DOCKET NO. NNHCV-22-6123502-S : STATE OF CONNECTICUT
:
JAMIE MATURO : SUPERIOR COURT
:
: JUDICIAL DISTRICT OF NEW HAVEN
V. :
: AT NEW HAVEN
:
TOWN OF EAST HAVEN : April 17, 2024

MEMORANDUM OF DECISION

APPLICATION TO VACATE ARBITRATION AWARD (#100.31)

I.

STATEMENT OF CASE AND PROCEDURAL HISTORY

"The plaintiff, Jamie Maturo (plaintiff), was employed by the defendant, Town of East Haven (defendant) in an administrative position. When the pandemic hit in March 2020, Maturo was not required to report to work for approximately six (6) weeks and the Town continued paying her while she was not working. However, not only did Maturo receive her salary and benefits, even though not working, she also applied for and was paid almost $4,000 in unemployment benefits. When the Town discovered this conduct it put Maturo on paid administrative leave; had its outside counsel investigate; and held a pre-termination hearing under *Cleveland Board of Education* v. *Loudermill*, 470 U.S. 532, 105 S. Ct. 1487., 84 L. Ed.2d 494 (1985), providing Maturo with the opportunity to tell her side of the story. After considering all the documents and information presented to him, the Loudermill Hearing Officer, Attorney

Jeffrey Donofrio, recommended that Maturo's employment with the Town be terminated. Based on that recommendation East Haven's Mayor terminated Maturo's employment with the Town.

"Within twenty (20) days of the plaintiff's termination, the union filed a grievance with the State Board of Mediation and Arbitration (SBMA) pursuant to the Collective Bargaining Agreement (CBA) between the Town and Union. Thereafter, the Town and Union entered a 'Memorandum of Agreement' (MOA) to resolve the matter through arbitration with a private arbitrator pursuant to the Labor Arbitration Rules of the American Arbitration Association (AAA) instead of the SBMA. The MOA provides in relevant part:

"2. The Town and the Union agree the Town shall transfer the arbitration hearing . . . from the [SBMA] to arbitrator Michael Ricci within seven days of the complete execution of this Agreement.

"4. The arbitration hearing shall be conducted in person and in accordance with the labor Arbitration Rules of the American Arbitration Association.

"5. The Town and Union agree that the arbitration hearing will be conducted in private. . . .

"7. The agreed upon issue for . . . the [Grievant Maturo] shall be:

> a. Was [Maturo] terminated for just cause? If not, what shall the remedy be?
>
> b. The arbitrator shall have the power to fashion a remedy that would make [Maturo] whole. This includes, but is not limited to, reinstatement of employment and backpay to include lost benefits. He shall also have the power to issue a ruling that provides for severance pay, but the Union and Town agree that this additional remedy power shall not prohibit the arbitrator from granting reinstatement of employment to an individual. In addition, the Town and Union agree that this additional remedy power shall not prohibit or diminish the arbitrator's power to grant back pay to include lost benefits.

“8. The Town and Union agree that the decision of the arbitrator shall be binding upon the Town, Union and [Maturo] during the life of this agreement, unless the same is contrary to law.

Def. Ex. A.

“Based on the MOA the Town and Union proceeded to arbitration. Maturo’s arbitration was consolidated with hearings relating to two other Town employees who also collected unemployment benefits while being paid by the Town. The arbitrator, Michael Ricci, heard five days of testimony from seven witnesses and received and considered sixty-one exhibits. The union representative appeared for the Union and the Town was represented by its labor counsel. The President of Maturo’s Union was present at the hearing each day.

“In a thirty-six-page decision, the arbitrator determined that Maturo was terminated for just cause and denied the grievance. The arbitrator concluded that Maturo improperly filed for unemployment benefits while she was being paid and she provided no reason to mitigate the discipline. The arbitrator further found that the burden was met that there was cause for Maturo’s termination, and that the Town’s discipline was not unreasonable, arbitrary, or capricious.

“The arbitrator’s award was issued on May 2, 2022. On May 18, 2022, Maturo filed an application to vacate the arbitrator’s award. In her application to vacate the award, Maturo allege[d] that prior to May 2, 2022, she, as a member of Local 1303-159 of Council 4 AFSCME AFL-CIO and the respondent Town entered into a written agreement for arbitration. On May 2, 2022, the arbitrator, pursuant to the agreement, made a written award and the defendant was duly notified of the award. Pursuant to said arbitration award, the arbitrator found that Maturo was terminated for just cause from her position in the Town of East Haven. The arbitrator imperfectly executed his power in that he failed to issue a mutual, final, and definite award on the subject

matter submitted to him, he disregarded the law on the issue submitted, and his award violated public policy.

"On July 19, 2022, the Town filed a motion to dismiss the application for lack of subject matter jurisdiction on grounds that Maturo was not a party to the MOA or the arbitration itself and therefore lack[ed] standing to seek vacatur." *Maturo* v. *Town of East* Haven, Superior Court, judicial district of New Haven, Docket No., CV-22-6123501-S (May 30, 2023, *Wilson, J.*). On May 30, 2023, this court denied the defendant's motion to dismiss.

