity* v. *McCaskey*, 223 Conn. 1, 6, 612 A.2d 742 (1992). In the present case, the union claims that the trial court improperly failed to vacate the award despite its arguments that it violated § 52-418 (a) (4) and that it was violative of public policy.[6] We disagree.

A

The union first claims that the award was rendered in excess of the arbitrators' authority in violation of § 52-418 (a) (4) because it is inherently inconsistent with the agreement and fails to draw its essence therefrom. Specifically, the union claims that the arbitrators disregarded their obligation to interpret the language within the agreement by basing their decision on § 17-1 of the town ordinances rather than on the terms of the agreement. In support of this position, the union relies on our statement in *Hudson Wire Co.* v. *Winsted Brass Workers Union*, 150 Conn. 546, 553, 191 A.2d 557 (1963), that "[a]n arbitrator is confined to interpretation and application of the collective bargaining agreement; he does not sit to dispense his own brand of industrial justice." (Internal quotation marks omitted.) Further, the union asserts that, pursuant to the language within the parties' agreement, the grievance was clearly arbitrable and, therefore, the trial court should have granted

its application to vacate the award.

In response, the town argues that the arbitrators did not ignore the essence of the agreement or exceed their authority by considering whether the just cause provision in the agreement applied to the political decision—established by General Statutes § 9-198 and § 17-1 of the town ordinances—not to reappoint an individual in a political position to a successive term of office. The town further argues that the arbitrators properly concluded that the just cause provision in the agreement simply did not apply under the facts of this case and, therefore, the arbitrators' conclusion that the grievance was not arbitrable was not inconsistent with the terms of the agreement or rendered in excess of the arbitrators' authority. We agree with the town.

When addressing a claim that the arbitrators have exceeded their authority and violated § 52-418 (a) (4), the court's "inquiry generally is limited to a determination as to whether the parties have vested the arbitrators with the authority to decide the issue presented or to award the relief conferred." (Internal quotation marks omitted.) *Office of Labor Relations* v. *New England Health Care Employees Union, District 1199, AFL-CIO*, 288 Conn. 223, 230, 951 A.2d 1249 (2008). As we concluded in part I of this opinion, the union and the town in the present case clearly vested the arbitrators with the authority to decide the question of arbitrability. Thus, the court's review of the union's claim that the arbitrators exceeded their authority in rendering their award is "limited to a comparison between the submission and the award to see whether, in accordance with the powers conferred upon the arbitrators, their award conforms to the submission." (Internal quotation marks omitted.) *Stratford* v. *International Assn. of Firefighters, AFL-CIO, Local 998*, 248 Conn. 108, 128, 728 A.2d 1063 (1999). During this limited inquiry, the court is required to provide "[e]very reasonable presumption and intendment . . . in favor of the award and of the arbitrators' acts and proceedings. Hence, the burden rests on the party attacking the award to produce evidence sufficient to invalidate it or avoid it." (Internal quotation marks omitted.) *Board of Education* v. *AFSCME, Council 4, Local 287*, 195 Conn. 266, 271, 487 A.2d 553 (1985).

Furthermore, "[a]rbitration awards . . . are not to be invalidated merely because they rest on an allegedly erroneous interpretation or application of the relevant collective bargaining agreement. . . . Rather, in determining whether the arbitration award draws its essence from the collective bargaining agreement, the reviewing court is limited to considering whether the collective bargaining agreement, rather than some outside source, is the foundation on which the arbitral decision rests. . . . If that criterion is satisfied . . . then [the court] cannot conclude that the arbitrator

exceeded his authority or imperfectly executed his duty." (Citations omitted.) *Local 391, Council 4, AFSCME* v. *Dept. of Correction*, 76 Conn. App. 15, 20, 817 A.2d 1279 (2003). Ultimately, "[n]either a misapplication of principles of contractual interpretation nor an erroneous interpretation of the agreement in question constitutes grounds for vacatur." (Internal quotation marks omitted.) Id., 19. "It is not [the court's] role to determine whether the arbitrator's interpretation of the collective bargaining agreement was correct. It is enough to uphold the judgment of the court, denying the [union's] application to vacate the award, that such interpretation was a good faith effort to interpret the terms of the collective bargaining agreement." Id., 24.

