BEACH, J., dissenting. I respectfully dissent. In my opinion, the proposition that the terms of the collective bargaining agreement may trump well defined statutory provisions regarding the appointment of public officials is startling and unsettling. Accordingly, I believe that the arbitration panel acted with manifest disregard of the law.

The position of the plaintiff, the town of Marlborough, was adequately, though perhaps not optimally, presented to the arbitration panel. The panel specifically recognized in its award the town's reliance on General Statutes § 9-187 (a) and the argument that the statute provided for terms of office correlative to those of the selectmen. Specifically, the panel acknowledged the town's argument that where "a conflict between a collective bargaining agreement and a statute exists, the statute trumps the conflicting provisions of the collective bargaining agreement. In this case, this means that the [t]own would have been permitted to terminate the [a]ssessor as a result of her non-reappointment, notwithstanding any 'just cause' provisions of Article 24 [of the collective bargaining agreement]." The panel, nonetheless, rejected the town's position, expressly because the grievant was not an elected official and "the statute is silent as to the definition of a [t]own [o]fficial.[1]

The town adhered to its position in the trial court; it urged that the award should be vacated by virtue of General Statutes § 52-418 (a) (4). It argued that the arbitrators had exceeded their powers, in manifest disregard of the law, by not recognizing that § 9-187 (a) patently described the term of town officers and that assessors were included in the term "town officers" by virtue of General Statutes (Rev. to 2007) § 9-185[2] and § 5.2 of the town charter. The trial court, after recognizing the position of the town, stated that "[n]o authority has been cited, that in the situation of this case, a state statute or charter provision would override the specific language of a collective bargaining agreement. Moreover, no specific language in the state statute or charter appears to be so overriding."

I believe that the statutory scheme is clear. Section 9-187 (a) provides in relevant part that "[w]hen not otherwise prescribed by law, the terms of those town officers appointed by the board of selectmen shall expire on the termination date of the term of the board of selectmen appointing the officers." General Statutes (Rev. to 2007) § 9-185[3] at all relevant times referred to assessors as town officers who were to be elected unless "otherwise provided by special act or charter . . . ." The town charter included § 5.2, which stated that "the [s]electmen shall appoint qualified persons to the following offices to serve at the direction of the

[s]electmen . . . . 5.2.1 Assessor."

Case law to the effect that specific statutory provisions may indeed override terms of a collective bargaining agreement similarly is clear. For example, *Board of Trustees* v. *Federation of Technical College Teachers*, 179 Conn. 184, 196–98, 425 A.2d 1247 (1979), held that the state statutory scheme prescribing sick leave provisions could not be overridden legally by the terms of a collective bargaining agreement. State officials entering into a collective bargaining agreement did not have the authority to waive or otherwise to nullify the policy expressed by the legislature. Id., 196–98. The argument of the defendant, AFSCME, Council 4, Local 818-052, that the terms of a collective bargaining agreement override charter provisions is similarly misplaced: although there is authority that such an agreement may trump civil service *rules*; see General Statutes § 7-474 (f); it may not prevail over a contrary statutory scheme, and, in any event, it prevails only "on matters appropriate to collective bargaining . . . ." General Statutes § 7-474 (f). Cases such as *Broadnax* v. *New Haven*, 284 Conn. 237, 244–50, 932 A.2d 1063 (2007), rationally limit the extent to which bargaining provisions lawfully may modify statutory schemes.

The means by which citizens select their public officers is a matter of policy as determined by law. Even if the town, intentionally or not, submitted the issue to arbitration, the arbitration panel acted in manifest disregard of the law in reaching its conclusion.[4] Accordingly, I would remand the case to the trial court with direction to vacate the award.

I respectfully dissent.

[1] Section 9-187 (a) does not refer to town "officials" in any event but, rather, to town "officers."

[2] Section 9-185 was amended in 2010 to delete reference to assessors. Public Acts 2010, No. 10-84, § 3.

[3] See footnote 2 of this dissenting opinion.

[4] In reaching this conclusion, I, of course, express no opinion on the policy question of whether an assessor should be a political appointee or should be protected by civil service provisions. The General Assembly has amended § 9-185, such that an assessor apparently is no longer by state law a town officer and subject to the terms of office set forth in § 9-187 (a). See footnote 2 of this dissenting opinion. For that reason, the argument that clear public policy prevents judicial enforcement of the award, assessed de novo, has lost its appeal. Nonetheless, I believe that the law clearly provided at the time of the award that an assessor was, by state law, clearly a town officer subject to the terms provided in § 9-187 (a).