A remote hearing was held on the plaintiff's motion to vacate on July 14, 2023. At the conclusion of the hearing, the court ordered the parties to submit post-trial briefs. Plaintiff's brief was due on September 29, 2023, and defendant's reply was due on October 30, 2023. On December 11, 2023, the plaintiff filed a motion to extend the time for filing her post-trial brief to December 30, 2023, which the court granted. The defendant filed its brief on February 9, 2024.

As grounds for her motion, the plaintiff claims that the arbitrator failed to 1) issue a mutual, final, and definite award on the subject matter submitted to him; 2) he disregarded the law on the issue submitted and 3) his award violated public policy.

II.

LEGAL ANALYSIS

A.

The Arbitrator Did Not Exceed His Authority and the Award was Mutual, Final and Definite.

The plaintiff claims that the arbitrator failed to 1) issue a mutual, final, and definite award on the subject matter submitted to him; 2) he disregarded the law on the issue submitted and 3) his award violated public policy. The court will address the merits of all three grounds in turn.

"[A] claim that the arbitrators have exceeded their powers may be established under § 52–418 (a) (4) in either one of two ways: (1) the award fails to conform to the submission, or, in other words, falls outside the scope of the submission; or (2) the arbitrators manifestly disregarded the law." *AFSCME, Council 4, Local 2663* v. *Department of Children and Families*, 317 Conn. 238, 251, 117 A.3d 470 (2015).

Regarding the plaintiff's claim that the arbitrator failed to issue a mutual, final, and definite award on the subject matter, the court concludes that the arbitrator's award conformed with the submission. General Statutes § 52-418 (a) (4) provides in relevant part: "Upon the application of any party to an arbitration, the superior court for the judicial district in which one of the parties resides or, in a controversy concerning land, for the judicial district in which the land is situated or, when the court is not in session, any judge thereof, shall make an order vacating the award if it finds any of the following defects: (4) if the arbitrators have exceeded their powers or so imperfectly executed them that a mutual, final and definite award upon the subject matter submitted was not made." *AFSCME, Council 4, Local 2663* v. *Department of Children and Families*, supra, 317 Conn. 251.

In *AFSCME, Council 4, Local 1303-325* v. *Town of Westbrook*, 309 Conn. 767, 779-80, 75 A.3d 1 (2013), the Supreme Court outlined the limited judicial role in review of arbitration awards under Section 52–418 (a) (4): "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.' . . . . [T]he 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.' . . . 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.'

"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. . . .' Ultimately, '[n]either a misapplication of principles of contractual interpretation nor an erroneous interpretation of the agreement in question constitutes grounds for vacatur.' . . . '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. . . .'" (Citations omitted.) Id.

The Supreme Court stressed that the parties had bargained to submit disputes to arbitration, not litigation, so courts must defer so long as an award draws its essence from the collective bargaining agreement: "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. . . .' 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.' . . . 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. . . .' " (Citations omitted.) *AFSCME, Council 4, Local 1303-325* v. *Town of Westbrook*, supra, 309 Conn. 780-81.

The plaintiff has the burden to satisfy Section 52–418 (a) (4) and must show more than mere disagreement with the arbitrator's interpretation of the collective bargaining agreement to vacate the Award: "[a] mere difference of opinion as to the construction of the contract does not establish that the arbitrator[] exceeded [his] authority." (Citations omitted; internal quotation marks omitted.) Id., 784.

The Town and Union entered a MOA to resolve Maturo's grievance through arbitration with a private arbitrator pursuant to the AAA instead of the SBMA. In her application to vacate the award, Maturo does not challenge the terms of the MOA, but rather acknowledges that she was a member of the Union, and that the Union entered into an agreement with the Town to resolve her grievance. She asserts that the arbitrator exceeded his authority because the award did not conform to the submission to which the Union and Town agreed. Indeed, in her application to vacate and brief in support thereof she specifically refers to the submission that was agreed to in the MOA, and to which she claims the arbitrator failed to conform. Accordingly, the court will review the MOA, and the award and compare the award to the submission

contained therein to determine if the arbitrator's award conforms to the submission. The MOA provides in relevant part:

"2. The Town and the Union agree the Town shall transfer the arbitration hearing . . . from the [SBMA] to arbitrator Michael Ricci within seven days of the complete execution of this Agreement.

"4. The arbitration hearing shall be conducted in person and in accordance with the labor Arbitration Rules of the American Arbitration Association.

"5. The Town and Union agree that the arbitration hearing will be conducted in private. . .

"7. The agreed upon issue for . . . the [Grievant Maturo] shall be:

> a. Was [Maturo] terminated for just cause? If not, what shall the remedy be?
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> b. The arbitrator shall have the power to fashion a remedy that would make [Maturo] whole. This includes, but is not limited to, reinstatement of employment and backpay to include lost benefits. He shall also have the power to issue a ruling that provides for severance pay, but the Union and Town agree that this additional remedy power shall not prohibit the arbitrator from granting reinstatement of employment to . . . [Maturo]. In addition, the Town and Union agree that this additional remedy power shall not prohibit or diminish the arbitrator's power to grant back pay to include lost benefits.

