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The ''officially released'' date that appears near the beginning of each opinion is the date the opinion will be published in the Connecticut Law Journal or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the ''officially released'' date appearing in the opinion. In no event will any such motions be accepted before the ''officially released'' date.

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VERTEFEUILLE, J., dissenting. I agree with the majority that the testimony of Paul Pinto was both relevant and not cumulative. I disagree, however, with the majority's conclusion that the arbitrator's exclusion of Pinto's testimony substantially prejudiced the defendant, The Kasper Group, Inc. In my view, the exclusion of Pinto's testimony, in light of the other evidence, did not substantially prejudice the plaintiff, the city of Bridgeport and, accordingly, I conclude that the arbitrator's decision to exclude this evidence was not misconduct. Because I conclude that the arbitrator did not commit misconduct, I, unlike the majority, would reach the plaintiff's argument that the trial court's judgment should be affirmed on the alternate grounds that the enforcement of the arbitration award would violate public policy. Nevertheless, I conclude that both of the plaintiff's alternate grounds to affirm the trial court's judgment lack merit. I therefore respectfully dissent and would reverse the judgment of the trial court and remand the case to that court with direction to grant the defendant's application to confirm the arbitration award and to deny the plaintiff's application to vacate the arbitration award.

I

At the outset, I note my agreement with the majority's determination that substantial prejudice arises if the excluded evidence would have been likely to alter the outcome if it had been introduced. See *Daley* v. *McClintock*, 267 Conn. 399, 403, 838 A.2d 972 (2004) (new civil trial required only when trial court's evidentiary ''ruling [likely] would [have] affect[ed] the result''); *Hoteles Condado Beach* v. *Union De Tronquistas Local 901*, 763 F.2d 34, 40 (1st Cir. 1985) (vacating arbitrator's award because evidence excluded was ''central and decisive'' to proffering party's claim). I disagree, however, with the majority's application of this rule to the present case. The majority concludes that Pinto's testimony ''very likely'' would have altered the outcome of the arbitration because he had testified in a related criminal trial against the plaintiff's then mayor, Joseph Ganim, that: (1) it was his job to do whatever he had to do in order to continue the flow of work to the defendant; (2) he had engaged in a widespread corruption scheme that resulted in him getting every contract he wanted; and (3) he had procured major municipal contracts including ''some school jobs.'' I disagree with the majority's conclusion because the prejudice of excluding evidence cannot be determined in a vacuum, but must be evaluated in light of the other evidence that was before the arbitrator. See *Newark Stereotypers' Union No. 18* v. *Newark Morning Ledger Co.*, 397 F.2d 594, 599 (3d Cir.) (declining to vacate arbitrator's

award because ''it cannot be said as a matter of law that [the excluded evidence] was decisive or that its exclusion was seriously harmful *in the light of the other evidence in the case*'' [emphasis added]), cert. denied, 393 U.S. 954, 89 S. Ct. 378, 21 L. Ed. 2d 365 (1968); see also *Vasquez* v. *Rocco*, 267 Conn. 59, 71–72, 836 A.2d 1158 (2003) (in determining whether improperly excluded evidence was harmful, ''we necessarily must view that impropriety in the context of the totality of the evidence adduced at trial''). I conclude, for several reasons, that Pinto's testimony, viewed in light of the other evidence, does not make it likely that the arbitrator would have determined that the plaintiff met its burden in establishing that the West Side School contract was procured illegally.

First, there was no evidence at all offered during the arbitration showing that Ganim was involved in any way with the award of the West Side School contract to the defendant.[1] The lack of evidence regarding Ganim's involvement is revealing in light of Pinto's testimony that Ganim was responsible for selecting the defendant for each of the major municipal projects that he had obtained in return for bribes, including the ''school jobs.''