Indeed, "[b]y including an arbitration clause in their contract, the parties bargain for a decision maker that is not constrained by formalistic rules governing courtroom proceedings and dictating judicial results. . . . Put simply, the parties bargain for the arbitrator's independent judgment and sense of justice . . . ." (Footnote omitted.) *Stratford* v. *International Assn. of Firefighters, AFL-CIO, Local 998*, supra, 248 Conn. 121–22. Thus, it is only "[w]hen the arbitrator's words manifest an infidelity to [the obligation of rendering an award that draws its essence from the collective bargaining agreement], [that] courts have no choice but to refuse enforcement of the award." (Internal quotation marks omitted.) *Hudson Wire Co.* v. *Winsted Brass Workers Union*, supra, 150 Conn. 553. Finally, even if we disagree with the arbitrators' reasoning and the bases for their award, the award nevertheless controls unless the arbitrators' memorandum "patently shows an infidelity to [their] obligation . . . ." Id.

The union argues, however, that simply comparing the award to the *submission* is not appropriate in the present case because it claimed, in its application to vacate the award, that the award was inconsistent with the provisions of the parties' *agreement*. Specifically, the union argues that, pursuant to *Hudson Wire Co.* v. *Winsted Brass Workers Union*, supra, 150 Conn. 553, the arbitrators were *prohibited* from looking to applicable statutes and related town ordinances for guidance when interpreting the language of the agreement and, therefore, their reference to those sources in their memorandum of decision renders the award in excess of their authority. Therefore, the union argues that the trial court should have expanded its scope of review in the present case, and compared the award to the *agreement*, rather than simply comparing it to the submission.

We disagree that the union's arguments warranted a broader review from the trial court. Although we did state in *Hudson Wire Co.* that "[a]n arbitrator is confined to interpretation and application of the collective bargaining agreement," we also went on to note in that

decision that an arbitrator "*may of course look for guidance from many sources* . . . so long as [the award] draws its essence from the collective bargaining agreement." (Emphasis added; internal quotation marks omitted.) Id. Furthermore, "[a]n arbitrator is entitled to take cognizance of contract principles and draw on them for guidance in construing an agreement." (Internal quotation marks omitted.) *Local 391, Council 4, AFSCME* v. *Dept. of Correction*, supra, 76 Conn. App. 19. Finally, "[a]s with contracts generally, the bargaining process and resulting agreements are subject to the restrictions and limitations of public policy as manifested in constitutions, statutes and applicable legal precedents."[7] *Lieberman* v. *State Board of Labor Relations*, 216 Conn. 253, 264–65, 579 A.2d 505 (1990).

Thus, the question we must ask, under the circumstances of the present case—wherein the parties committed the question of whether the grievance fell within the terms of the agreement and, therefore, fell within the grievance and arbitration provisions contained therein—is limited to whether the arbitrators answered that question in their award. A review of the award reveals that the arbitrators acknowledged all of the agreement provisions relevant to the dispute, including the just cause, grievance and arbitration provisions, but simply determined that the town's decision not to reappoint Kuvalanka upon the expiration of his term of office—and the resulting termination of Kuvalanka's employment with the town—was not governed by those provisions. The arbitrators supported their decision by referencing the fact that the legislature had enacted § 9-198, which vested in the town the sole discretion to appoint assessors, and § 17-1 of the town ordinances, which, pursuant to § 9-198, established a one-year term for the town assessor with no evident right to reappointment.

In *Board of Education* v. *AFSCME, Council 4, Local 287*, supra, 195 Conn. 267–68, we addressed a case in which the arbitrators determined that an employer had violated the relevant collective bargaining agreement by serving an employee with a termination notice at his home. In that case, we determined that the arbitrators had exceeded their authority in violation of § 52-418 (a) (4) because, in coming to their conclusion, the arbitrators primarily relied on a previous arbitration award setting forth the employer's agreement not to deliver communications concerning disciplinary action to employees' homes in the future; id., 268, 272–73; rather than on any provision of the relevant agreement. Because there was no provision in the agreement addressing the manner in which termination notices were to be served, we concluded that the arbitrators exceeded their authority by "considering and basing [their] award on a document which was not part of the parties' agreement [in the previous arbitration award]." Id., 273.

There is, however, a fundamental difference between these circumstances and those in the present case. In *Board of Education* v. *AFSCME, Council 4, Local 287*, supra, 195 Conn. 272, the arbitrators clearly disregarded the fact that the agreement that they were asked to interpret contained no provision, whatsoever, dictating *the manner* in which the employer was required to deliver termination notices. Therefore, concluding that the employer had violated the agreement based on *the manner* in which it delivered a termination notice was clearly beyond the scope of authority that the parties had granted to the arbitrators by submitting their dispute to arbitration. Id., 273. In the present case, however, the arbitrators did not base their award on a document that was not a part of the agreement. On the contrary, the arbitrators, in accordance with their obligation to interpret the terms of the agreement, simply referred to the town ordinance to assist in determining whether the provisions of the agreement applied to a dispute over the nonreappointment of a town assessor upon the expiration of his term of office. The arbitrators then determined that, given that the town assessor was a political position, the agreement did not apply to the facts of this case.