"8. The Town and Union agree that the decision of the arbitrator shall be binding upon the Town, Union and [Maturo] during the life of this agreement, unless the same is contrary to law." Def. Ex. A.

"The authority of an arbitrator to adjudicate the controversy is limited only if the agreement contains express language restricting the breadth of issues, reserving explicit rights, or conditioning the award on court review. In the absence of any such qualifications, an agreement is unrestricted." *Industrial Risk Insurers* v. *Hartford Steam Boiler Inspection & Ins. Co.*, 258 Conn. 101, 109, 779 A.2d 737 (2001). The MOA provided for arbitration under these

circumstances. See Def. Ex. A. There was no language in the MOA restricting the breadth of issues, reserving explicit rights, or conditioning the award on court review. Accordingly, the arbitration submission was unrestricted.

"[U]nder an unrestricted submission, the arbitrators' decision is considered final and binding; thus, the courts will not review the evidence considered by the arbitrators nor will they review the award for errors of law or fact." *Harty* v. *Cantor Fitzgerald Co.*, 275 Conn. 72, 80 (2005). The Supreme Court explained the limited nature of judicial review in *AFSCME, Council 4, Local 2663* v. *Department of Children and Families*, supra, 317 Conn. 250-252 & n. 8, stating: "In *Harty*, we explained that our standard of review 'best can be understood when viewed in the context of what the court is permitted to consider when making this determination and the exact nature of the inquiry presented. Our review is limited to a comparison of the award to the submission. Our inquiry generally is limited to a determination as to whether the parties have vested the arbitrator[] with the authority to decide the issue presented or to award the relief conferred. With respect to the latter, we have explained that, as long as the arbitrator['s] remedies were consistent with the agreement [he was] within the scope of the submission.' " Id.

Here, the Award conforms to the submission. The question presented to the arbitrator was: "Was [Maturo] terminated for just cause? If not, what shall the remedy be?" The Award held the discipline was just and denied the grievance. The Award is consistent with the submission. Comparing the arbitrator's Award to the submission, the arbitrator did not exceed his authority and the Award was mutual, final, and definite.

B.

Public Policy

In support of her argument that the arbitrator's award violated public policy, the plaintiff claims that she was confused as to whether to apply for unemployment benefits, and her conduct during this time was because of the pandemic. In her memorandum in support of her motion to vacate, she makes a general reference to Governor Lamont "declar[ing] a public health emergency and civil preparedness emergency throughout the state pursuant to [General Statutes §§] 19a-131a and 28-9. . . ." Pl. Mem., p. 4. The plaintiff does not cite to any specific executive order issued by the Governor. The plaintiff argues that the arbitrator's award "violated public policy as not considering the facts of [her] conduct or misconduct in light of the unique nationwide pandemic . . . whose impact affected [her] conduct in the case." Id. The plaintiff claims that "her confusion over whether or not she should have accepted unemployment benefits was due to the pandemic [and that] there was never any evidence offered as to [her] intent to defraud the Town. [She argues] that a finding of 'Just Cause' ignores the realities of the pandemic world in the Spring of 2020 and thus, her termination was unreasonable as violating public policy." Id.

In the case of an unrestricted submission, our Supreme Court has recognized three grounds for vacating an award: "(1) the award rules on the constitutionality of a statute . . . (2) the award violates clear public policy . . . [and] (3) the award contravenes one or more of the statutory proscriptions of General Statutes § 52-418." *Industrial Risk Insurers* v. *Hartford Steam Boiler Inspection & Ins. Co.*, 273 Conn. 86, 94, 868 A.2d 47 (2005). The first exception does not apply, and the court has concluded that the arbitrator's award did not violate § 52-418 (a) (4).

The court therefore must now determine whether the award violates public policy as claimed by the plaintiff.

As just stated, an arbitrator's award may be vacated if it violates clear public policy. *Industrial Risk Insurers* v. *Hartford Steam Boiler Inspection & Ins. Co.*, supra, 273 Conn. 94. This rule is an exception to the general rule restricting judicial review of arbitral awards. Id. The exception, however, is "narrowly construed and . . . 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] view that public policy exceptions to arbitral authority should be narrowly construed finds support in . . . *United Paperworkers International Union, AFL–CIO* v. *Misco, Inc.*, 484 U.S. 29, 44, 108 S.Ct. 364, 98 L.Ed.2d 286 (1987), [where] the United States Supreme Court concluded that a policy against the operation of dangerous machinery by persons under the influence of drugs or alcohol, while 'firmly rooted in common sense,' did not permit a court to set aside an arbitration award. . . . Therefore, the award must be 'clearly illegal or clearly violative of a strong public policy.' . . . Furthermore, '[t]he party challenging the award bears the burden of proving that illegality or conflict with public policy is clearly demonstrated.' . . .

"Thus, in the face of a challenge to an arbitral award on public policy grounds, [the court should] engage in a two step process: First . . . determine whether an explicit, well-defined and dominant public policy can be identified. . . . If so, [the court] then [decides] if the arbitrator's award violated the public policy. . . . [Our Supreme 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. . . .