Second, Pinto testified that Ganim, in return for bribes and kickbacks, would bypass the proper selection procedures to award projects to the defendant. In particular, Pinto detailed how Ganim directed the contracts for the construction of a ballpark for a minor league baseball team and an indoor hockey arena to the defendant outside of the normal bidding and selection process. Yet, no evidence was presented to the arbitrator demonstrating that the proper selection process had not been followed for the West Side School contract. Indeed, it appears that the proper selection process was followed. John Marsilio, the plaintiff's director of facilities, described, in his testimony during the arbitration, the proper selection procedure for a design professional firm as including advertisement, review of submittals from firms, and selection. Further, he testified that as part of the selection process a ''short list'' of firms may be asked to make presentations. There was undisputed testimony that, in the selection of the design professional for the West Side School, the plaintiff advertised for bids, the defendant submitted a proposal and its qualifications, the plaintiff placed the defendant on a short list to present its proposal, the defendant presented its proposal, and subsequently the school building committee (committee) selected the defendant for the project.

Third, the majority suggests that Pinto may have been motivated not to testify during the arbitration in order not to jeopardize his plea bargain deal. See footnote 11 of the majority opinion. Pinto may also have been similarly motivated to be a strong witness for the gov-

ernment in order to not risk his plea deal. This motivation could have led the arbitrator reasonably to discount some of Pinto's sweeping statements that ''there was not a contract that we wanted or actively sought that we did not get,'' and that he got ''any job contract or outcome that I needed to get and I was successful in all of them.''

Fourth, despite Pinto's testimony that he illegally obtained ''some school jobs,'' the United States Attorney did not pursue additional criminal charges against Ganim or Pinto with regard to any school contracts. Although prosecution of such criminal charges would have required a higher burden of proof than in a civil proceeding, the failure to pursue additional criminal charges for any school contracts undercuts Pinto's claim to have obtained them through bribery. Thus, the arbitrator also reasonably could have discounted Pinto's testimony that he illegally obtained ''some school jobs'' as the result of either an imprecise memory or Pinto's desire to embellish the scope of the bribery scheme to increase his value as a government witness.

Fifth, Pinto's broad statements that he got every contract he wanted do not necessarily mean that the defendant obtained all of its contracts through bribery. For example, Patrick M. Rose, the senior vice president of the defendant, testified during the arbitration that he ''has a contract in hand . . . for the [plaintiff].'' This contract was not mentioned in Pinto's testimony or implicated in Pinto's information or Ganim's criminal indictment. In addition, Pinto admits in his testimony that when he went to work for the defendant, the plaintiff was already the defendant's largest client. Thus, Pinto's testimony would not necessarily establish that the defendant could have been selected for a municipal contract only through bribery, as opposed to on the merits of its bid.

Sixth, even if the arbitrator fully credited Pinto's admission that he obtained ''some school contracts'' illegally, the arbitrator was not required to conclude that the West Side School contract was among them. The majority acknowledges that Patrick Rose testified during the arbitration hearing that, in addition to the West Side School, the defendant worked on two other schools in Bridgeport, as well as a regional vocational agricultural school. See footnote 10 of the majority opinion. Thus, it was not a certainty, particularly in light of the complete absence of evidence of Ganim's involvement in the selection of the defendant for the West Side School contract, that the arbitrator would have concluded that the West Side School contract was procured illegally.

I therefore conclude that, even if Pinto's testimony had been admitted into evidence, the arbitrator nevertheless could have concluded that the defendant failed to meet its burden of proving its defense that the con-

tract was illegally procured. The defendant therefore was not substantially prejudiced by the exclusion of that testimony.