Given that this court has specifically indicated that arbitrators may look to many sources for guidance in their interpretation of collective bargaining agreements so long as their award draws its essence from the agreement; *Hudson Wire Co.* v. *Winsted Brass Workers Union*, supra, 150 Conn. 553; the union's argument that the arbitrators exceeded their authority by referencing the town ordinances to assist in their interpretation of the agreement provisions is unavailing. The union simply disagrees with the arbitrators' determination that, under the facts of the present case, the agreement did not apply. Essentially, the union's argument that the arbitrators exceeded their authority is merely a thinly veiled attempt to vacate the award on the ground that it disagrees with their interpretation of the agreement. Because, "[a] mere difference of opinion as to the construction of the contract does not establish that the arbitrators exceeded their authority"; (internal quotation marks omitted) *Franco* v. *East Shore Development, Inc.*, 59 Conn. App. 99, 108, 755 A.2d 345, cert. denied, 254 Conn. 941, 761 A.2d 760 (2000); we conclude that the trial court properly rejected the union's claim that the arbitrators exceeded their authority in violation of § 52-418 (a) (4).

B

The union next claims that the trial court should have vacated the award because it violates public policy. The union claims that, in 2007, when Kuvalanka was employed as the town's assessor, there was a clear public policy among various towns to include the position of assessor in collective bargaining agreements and

to apply all of the terms of those agreements, including the just cause, grievance and arbitration provisions, to the position of assessor, just as they would apply to any other position covered by the agreement. Specifically, the union argues that Public Acts 2010, No. 10-84, § 5 (P.A. 10-84),[8] which repealed § 9-198, was intended to clarify *existing* law and legislative intent that the position of municipal assessor was not a political one. The union further argues that the legislative history of P.A. 10-84 also evidenced a general consensus among towns to that effect.

In response, the town argues that the enactment of Public Act 10-84 and its legislative history clearly indicate that the repeal of § 9-198 was intended to be a *change* in existing law and that, prospectively (from 2010, two years after the board declined to reappoint Kuvalanka), the position of assessor would *no longer* be considered a political one.[9] Accordingly, the town claims that the union has failed to demonstrate that there was a clearly established public policy that was violated by the arbitrators' award. We agree with the town and conclude that the union has failed to establish that the trial court should have vacated the arbitration award on public policy grounds.

The following additional facts are relevant to the resolution of this claim. On February 18, 2010, the legislature's labor and public employees committee (committee) held a hearing concerning House Bill no. 5059, 2010 Sess., which was entitled "An Act Concerning the Appointment of Municipal Assessors." Conn. Joint Standing Committee Hearings, Labor and Public Employees, 2010 Sess., Pt. 1, pp. 29–69. During that hearing, the committee heard testimony from several individuals speaking in support of the bill. Id., pp. 29, 48, 50, 66. These individuals discussed the history of the municipal assessor position, including its evolution from an inherently political position to one that requires specialized skills, training, certification and, importantly, independence from undue political pressures and the necessity to change the existing law to address that evolution. Id., pp. 29–69. For example, John Chaponis, a representative from the Connecticut Association of Assessing Officers, testified that "[t]he laws concerning the appointment of municipal assessors have remained unchanged since the 1940s. At that time, many or most assessors were elected and the position was *considered political*. For towns who wish[ed] to appoint an assessor, it was *still considered political* . . . ." (Emphasis added.) Id., p. 29. Chaponis indicated that, over the course of the previous two years, some "assessors were pressured to reduce individual assessment values. And when they acted in an ethical manner, refused to do so, ensuring fairness to all [taxpayers], after the next election took place, they were rewarded by being removed from their position via not being reappointed." Id. Chaponis went on to say that "the position of asses-

sor, as well as the job function has changed drastically over the last [sixty] years. . . . For this to be a politically appointed position makes little sense in today's day and age." Id., p. 30. He indicated that, although 30 or 35 percent of assessors in Connecticut were members of some type of collective bargaining unit, that "[did not] always afford the [necessary] protection"; id., 33–34; and that only approximately 10 percent of towns had started to include a provision in the town charter indicating that nonreappointment decisions constitute disciplinary action requiring just cause under the relevant collective bargaining agreements. Id., pp. 42–43. In response to questions from committee members, Chaponis emphasized that the goal of House Bill No. 5059 was to *change* the municipal assessor from a political position to an apolitical one and "to completely remove them from . . . the political process"; id., p. 35; in order for termination of employment decisions to be based on performance rather than political motivations.[10] Id., pp. 30–35.