"[The court has] looked to a variety of sources in determining whether an arbitral award violates a well-defined public policy, and ha[s] cited, as examples of possible sources, statutes, administrative decisions and case law. . . . In those cases in which [the court] [has] vacated an arbitral award on public policy grounds, the public policy has most commonly been grounded in the General Statutes. Rather than requiring that public policy be grounded on a particular type of source, however, in determining whether a party has satisfied its burden of demonstrating the existence of a well-defined public policy, [the court has] instead focused [its] inquiry on whether the alleged public policy is in fact clearly discernible in the purported source. Because they establish the illegality of an act, criminal statutes often provide a clear basis for a public policy. For example, in *Groton* v. *United Steelworkers of America*, 254 Conn. 35, 36–37, 757 A.2d 501 (2000), [the court] affirmed the trial court's decision vacating an arbitration award that reinstated employment of an employee who had been convicted of embezzlement of his employer's funds following a plea of nolo contendere because the award had violated the public policy against embezzlement found in General Statutes § 53a–119 (1), which criminalizes embezzlement by defining it as a type of larceny. The public policy against embezzlement, [the court] held, 'encompasse[d] the policy that an employer may not be required to reinstate the employment of one who has been convicted of embezzlement of his employer's funds, whether that conviction follows a trial, a guilty plea, or a plea of nolo contendere.'. . . [The court] also found a dominant and clearly defined public policy in *State* v. *AFSCME, Council 4, Local 387, AFL–CIO*, 252 Conn. 467, 472–73, 747 A.2d 480 (2000), where [it] affirmed the trial court's decision to vacate an arbitration award that had ordered the reinstatement of a correction officer who had been

convicted of harassment under General Statutes § 53a–183 (a), for placing an anonymous, obscene and racist telephone call to a state legislator from a correctional facility telephone while he was on duty because the award had violated the public policy against harassment as expressed in the statute.

"[The court has] also found public policy clearly defined in noncriminal statutes. For instance, in *Board of Trustees* v. *Federation of Technical College Teachers*, 179 Conn. 184, 187, 425 A.2d 1247 (1979), [it] affirmed the trial court's decision to vacate an arbitration award that had ordered, pursuant to provisions of a collective bargaining agreement between the union and the plaintiff board of trustees for state technical colleges, that full-time faculty members employed by the board who worked 171 days per year were entitled to accrue fifteen days of sick leave per year. [The court] concluded that the award violated the public policy codified in General Statutes § 5–247(a) that those faculty members were entitled to only twelve and one-half sick days per year. . . . In *State* v. *New England Health Care Employees Union*, supra, 271 Conn. at 138, 855 A.2d 964, [the court] held that General Statutes §§ 17a–238 (b) and (e), 17a–247b (a) and 17a–247c (a) established a clearly defined and dominant public policy of protecting department of mental retardation clients from mistreatment, and that the policy was not violated when an arbitrator ordered the reinstatement of an employee who was found to have abused a client.

"Statutes have not been the exclusive source from which [the court] [has] found clear statements of public policy. [The court] also [has] looked to city charters and, on one occasion, to the Rules of Professional Conduct. In *Waterbury Teachers Assn.* v. *Furlong*, 162 Conn. 390, 423, 294 A.2d 546 (1972), [the court] concluded that a city charter provision provided a sufficient basis to establish a well-defined and dominant public policy. In that case, [the court] affirmed the

trial court's decision to vacate an arbitration award limiting a teacher's contribution to the retirement system to 1 percent of her pay in accordance with the union contract. . . . [The court] grounded [its] decision on § 2731 of the Waterbury charter, which provided in relevant part: 'The rate of contributions to be made by a teacher participant of the retirement system shall be three percent of pay.' . . . [The court] agreed with the trial court's conclusion that the award had violated a clearly stated public policy. . . . In *Schoonmaker* v. *Cummings & Lockwood of Connecticut, P.C.*, supra, 252 Conn. 416, 747 A.2d 1017, [the court] looked to the Rules of Professional Conduct as the source for public policy. In that case, [the court] concluded that an arbitrator's finding that the plaintiff had forfeited his right to postemployment benefits by practicing law in violation of a noncompetition provision in a partnership agreement did not violate the public policy of facilitating clients' access to an attorney of their choice embodied in rule 5.6 of the Rules of Professional Conduct. . . . In analyzing rule 5.6 to discern the nature of the implicated policy, we focused on 'the purpose of the rule, its express language, and the manner in which courts in other jurisdictions have applied its restriction.'. . . On the basis of that analysis, we concluded that the purpose of the rule was to ensure clients the freedom of counsel of their choice. Id.

"In other cases, [the court] found that the statute relied upon as a ground for the alleged public policy was too tenuously related to the subject matter to constitute a ground for a clearly defined and dominant public policy. For example, in *State* v. *AFSCME, AFL–CIO, Council 4, Local 2663*, supra, 257 Conn. at 81–82, 777 A.2d 169, [the court] concluded that the state did not meet its burden of proving that an arbitration award that granted overtime pay to staff attorneys for the commission on human rights and opportunities violated what the state claimed was a clear public policy of prohibiting professional employees from receiving overtime compensation.