I also disagree with the majority's conclusion that the arbitrator's exclusion of Pinto's testimony does not find support in the rules under which the arbitration was conducted. Arbitration is a creature of contract and in that contract the parties can agree to the rules under which an arbitrator will decide the dispute. See *Stratford* v. *International Assn. of Firefighters, AFL-CIO, Local 998*, 248 Conn. 108, 121, 728 A.2d 1063 (1999). The majority observed that the parties' submission to arbitration included a provision under which the parties agreed to arbitrate the dispute in accordance with the construction industry arbitration rules of the American Arbitration Association (arbitration rules). See footnote 12 of the majority opinion. Under the arbitration rules, if evidence is submitted after the conclusion of the hearing, ''[a]ll parties *shall* be afforded an opportunity to examine and respond to such documents or other evidence.''[2] (Emphasis added.) American Arbitration Association, Construction Industry Dispute Resolution Procedures (1999 Ed.) rule R-32, pp. 28–29. Thus, if the arbitrator had admitted Pinto's testimony, he would have been required to allow the defendant, after twelve days of hearings spanning nearly nineteen months, additional time to examine and respond to this new evidence. In addition, the arbitration rules provide the arbitrator with the discretion to ''reject evidence deemed . . . to be . . . of slight value compared to the time and expense involved.'' Id., rule R-31. Accordingly, I conclude that the arbitrator reasonably may have determined that, based on the timing of the plaintiff's motion, the limited value of Pinto's testimony in light of the other evidence adduced during the arbitration, and the fact that the arbitration proceeding had been initiated nearly two years earlier,[3] admitting Pinto's testimony simply was not worth the risk of additional delay in concluding the proceedings. See *Alexander Julian, Inc.* v. *Mimco, Inc.*, 29 Fed. Appx. 700, 703 (2d Cir. 2002) (concluding that arbitrator did not commit misconduct in denying adjournment because opposing party may have been prejudiced by delay in concluding proceedings); *Riddle* v. *Wachovia Securities, LLC*, United States District Court for the District of Nebraska, Docket No. 8:05CV87 (December 12, 2005) (determining that arbitrator did not commit misconduct in refusing to grant party's motion for continuance when arbitrator possibly could have concluded that opposing party would have been unfairly prejudiced because arbitration already pending for one year).

The majority expresses doubt about the extent of any delay that admitting Pinto's testimony would have caused in bringing the arbitration proceedings to a conclusion. Specifically, in footnote 13 of its opinion, the

majority "question[s] . . . in light of Pinto's refusal to testify in the first instance, the extent, if at all, to which he would have responded to that evidence." If the majority is suggesting that the defendant would not have responded if Pinto's testimony was admitted into evidence, I disagree. First, Pinto would have played no role in the defendant's decision to respond to Pinto's testimony because, by the time of the arbitration, Pinto was no longer a shareholder of the defendant. Thus, Pinto's potential criminal liability likely would not have been a concern to the defendant in its decision to respond to his testimony. Second, the parties zealously contested this dispute throughout the arbitration proceedings as evidenced by the fact that it lasted nearly nineteen months and generated more than 2100 transcript pages and more than 100 exhibits. Third, the defendant was pursuing a claim for substantial damages that resulted in an award of $155,507.36. These factors lead to the conclusion that the defendant would have continued to pursue this claim as vigorously as it had throughout the prior proceedings.

Alternatively, if the majority is suggesting in the previously set forth quoted statement that the delay would have been minimal because Pinto likely would have refused to testify for the defendant in its response to the submission of his testimony from the Ganim trial, I also disagree. I believe that admitting Pinto's testimony would have delayed further the conclusion of the arbitration proceedings even if Pinto had again refused to testify because the arbitrator would have been required to, at the very least, give the defendant time to review the entire transcript of Pinto's testimony and any other relevant evidence from the Ganim trial, and to submit pertinent excerpts to the arbitrator. Further, the defendant may also have decided to call witnesses or adduce other evidence to attack Pinto's credibility and undermine the allegations he made in his testimony.

II

Because I conclude that the arbitrator did not commit misconduct, I reach the plaintiff's alternate grounds to affirm the judgment of the trial court. Specifically, the plaintiff argues that the arbitrator's award should be vacated because its enforcement would violate two public policies. First, the plaintiff claims that enforcement of the award would violate the public policy against binding a municipality to an agreement entered into by its unauthorized agent. Second, the plaintiff argues that enforcement of the award would violate the public policy against enforcing a contract that was illegally procured. I conclude that both of the plaintiff's alternate grounds for affirmance lack merit.