The union asserts that the foregoing testimony supports its contention that the arbitrators should have concluded that the parties' agreement, rather than General Statutes § 9-198 and § 17-1 of the town ordinances, governs the terms of employment for the assessor position. Relying on the testimony from Chaponis, the union claims that the position of assessor clearly has not been a political position for the last sixty years, and that 30 to 35 percent of towns have begun including assessors in collective bargaining units. Therefore, the union argues, the legislative history of P.A. 10-84 demonstrates that the repeal of § 9-198 was intended to reflect the *existing* public policy among towns to treat municipal assessors as nonpolitical employees.

In regard to this claim, we acknowledge that "where a party challenges a consensual arbitral award on the ground that it violates public policy, and where that challenge has a legitimate, colorable basis, de novo review of the award is appropriate in order to determine whether the award does in fact violate public policy." *Schoonmaker* v. *Cummings & Lockwood of Connecticut, P.C.*, 252 Conn. 416, 429, 747 A.2d 1070 (2000). Nevertheless, "a party raising such a challenge to an arbitral award may not succeed in receiving de novo review merely by labeling its challenge as falling within the public policy exception to the normal rule of deference. The substance, not the form, of the challenge will govern. Thus, the court should not afford de novo review of the award without first determining that the challenge truly raises a legitimate and colorable claim of violation of public policy. If it does raise such a claim, de novo review should be afforded. If it does not, however, *the normal deferential scope of review should apply*." (Emphasis added.) Id., 429 n.7. Furthermore, "the public policy exception to arbitral authority should be narrowly construed and [a] court's refusal

to enforce an arbitrator's interpretation of [collective bargaining agreements] is limited to situations where the contract as interpreted would violate some explicit public policy that is well defined and dominant, and is to be ascertained by reference to the laws and legal precedents and not from general considerations of supposed public interests. . . . Therefore, in light of the exceedingly narrow scope of the public policy limitation on an arbitrator's authority, for the [union] to prevail on this claim it must demonstrate that the . . . award clearly contravenes an established public policy." (Citations omitted; internal quotation marks omitted.) *Stratford* v. *International Assn. of Firefighters*, *AFL-CIO*, *Local 988*, supra, 248 Conn. 126.

We conclude that the union has failed to raise a colorable claim that there was a clearly existing, well-defined public policy, as of 2008, of treating municipal assessors as nonpolitical employees. The union's reliance on the voluntary action of only slightly more than one quarter of the towns in including assessors in a collective bargaining unit, and the legislature's act of repealing a statute that had indicated that the position of assessor was a politically appointed one until October 1, 2010, falls far short of establishing a clearly existing or strong public policy of treating the position of assessor as a nonpolitical one in 2008. This is especially true given that a careful review of the legislative history of P.A. 10-84 reveals that that act was enacted in the context of perceived problems with the political nature of the municipal assessor position because that profession had evolved, but the law had not. Indeed, the legislative history, read as a whole clearly demonstrates that the enactment of P.A. 10-84 was intended to *change* the political nature of the municipal assessor position to alleviate the possibility of ongoing improper political pressures that assessors faced under existing law. Thus, "[w]here there is no clearly established public policy against which to measure the propriety of the arbitrator[s'] award, there is no public policy ground for vacatur." *Schoonmaker* v. *Cummings & Lockwood of Connecticut*, *P.C.*, supra, 252 Conn. 429. Accordingly, we conclude that the trial court appropriately refused to perform de novo review of the arbitral award pursuant to the public policy exception to the traditional rule of deference.

The judgment is affirmed.

In this opinion the other justices concurred.

[1] The plaintiff appealed from the judgment of the trial court to the Appellate Court, and, upon the defendant's motion, we transferred the appeal to this court pursuant to General Statutes § 51-199 (c) and Practice Book § 65-2.

[2] Westbrook Code of Ordinances (Rev. to 2008) § 17-1 provided in relevant part: "Under the authority of section 9-198 of the General Statutes the office of assessor shall be by appointment of the board of selectmen. The board of selectmen shall appoint an assessor to serve for a term of one . . . year and shall annually appoint an assessor. Vacancies in the office of assessor shall be filled by the board of selectmen for the unexpired term. Any assessor appointed by the board of selectmen may be removed by them for cause."

[3] Article XVI of the agreement provides in relevant part: "No employee shall be discharged or otherwise disciplined without just cause. . . ."