In arguing for the existence of the public policy, the state pointed to the Federal Fair Labor Standards Act, 29 U.S.C. § 213(a)(1), and the related state statute, General Statutes § 5–245(b). . . . [The court] concluded that the purpose of those statutes is violated when workers are paid less than the amount set forth therein, and that employers do not violate the purpose of the statutes by providing employees with greater benefits than those required. . . . In another case, *South Windsor* v. *South Windsor Police Union Local 1480, Council 15*, supra, 255 Conn. at 802, 770 A.2d 14, [the court] reversed the Appellate Court's judgment vacating an arbitral award and disagreed that the award, which ordered the plaintiff town to reinstate a union member to his position as a police officer for the town, violated 'the specific public policy of a town's control over the fitness for duty of its police force . . . .' . . . [The court] concluded that General Statutes §§ 7–274, 7–276 and 7–294d (a)(10), or § 7–294e–16 (j) of the Regulations of Connecticut State Agencies, all of which establish a town's authority to establish a board of police commissioners and set entry level requirements for town officers, provided a sufficient basis to establish the purported public policy. . . . In analyzing the various statutes and regulations, [the court] concluded that they did not establish an explicit public policy that 'a town has control over termination for fitness for duty of a police officer such as [the officer who had been terminated].' . . .

"Thus, [Supreme Court] case law establishes that, although [the court] ha[s] been willing to find a public policy grounded in a variety of sources, the party seeking to establish the public policy bears a heavy burden of showing the existence of such a well-defined and dominant public policy. Indeed, [the court] ha[s] in the past found a clear statement of that policy in some objectively stated form, such as a statute, city charter or rule of professional conduct. Although . . . a statement in such a form is [not] *always* required as the predicate for the public policy

exception . . . the public policy must be 'explicit, well defined and dominant . . . .'" (Citations omitted; emphasis in original.) *MedValUSA Health Programs, Inc.* v. *MemberWorks, Inc.*, 273 Conn. 634, 655-61, 872 A.2d 423 (2005).

This court's research revealed several Superior Court decisions that addressed whether Governor Lamont's executive orders issued in the wake of the pandemic were the basis of public policy. Although the cases do not specifically address the public policy exception within the context of vacating an arbitration award, the cases are instructive.

In *Colon* v. *Waverly Markets of East Hartford*, Superior Court, judicial district of Hartford, Docket No. HHD-CV-22-6153936-S, (November 3, 2022, *Reed, J.*), the plaintiff filed a one-count complaint for common law wrongful discharge, following his termination by the defendant after he failed to return to work following his diagnosis with COVID-19. The defendant moved to strike the plaintiff's complaint for failing to state a claim upon which relief may be granted. The court was required to decide whether Governor Lamont's Executive Order 7V expressed an important public policy sufficient to support a cause of action for common law wrongful discharge. The court determined that Executive Order 7V did not express a clearly defined public policy and therefore concluded that the plaintiff failed to state an important public policy that had been violated to state a common law cause of action for wrongful termination and granted the defendant's motion to strike.

In his well-reasoned decision, Judge Reed stated: "The Connecticut courts have never found an executive order alone to be the basis of public policy. The courts have found that 'criminal statutes . . . noncriminal statutes . . . city charters . . . as well as the rules of professional conduct governing attorneys . . . ar[e] sources of clearly defined and dominant public policies.' (Citations omitted.) *State* v. *Connecticut State Employees Assn.*, *SEIU Local 2001*, 287 Conn.

258, 274-75, 947 A.2d 928 (2008). Recently, two Superior Court judges have declined to find that an executive order is sufficient to express a public policy for purposes of a common law wrongful termination claim: *Bergeron* v. *R.A. D'Addario Builders, Inc.*, Superior Court, judicial district of Hartford, Docket No. CV-21-6145455-S (April 6, 2022, *Sheridan, J.*) and *Taney* v. *Gaylor*, Superior Court, judicial district of Danbury, Docket No. CV-20-6037141-S (August 31, 2021, *Brazzel-Massaro, J.*). As noted by the court in *Taney*, the duration of the executive orders was temporary, and their adoption was not the result of legislative deliberation and enactment. Moreover, courts in several other states have found that an executive order alone cannot articulate public policy. See *Warner* v. *United Natural Foods, Inc.*, 513 F. Supp. 3d 477 (M.D. Pa. January 13, 2021); *Williams* v. *Virginia State Board of Elections*, United States District Court, Docket No. 3:11CV863 (HEH) (E.D. Va. July 13, 2012); *Amato* v. *Division of Information Technology*, 76 Mass. App. Ct. 1133, 926 N.E.2d 1199, review denied, 458 Mass. 1101, 934 N.E.2d 824 (2010)." Id.

