

LYNDHURST EDUCATION :  
ASSOCIATION, ET AL., :  
 :  
PETITIONERS, :  
 : COMMISSIONER OF EDUCATION  
V. :  
 : DECISION  
BOARD OF EDUCATION OF THE :  
TOWNSHIP OF LYNDHURST, :  
BERGEN COUNTY, :  
 :  
RESPONDENT, :  
 :  
AND :  
 :  
TMC SERVICES, INC., :  
 :  
INTERVENOR-RESPONDENT. :  
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SYNOPSIS

Petitioning Education Association and 21 former Board of Education employees alleged that the process used by the Board in subcontracting out custodial, maintenance and bus transportation services to TMC Services Inc. for the 2002-2005 school years violated the public school bidding laws, and, as a consequence, the legal rights of the 21 individual petitioners whose employment was terminated upon implementation of the contract. Petitioners asked that the Commissioner order the Board to cease and desist from continuing with the contract; declare the contract null and void; order petitioners' reinstatement to their previous positions; and order that petitioners be made whole with respect to back pay, benefits, and emoluments.

The ALJ concluded that petitioners did not have standing to pursue allegations of violation of bidding laws, particularly where the remedy sought was primarily private monetary compensation. The ALJ further concluded that even if the contract in question had been found defective, that would not in itself constitute illegal dismissal of the employees terminated as the result of a lawful decision to subcontract so as to entitle them to reinstatement and back pay. Finally, the ALJ noted that the contract was due to expire and was not expected to be renewed, so that the matter had additionally become moot. The ALJ noted that his decision should not be construed as a willingness to condone or ignore material procedural defects in the public bidding process, but, rather, as recognition that these must be challenged in the appropriate manner.

The Commissioner adopted the Initial Decision as the final decision in this matter.

This synopsis is not part of the Commissioner's decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

OAL DKT. NO. EDU 1408-03  
AGENCY DKT. NO. 345-10/02

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have petitioners' exceptions and the reply thereto filed by the Board of Education (Board) in accordance with *N.J.A.C.* 1:1-18.4. Neither exceptions nor replies were filed by Intervenor-Respondent TMC Services, Inc. (TMC).

On exception, petitioners urge rejection of the Initial Decision, which, they object, focuses on issues of standing, jurisdiction and appropriateness of individual remedy without ever reaching the merits of petitioners' claims. Petitioners contend that, contrary to the findings of the Administrative Law Judge (ALJ): 1) There is no conclusive proof of cancellation of the TMC contract by the Board so as to moot the appeal; 2) the contract between the Board and TMC is patently illegal under the public

school bidding laws and must be declared void rather than left intact on grounds of the type relied upon by the ALJ; 3) petitioners do, in fact, have standing to bring the pleaded claims to the Commissioner of Education, who has primary jurisdiction over education laws including the public school bidding laws and applicable State Board regulations; and 4) under the circumstances of this matter, it is entirely appropriate for petitioners to seek both the public remedy of contract avoidance and the individual remedy of making whole those employees wrongfully terminated pursuant to the voided contract. (Petitioners' Exceptions at 1-13)<sup>1</sup>

In reply, the Board relies upon and references the arguments of its prior submissions, and it further asks that the record reflect that TMC's contract with the Board has, indeed, been terminated, and that such contract will, in fact, not be renewed. (Board's Reply at 1)<sup>2</sup> In response to the Board's confirmation of cancellation, petitioners counter that the Board could have invoked the contract's 60-day termination clause to end it effective October 12, 2005, but did not, so that

The illegal contracts continue (*sic*), as does the illegal removal of employees that resulted from it. The remedy of back pay and reinstatement is still viable even if the contract eventually lapses. All contracts end, that does not nullify the harm they generated during their term. Dismissal for mootness will only instruct the school districts of this state to litigate for as long as possible so that they can achieve their illegal goal with no sanction. (Petitioners' Letter dated August 26, 2005)

Upon his own independent review and consideration, the Commissioner concurs with the ALJ that petitioners do not have standing to allege violation of the

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<sup>1</sup> Because petitioners' arguments in support of these contentions are substantially similar to those made at the OAL and were fully considered by the ALJ, the Commissioner does not detail them here.

<sup>2</sup> Notwithstanding the provisions of *N.J.A.C.* 1:1-18.4(c), the Board includes with its exceptions copies of its official resolution terminating the contract as of November 19, 2005 and mailing receipts for notice of such termination to TMC. Petitioners did not object to submission of these documents, and responded to them as subsequently set forth.

public school contracts law, nor could any monetary relief be awarded them if they did. Similarly, the Commissioner concurs that violation of the bidding laws, even if proven by a party with standing, would not result in a finding that petitioners were “illegally dismissed” within the meaning of *N.J.S.A.* 18A:6-30. Therefore, even if the ALJ had not concluded that this matter was moot by virtue of termination of TMC’s contract with the Board, there would be no basis on which to order the requested relief or direct further proceedings.<sup>3</sup>

Accordingly, for the reasons expressed therein, the Initial Decision of the OAL dismissing the Petition of Appeal is adopted as the final decision in this matter.

IT IS SO ORDERED.<sup>4</sup>

ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 9, 2005

Date of Mailing: September 12, 2005

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<sup>3</sup> The Commissioner echoes the ALJ’s statement, in the Initial Decision at 7 (Note 1), that: “This view should not be construed as a willingness by the undersigned to condone or ignore material procedural defects in the public bidding process,” but that where challenges to such actions are to occur, they must be made in the appropriate manner and by appropriate parties.

<sup>4</sup> This decision may be appealed to the State Board of Education pursuant to *N.J.S.A.* 18A:6-27 *et seq.* and *N.J.A.C.* 6A:4-1.1 *et seq.*