This court will vacate an arbitrator's award if the award violates a clear public policy. *Garrity* v. *McCaskey*, 223 Conn. 1, 6, 612 A.2d 742 (1992). In deciding whether to vacate the arbitrator's award on this

ground, a court ''is not concerned with the correctness of the arbitrator's decision but with the lawfulness of enforcing the award. . . . Accordingly, the public policy exception to arbitral authority should be narrowly construed and [a] court's refusal to enforce an arbitrator's interpretation of [a contract] 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. . . . The party challenging the award bears the burden of proving that illegality or conflict with public policy is clearly demonstrated. . . . Therefore, given the narrow scope of the public policy limitation on arbitral authority, the plaintiff can prevail in the present case only if it demonstrates that the [arbitrator's] award clearly violates an established public policy mandate.'' (Internal quotation marks omitted.) *State* v. *AFSCME, Council 4, Local 387, AFL-CIO*, 252 Conn. 467, 474–75, 747 A.2d 480 (2000).

On the basis of the foregoing, this court's analysis proceeds in two steps: First, it must be determined ''whether an explicit, well-defined and dominant public policy can be identified. . . . If so, [we] then [decide] if the award violated the public policy.'' (Citation omitted; internal quotation marks omitted.) *MedValUSA Health Programs, Inc.* v. *MemberWorks, Inc.*, 273 Conn. 634, 656, 872 A.2d 423, cert. denied sub nom. *Vertrue, Inc.* v. *MedValUSA Health Programs, Inc.*, U.S. , 126 S. Ct. 479, 163 L. Ed. 2d 363 (2005); *State* v. *AFSCME, Council 4, Local 387, AFL-CIO*, supra, 252 Conn. 476. It should be noted, however, that this court has ''been wary about vacating arbitral awards on public policy grounds because implicit in the stringent and narrow confines of this exception to the rule of deference to arbitrators' determinations, is the notion that the exception must not be interpreted so broadly as to swallow the rule.'' (Internal quotation marks omitted.) *MedValUSA Health Programs, Inc.* v. *MemberWorks, Inc.*, supra, 657.

A

Turning to the plaintiff's first alternate ground for affirmance, I conclude that it lacks merit because, even if I were to assume, arguendo, that this state has an explicit, well-defined, and dominant public policy against enforcing contracts entered into by a municipality's agent who lacked the authority to bind the municipality, the plaintiff's claim seeks to disturb the arbitrator's factual findings in violation of this court's traditional deference to the arbitrator's factual findings. Although this court reviews de novo whether an arbitrator's award is clearly violative of public policy; *State* v. *AFSCME, Council 4, Local 387, AFL-CIO*, supra, 252 Conn. 475–76; *Schoonmaker* v. *Cummings & Lockwood of Connecticut, P.C.*, 252 Conn. 416, 429, 747 A.2d 1017

(2000); we still ''adhere to the long-standing principle that findings of fact are ordinarily left undisturbed upon judicial review.'' *Schoonmaker* v. *Cummings & Lockwood of Connecticut, P.C.*, supra, 432; see also *State* v. *AFSCME, AFL-CIO, Council 4, Local 2663*, 257 Conn. 80, 95, 777 A.2d 169 (2001) (court deferred to arbitrator's factual findings in review of whether award violated public policy). The arbitrator, in the present case, did not set forth explicitly his findings of fact and was not required to do so. *Almeida* v. *Liberty Mutual Ins. Co.*, 234 Conn. 817, 825, 663 A.2d 382 (1995). The arbitrator did, however, specify that he was awarding the defendant ''contract damages,'' which indicates that he found, as a factual matter, a breach of either an express or implied in fact contract.[4] Accordingly, the arbitrator, as a predicate to finding a breach of contract, had to have found that the committee had either express or apparent authority to enter into the West Side School contract. See *Fennell* v. *Hartford*, 238 Conn. 809, 813, 681 A.2d 934 (1996) (no agent of common council ''has power to bind the municipal corporation by contract, unless duly empowered by . . . authority conferred by the common council'' [internal quotation marks omitted]); 10 E. McQuillin, Municipal Corporations (3d Ed. Rev. 1999) § 29.17, p. 321 (municipality is not bound by contract entered into by its agent ''unless it manifestly appears that the agent is acting within the scope of his or her authority, or he or she is held out as having authority to do the act''). Thus, the arbitrator necessarily found that the committee had either the implied or apparent authority to bind the municipality. See *Giametti* v. *Inspections, Inc.*, 76 Conn. App. 352, 364, 824 A.2d 1 (2003) (despite lack of express finding of fact, implying from trial court's finding for plaintiff on merits of negligent misrepresentation claim that trial court found that plaintiff relied on misrepresentation because reliance is element of negligent misrepresentation).