The court further noted that "[a] review of the [Department of Economic and Community Development] DECD guidance that implements Executive Order 7V demonstrates that many of its directives are not mandatory; rather, they are expressed as guidelines with the use of words like "should" and where "possible" or "practical." Moreover, none of these provisions mandated the retention of any employee or forbid employers from maintaining their own standards of attendance or work performance. By their very terms, Executive Order 7V and the DECD guidance were temporary in duration and have since expired. Although the Governor's emergency powers were given broad effect in *Casey* v. *Lamont*, supra, 338 Conn. 479, the Supreme Court recognized that the underlying legislative authority imposed limits on his actions, consistent with the expected temporary duration of any particular emergency. '[T]he governor's

actions have temporal limitations, namely, the period of time the modification or suspension may be enforced is limited to six months . . . any actions the governor takes . . . are temporary . . . he cannot modify or suspend any statutes or regulations permanently.' *Casey* v. *Lamont*, supra, 507-08. The Governor must only take measures that 'are reasonably necessary in light of the emergency to protect the health, safety, and welfare of the people of the state . . . implicated by *this particular* serious disaster.' . . . (Emphasis in original.) Id.

"The plaintiff has not met his 'heavy burden' to show that the Governor's Executive Order 7V expressed a clearly defined public policy that otherwise might be found in legislative enactments, executive regulations or 'judicially conceived notions of public policy.' The Governor acted under a temporary authorization to protect the public during a specific disaster, namely, the COVID-19 pandemic. The statutory authorization for his emergency action, and those measures implemented, should not be read as expressions of broad public policies, ones that have not undergone legislative, regulatory or judicial scrutiny." (Citations omitted.) *Colon* v. *Waverly Markets of East Hartford*, supra, Superior Court, Docket No. HHD-CV-22-6153936-S.

In *Bergeron* v. *R.A. D'Addario Builders, Inc.*, supra, Superior Court, Docket No. CV-21-6145455-S and *Taney* v. *Gaylor*, Superior Court, supra, Docket No. CV-20-6037141-S, both cited by Judge Reed in *Colon*, the trial courts were required to determine whether Governor Lamont's Executive Order 7H was the source of public policy to establish a common law wrongful termination claim. Executive Order 7H stated that "all businesses and not-for-profit entities in the state shall employ, to the maximum extent possible, any telecommuting or work from home procedures that they can safely employ . . . Non-essential businesses or not for profit entities shall reduce their in-person workforces at any work place location by 100%, no later than March 23, 2020 at 8 p.m.".

In both cases, the trial courts held that Executive Order 7H was not a well-defined and dominant public policy. Citing the Supreme Court decision, *State* v. *Connecticut State Employees Assn.*, supra, 278 Conn. 275, both courts reasoned that “[t]he Connecticut courts have never found an executive order alone to [be] the basis of public policy. . . . [and that] the duration of the executive orders was temporary and their adoption was not the result of legislative deliberation and enactment. . . . The plaintiff cites only to Governor Lamont’s Executive Order No. 7H and no other policies, court ruling, or regulations to prove that working remotely during COVID-19 was an important public policy. In contrast to statutes, city charters, and rules of professional conduct, Executive Order No. 7H was issued by the governor as part of his civil preparedness functions and was not deliberated by a legislative body. *Casey* v. *Lamont*, Conn., 2021 WL 1181937 (2021). Further, the Governor’s Executive Order No. 7H is only temporary. Id. Thus, the plaintiff has not met his “heavy burden” of displaying that Executive Order No. 7H, which is temporary in nature and was not deliberated by a legislative body, is a well-defined and dominate public policy. *State* v. *Connecticut State Employees Assn.*, supra, 287 Conn. 275.” *Taney* v. *Gaylor*, Superior Court, supra, Docket No. CV-20-6037141-S; See also, *Bergeron* v. *R.A. D'Addario Builders, Inc.*, supra, Superior Court, Docket No. CV-21-6145455-S.

It is important to note that, in *State* v. *Connecticut State Employees Assn.*, supra, 287 Conn. 275, n. 15, the Supreme Court acknowledged that “[a]lthough we never have concluded that an executive order may serve as the source of a clearly defined and dominant public policy, we see no reason why an executive order may not serve as the source of a public policy, especially in light of our previous conclusions that a rule of professional conduct and a city charter are sources of public policy. Rather, our inquiry focuses on whether the policy is explicit, well-defined and dominant.” Id. Hence, in contrast to *Colon*, *Bergeron* and *Taney*, the court in

Casiano v. *AffinEco, LLC*, Superior Court, judicial district of Hartford, Docket No. HHD-CV-22-6150857-S (November 8, 2022, *Sicilian, J.*) concluded that Executive Order 7V was a clearly defined and important public policy which formed the basis of a wrongful termination action and denied the defendant's motion to strike.

In *Casiano*, the plaintiff brought a common law wrongful discharge claim against the defendant, AffinEco, LLC. He alleged that he tested positive for COVID-19 in May 2020, and was required to quarantine for two weeks pursuant to Governor Lamont's Executive Order 7V and related safe workplace rules promulgated by the DECD. Four days after returning to work on June 15, 2020, the plaintiff was terminated. He alleged that the reason given for his termination was fabricated and that he was terminated because he was diagnosed with COVID-19 and self-quarantined. He alleged that his termination was in violation of public policy as embodied in Executive Order 7V, which was issued pursuant to the Governor's emergency powers under General Statutes §§ 19a-131a and 28-9, and the DECD safe workplace rules promulgated pursuant to Executive Order 7V.