[4] General Statutes (Rev. to 2007) § 9-198 provided in relevant part that: "Any town . . . may . . . provide for the election or appointment of one or more but not more than five assessors. Any such municipality may provide for the term of office, qualifications and compensation of such assessor or assessors . . . . Any municipality acting under the provisions of this section may, whenever necessary to the action taken hereunder, provide for the termination of the terms of assessors then in office." All references hereinafter to § 9-198 are to the 2007 revision of the statute, unless otherwise indicated.

[5] General Statutes § 52-418 provides in relevant part: "(a) Upon the application of any party to an arbitration, the superior court . . . shall make an order vacating the award if it finds any of the following defects: (1) If the award has been procured by corruption, fraud or undue means; (2) if there has been evident partiality or corruption on the part of any arbitrator; (3) if the arbitrators have been 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 action by which the rights of any party have been prejudiced; or (4) if the arbitrators have exceeded their powers or so imperfectly executed them that a mutual, final and definite award upon the subject matter was not made. . . ."

[6] The union also claims that *Marlborough* v. *AFSCME*, *Council 4*, *Local 818-052*, 130 Conn. App. 556, 568, 23 A.3d 798, cert. granted, 302 Conn. 940, 29 A.3d 466 (2011), in which the Appellate Court affirmed the trial court's refusal to vacate an arbitration award concluding that the non-reappointment of the town's assessor was a discharge without just cause in violation of the applicable collective bargaining agreement, applies to and is determinative of the present case. We disagree. Despite the fact that that case arose under factual circumstances very similar to the present case, the parties in *Marlborough* only submitted the substantive questions of whether the nonreappointment constituted a violation of the agreement and, if so, what the remedy should be. Id., 559. The parties did not submit the question of arbitrability to the arbitrators, essentially assuming that the grievance *was* arbitrable. Id. Furthermore, in challenging the termination of the assessor's employment, the union in *Marlborough* relied on General Statutes § 9-187 (a), which statutorily establishes a term of office for municipal officers; id., 560 n.4; whereas the union in the present case based its claims on § 9-198. Finally, this court granted the town's petition for certification in *Marlborough*; see *Marlborough* v. *AFSCME*, *Council 4*, *Local 818-052*, 302 Conn. 940, 29 A.3d 466 (2011); and reversed the judgment of the Appellate Court, concluding that the arbitral award in that case improperly ordered the town to perform an illegal act, namely to reinstate a municipal officer to a position to which she was no longer statutorily entitled. *Marlborough* v. *AFSCME*, *Council 4*, *Local 818-052*, 309 Conn. 767, 809–10, A.3d (2013). Thus, neither the procedural posture of *Marlborough*, nor its outcome, support the union's claims in the present appeal.

[7] We also note that the union agreed to submit, for the arbitrators' consideration, the text of General Statutes § 9-198 and § 17-1 of the town ordinances as exhibits attached to the parties' joint stipulation. Although agreeing to submit evidence to the arbitrators does not necessarily prevent the union from arguing that such evidence is irrelevant or, at least, not determinative of the issues to be decided by arbitration; see *Board of Education* v. *AFSCME*, *Council 4*, *Local 287*, supra, 195 Conn. 272; in the present case, the joint stipulation is probative of whether it was appropriate for the arbitrators to *consider* these sources when rendering their award. Put differently, the union's agreement to submit General Statutes § 9-198 and § 17-1 of the town ordinances as exhibits to the arbitrators undermines its argument that the arbitrators were *prohibited* from considering these sources while exercising their obligation to interpret the parties' agreement.

[8] Public Acts 2010, No. 10-84, § 5, provides in relevant part: "Section 9-198 of the general statutes is repealed. (*Effective October 1, 2010*)."

[9] See House Bill No. 5059, 2010 Sess., which provided in relevant part: "Statement of Purpose: To *remove* town assessors from the election statutes and place them in the municipal statutes and to require they be removed only for good cause." (Emphasis added.)

[10] Other individuals testified to similar effect, including David Dietsch, the assessor for Waterbury, and who stated that "we just don't want to be political anymore." Conn. Joint Standing Committee Hearings, supra, p. 52. Walter Topliff, the assessor for Bloomfield, also testified that "[i]n order to

solidify the integrity of the future of the assessment process, I feel that this position must be *changed* from a political appointment to a nonpolitical position requiring that the employee be appointed only once and eliminating the terms of office. . . . [*W*]*e want to be professional technicians and not political appointees*." (Emphasis added.) Id., pp. 67–68.