''Whether a particular act . . . was authorized by the city, by any previous delegation of power . . . is a question of fact . . . .'' (Internal quotation marks omitted.) *Oklahoma City* v. *Tuttle*, 471 U.S. 808, 836–37 n.8, 105 S. Ct. 2427, 85 L. Ed. 2d 791 (1985); see also *Updike, Kelly & Spellacy, P.C.* v. *Beckett*, 269 Conn. 613, 636, 850 A.2d 145 (2004) (''nature and extent of an agent's authority is a question of fact for the trier where the evidence is conflicting or where there are several reasonable inferences which can be drawn'' [internal quotation marks omitted]); *Fireman's Fund Indemnity Co.* v. *Longshore Beach & Country Club, Inc.*, 127 Conn. 493, 498, 18 A.2d 347 (1941) (implied authority is ordinarily question of fact). In addition, ''[t]he issue of apparent authority is one of fact, requiring the trier of fact to evaluate the conduct of the parties in light of all of the surrounding circumstances.'' *Lettieri* v. *American Savings Bank*, 182 Conn. 1, 9, 437 A.2d 822 (1980). In the present case, the question of whether the commit-

tee had implied or apparent authority to bind the municipality is a finding of fact with regard to which I would defer to the arbitrator. Declining to review the factual findings of an arbitrator is consistent with our admonition to construe narrowly the public policy grounds for vacating arbitration awards lest this exception swallow this court's rule of deference to arbitrators' determinations. *MedValUSA Health Programs, Inc.* v. *MemberWorks, Inc.*, supra, 273 Conn. 657. If this court were to engage in a review of the arbitrator's factual findings each time a dissatisfied party to an arbitration could make a colorable claim that the award implicates an explicit, well-defined, and dominant precedent of our case law, then an arbitrator's award would likely mark the beginning of litigation and not the resolution of the parties' dispute. Such a review would be inconsistent with the well settled principle that: ''[B]ecause we favor arbitration as a means of settling private disputes, we undertake judicial review of arbitration awards in a manner designed to minimize interference with an efficient and economical system of alternative dispute resolution.'' (Internal quotation marks omitted.) *United States Fidelity & Guaranty Co.* v. *Hutchinson*, 244 Conn. 513, 519, 710 A.2d 1343 (1998). I therefore conclude that the award did not violate public policy because the arbitrator implicitly found that the committee, as an agent of the plaintiff, had authority to enter into the contract.

B

Turning to the plaintiff's second alternate ground for affirmance, I conclude that this claim also lacks merit because, even if I again were to assume, arguendo, that there exists an explicit, well-defined, and dominant public policy against enforcing illegally procured contracts, I would defer to the arbitrator's factual findings under this court's standard of review of the narrow public policy exception. See part II A of this opinion. Thus, I would not review the correctness of the finding, implicit in the arbitrator's award, that the contract was not illegally procured. See *Connecticut Importing Co.* v. *Janowitz*, 128 Conn. 433, 436, 23 A.2d 514 (1941) (whether circumstances surrounding contract show that it was induced illegally is question of fact). The plaintiff contended throughout the arbitration that the West Side School contract was illegally procured. The arbitrator's award in favor of the defendant reveals his clear rejection of this defense. Even if I were to consider the evidence excluded by the arbitrator, I would nevertheless conclude that this evidence was insufficient to prove clearly that the West Side School contract was obtained illegally. See part I of this opinion. I therefore conclude that the plaintiff's second alternate ground also lacks merit.