In an equally well-reasoned decision, Judge Sicilian, in *Casiano*, rejected the defendant's argument that an executive order, regardless of the context and circumstances, can never establish an important public policy sufficient to support a claim for wrongful discharge and held that Executive Order 7V was an important public policy sufficient to support the plaintiff's claim for wrongful discharge. He cogently wrote: "General Statutes § 19a-131a authorizes the Governor to declare 'a state-wide or regional public health emergency' and to order the implementation of a 'public health emergency response plan' which could include authorizing the Commissioner of Public Health to 'isolate or quarantine persons' or 'to vaccinate persons.' Section 28-9 authorizes the Governor to proclaim that a civil preparedness emergency exists and

to take 'operational control of any or all parts of the civil preparedness forces and functions of the state.'

"In *Casey* v. *Lamont*, 338 Conn. 479, 258 A.3d 647 (2021), the Supreme Court considered a challenge to the Governor's authority to issue executive orders during the civil preparedness emergency he declared pursuant to § 28-9 in response to the COVID-19 pandemic. Specifically, the court considered the Governor's Executive Orders that limited certain commercial activities at bars and restaurants in an effort to address the COVID-19 pandemic. The Supreme Court held that the COVID-19 pandemic constitutes a 'serious disaster' pursuant to § 28-9 and that § 28-9 does not constitute an unconstitutional delegation of legislative authority to the Governor. Id., 483, 258 A.3d 647. Although *Casey* did not directly address Executive Order 7V or the safe workplace rules promulgated by the DECD, there is much in that decision that informs this issue before the court.

"*Casey* recognized that, at the time the decision was issued some twenty months ago, 'the world had been in the unyielding grip of a highly virulent infectious disease that, to date, has infected approximately 127 million people worldwide and has killed more than 2.7 million individuals. . . . In Connecticut alone, more than 305,000 people have been infected and more than 7800 have died.' Id., 481-82, 258 A.3d 647. Governor Lamont declared public health and civil preparedness emergencies, and 'promulgated a series of executive orders in an attempt to contain and mitigate the spread of COVID-19.' Id., 484, 258 A.3d 647. The Casey court concluded that 'the General Assembly instructed [the Governor] to exercise the powers delegated to him under § 28-9 broadly for "the protection of the public health"; General Statutes § 28-9 (b) (1); and "to protect the health, safety and welfare of the people of the state . . . ." General Statutes § 28-9 (b) (7).' Id., 492, 258 A.3d 647. The court held that 'the COVID-19 pandemic

constitutes a serious disaster' and that the Governor 'was statutorily authorized to proclaim a civil preparedness emergency,' Id., 498, 258 A.3d 647, and to 'modify or suspend in whole or in part, by order as hereinafter provided, any statute, regulation or requirement or part thereof whenever the Governor finds such statute, regulation or requirement, or part thereof, is in conflict with the efficient and expeditious execution of civil preparedness functions or the protection of public health.' Id. (quoting General Statutes § 19a-131a). The court concluded that § 28-9 'sets forth the General Assembly's policy that the state must be able to mount a rapid and agile response to a "serious disaster," and the executive branch, namely, the governor, is most capable of carrying out that response.' Id., 505, 258 A.3d 647. The legislature specifically authorized the governor to take steps that 'are reasonably necessary in light of the emergency to protect the health, safety and welfare of the people of the state . . .' Id., 508, 258 A.3d 647 (quoting § 28-9 (b) (7)).

"*Casey* also recognized that '[l]egislative oversight [of the Governor's declaration of a public health emergency] has not been altogether lacking.' Id., 514, 258 A.3d 647. The court recognized that a legislative committee was formed to consider the Governor's action and had the right, which it did not exercise, to veto the Governor's declaration. Id., 516, 258 A.3d 647. The legislative committee later took up a motion to disapprove of the Governor's declaration of a public health emergency, but the motion failed. Id. The Casey court took 'this inaction as an indication of the committee's acquiescence in Governor Lamont's actions pursuant to his public health authority.' Id., 516, 258 A.3d 647. 'Although not the equivalent of full legislative ratification, this procedure should significantly ameliorate concerns regarding legislative oversight.' Id., 517, 258 A.3d 647. 'In sum, § 28-9 sets forth the General Assembly's policy that, in the event of a serious disaster, the health, safety and welfare of Connecticut's residents is of

utmost importance . . . [and] affords the governor considerable latitude to employ the "necessary means" for accomplishing that policy objective.' Id.

"Against Casey's analysis demonstrating that Governor Lamont's actions in response to the COVID-19 pandemic were authorized by statute to address a 'serious disaster' threatening the health, safety and welfare of Connecticut residents, and that there was some legislative oversight of those actions, the defendant rests its argument on the proposition that an executive order, regardless of the context and circumstances, can never establish an important public policy sufficient to support a claim for wrongful discharge.

"[The] court acknowledge[d] that two Superior Court judges have rejected wrongful discharge claims based on Governor Lamont's executive orders regarding the COVID-19 pandemic. Those decisions reasoned that the executive orders were 'only temporary' and that the plaintiffs in those cases did not cite to any 'other policies, court ruling, or regulations to prove' that an important public policy was at issue. *Taney* v. *Gaylor*, 2021 WL 4295814, Superior Court, judicial district of Danbury, Docket No. CV-20-6037141-S (August 30, 2021, *Brazel-Massaro, J.*); see also *Bergeron* v. *R.A. Daddario Builders, Inc.*, 2022 WL 1135671, Superior Court, judicial district of Hartford, Docket No. CV-21-6145455-S (April 6, 2022, *Sheridan, J.*) ('The Connecticut courts have never found an executive order alone to [be] the basis of public policy.')." *Casiano* v. *AffinEco, LLC*, supra, Superior Court, Docket No. HHD-CV-22-6150857-S. Judge Sicilian disagreed with those decisions, further reasoning that "[t]he Governor's declaration of public health and civil preparedness emergencies, and his promulgation of executive orders in an effort to protect public health in the face of 'the unyielding grip of a highly virulent infectious disease' that has killed millions of people worldwide and thousands in Connecticut are a far cry from the sort of routine executive orders that, for example, establish a

commission to plan for the 250th anniversary of the founding of the United States, Executive Order 22-2, or that creates a Workforce Council to coordinate workforce training, Executive Order 4.

"Executive Order 7V required every workplace in Connecticut to take measures to reduce the transmission of COVID-19 and tasked the Commissioner of the DECD, in consultation with the Commissioner of Public Health, to issue 'legally binding statewide rules prescribing . . . additional protective measures . . . .' The DECD issued such rules, which state that employees who have symptoms of COVID-19 should notify their supervisor and stay home. The plaintiff in this case alleges that he was terminated because he complied with these rules. The Supreme Court's decision in *Casey* recognizes and approves the legislature's grant of authority to the Governor to address the 'serious disaster' created by the COVID-19 pandemic by issuing executive orders to protect the health, safety, and welfare of the public." Id.

As pointed out in *Casiano*, our Supreme Court has acknowledged that there is no reason why an executive order may not serve as the source of a public policy, so long as the policy is explicit, well-defined, and dominant. See *State* v. *Connecticut State Employees Assn.*, supra, 287 Conn. 275. After review of *Colon*, *Bergeron*, *Taney* and *Casiano*, four well-reasoned and thorough decisions, Judge Sicilian's analysis persuasively demonstrates that the Governor's Executive Orders issued during the pandemic, more specifically, Executive Order 7V, within the context and circumstances presented before him, served as the source of an explicit, well-defined, and dominant public policy to form the basis of a common law wrongful termination claim. This court is therefore persuaded by the court's reasoning in *Casiano*.

While this court agrees with Judge Sicilian's decision in *Casiano*, the plaintiff, here, has not cited to any specific Executive Order that is relevant to the context and circumstances of this

case, and that she followed, which would serve as a source of public policy to mitigate her conduct. The plaintiff broadly references the Governor's declaration of a public health emergency and civil preparedness emergency throughout the state without citing to one specific Executive Order that is applicable here. The plaintiff is merely using the pandemic to justify her misconduct.

Contrastingly, in *Casiano*, Executive Order 7V required every workplace in Connecticut to take measures to reduce the transmission of COVID-19 and tasked the Commissioner of the DECD, in consultation with the Commissioner of Public Health, to issue "legally binding statewide rules prescribing . . . additional protective measures . . . ." *Casiano* v. *AffinEco, LLC*, supra, Superior Court, Docket No. HHD-CV-22-6150857-S. The DECD issued such rules, which state that employees who have symptoms of COVID-19 should notify their supervisor and stay home. The plaintiff in *Casiano* alleged that he was terminated because he complied with these rules.

Moreover, any consideration of public policy in this case would lead the court to conclude that the award must be upheld. There is a well-defined public policy against theft and fraud. "[T]he statutory, regulatory and decisional law of Connecticut evinces an explicit and well-defined public policy against public corruption in all of its forms; and in favor of imposing strong ethical standards on government officials. (Citations omitted.) *City of New Haven* v. *AFSCME, Council 4, Local 3144*, 338 Conn. 154, 173, 257 A.3d 947 (2021). Moreover, "[Connecticut's] compelling public policy of not tolerating the knowing misappropriation of state funds by state officials or employees cannot be disputed. General Statutes § 53a–119 (6), which explicitly proscribes such conduct, represents an unequivocal legislative articulation of this policy. The public policy of discouraging fraud generally is firmly rooted in our common

law as well." (Citations omitted.) *State* v. *Council 4, AFSCME*, 27 Conn. App. 635, 641, 608 A.2d 718 (1992).

Accordingly, the plaintiff has not met her "heavy burden" to show that there was a specific, Executive Order put into place to address COVID-19 and which expressed a clearly defined public policy that otherwise might be found in legislative enactments, executive regulations or judicially conceived notions of public policy that is applicable to the present case.

III.

CONCLUSION

For the foregoing reasons, the plaintiff's motion to vacate the arbitrator's award is denied.

Juris No. 421279

Wilson, J.