I therefore respectfully dissent.

[1] Unlike the cases the majority discusses in which the arbitration award was vacated because of the arbitrator's decision to exclude certain evidence,

Pinto's testimony was not the *only* possible source of evidence that the West Side School contract was procured illegally. For example, in *Tempo Shain Corp.* v. *Bertek, Inc.*, 120 F.3d 16, 20–21 (2d Cir. 1997), the court vacated the arbitration award because the arbitration panel denied the party challenging the award the opportunity to present the testimony of its *only* witness with knowledge of the alleged misrepresentations that were the basis of the parties' dispute. Likewise, in *Hoteles Condado Beach* v. *Union De Tronquistas Local 901*, supra, 763 F.2d 36–37, 40, the court vacated the arbitration award ordering the employer to reinstate its terminated employee because the arbitrator refused to consider the transcript of the prior testimony of the employer's *only* witness to the conduct that allegedly justified its dismissal of the employee. See also *Hall* v. *Eastern Air Lines, Inc.*, 511 F.2d 663, 664 (5th Cir. 1975) (affirming decision vacating award upholding moving party's discharge from employment because board refused to consider moving party's evidence of his defense which would, if true, be complete defense to his discharge); *Gallagher* v. *Schernecker*, 60 Wis. 2d 143, 150–51, 208 N.W.2d 437 (1973) (affirming trial court's order vacating award because arbitrators excluded all of moving party's witnesses).

In the present case, the plaintiff's claim that the contract was void ab initio was based on the theory that, as part of a bribery and kickback scheme, Ganim directed the school building committee (committee) to select the defendant for the West Side School contract. Accordingly, someone either on or affiliated with the committee had to have knowledge of Ganim's involvement in the decision to select the defendant. Yet, the plaintiff, despite opportunities to do so, never attempted to elicit any testimony from members of the committee about Ganim's involvement in the award of this contract. In particular, the plaintiff examined John Marsilio, who was a member of the committee and who sent the letter to the defendant requesting that it make a presentation for the West Side School project, but failed to ask if Ganim was involved in any way with the selection of the defendant for this project. The plaintiff also examined Ronald Pacacha, an associate attorney for the plaintiff municipality, regarding the bidding process for the West Side School contract, but did not inquire if Ganim was involved in awarding the contract to the defendant. Finally, the record reveals that besides Marsilio there were at least six other members of the committee, as it originally was comprised, and that only one of the six members would have been unavailable to testify during the arbitration. Therefore, I conclude that the circumstances surrounding the arbitrator's decision to exclude Pinto's testimony are not nearly as compelling as the circumstances that existed in *Tempo Shain Corp.* and *Hoteles Condado Beach*, in which the parties challenging the arbitrators' awards were deprived of producing their only evidence on the disputed claims.

[2] Failure to abide by rule R-32 of the arbitration rules would have exposed any subsequent award to the risk of being vacated on these very same grounds. See *Manitowoc* v. *Manitowoc Police Dept.*, 70 Wis. 2d 1006, 1014–15, 236 N.W.2d 231 (1975) (upholding arbitrator's decision not to consider evidence submitted with party's posthearing brief because proffering party did not seek to reopen proceedings to consider new evidence and "[f]airness in arbitration certainly demands that each party have notice and an opportunity to review the statutorily relevant evidence").

[3] The submission to arbitration was dated March 23, 2001, and the plaintiff's motion to admit Pinto's testimony to the arbitrator was dated March 10, 2003.

[4] Indeed, in an earlier part of its brief to this court, the plaintiff argues that the arbitrator's use of the phrase "contract damages" in the award indicates that he found there to be an operative contract between the parties.