

#489-14 (OAL Decision: Not yet available online)

AAA SCHOOL LLC / EL ELDESOUKY, :
PETITIONER, : COMMISSIONER OF EDUCATION
V. : DECISION
PASSAIC COUNTY EDUCATIONAL :
SERVICES COMMISSION, :
RESPONDENT. :
_____ :

SYNOPSIS

Petitioner AAA School, LLC (AAA) – a company that provides transportation services to public schools – owns six (6) seven-passenger minivans. Petitioner has bid several times for business from the respondent, Passaic County Educational Services Commission (PCEC), and has filed several appeals before the Commissioner prior to the instant case. Petitioner was the lowest bidder on four student transportation routes advertised by PCEC in June 2014, but was not awarded same because it was not able to meet the requirement in the specifications that sixteen-passenger yellow school buses be provided. Petitioner filed an appeal on June 26, 2014, challenging respondent’s actions in awarding the contracts to other vendors and simultaneously moved for emergent relief, which motion was subsequently denied. The respondent filed a motion for summary decision. Petitioner responded by expressing that he could not receive justice before the assigned ALJ or the Newark Office of Administrative Law, and requested change in both the forum and the assigned judge.

The ALJ declined to recuse herself, did not address petitioner’s demand for a different forum, and found, *inter alia*, that: there were no genuine issues of material fact, and the matter was ripe for summary disposition; PCEC’s action in rejecting petitioner’s bids was not arbitrary, capricious or unreasonable, as petitioner could not satisfy the specifications for the transportation routes at issue; and based on the Commissioner’s analysis in a previous emergent relief decision involving the same parties, the petitioner herein cannot be successful on the merits. The ALJ concluded that there were no remaining issues to determine in this matter and, accordingly, dismissed the petition with prejudice. Further, the ALJ ordered that petitioner be foreclosed from filing new petitions which raise the same issues.

Upon comprehensive review, the Commissioner, *inter alia*, concurred with the ALJ’s conclusion that the instant appeal must be dismissed as petitioner has not shown that the respondent’s action in awarding transportation contracts to other vendors was arbitrary, capricious or unreasonable. More specifically, there was sufficient basis in the Initial Decision to adopt its conclusion that the appeal must be dismissed. In so deciding, however, the Commissioner noted that the petitioner was justified in objecting to the ALJ’s reliance on the legal analysis set forth in prior orders or decisions on emergent relief applications. The standards for emergent relief are not applicable to the required analysis for resolving the ultimate issues in this case. Accordingly, summary decision was granted to respondent.

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.

December 18, 2014

OAL DKT. NO. EDU 8063-14
AGENCY DKT. NO. 162-6/14

AAA SCHOOL LLC / EL ELDESOUKY, :
PETITIONER, : COMMISSIONER OF EDUCATION
V. : DECISION
PASSAIC COUNTY EDUCATIONAL :
SERVICES COMMISSION, :
RESPONDENT. :
_____ :

Before the Commissioner is a controversy concerning respondent's public solicitation of bids for transportation services. Petitioner was the lowest bidder for four of a group of student transportation routes advertised in June 2014, but he was not awarded same because he did not meet the requirement in the specifications that sixteen-passenger yellow school buses be provided. He filed a June 26, 2014 petition challenging respondent's actions in awarding the contracts to other vendors, and simultaneously moved for emergent relief.

In an order dated July 7, 2014, the Administrative Law Judge (ALJ) assigned to the case denied petitioner's application for emergent relief. On August 21, 2014, the Commissioner: determined that petitioner had failed to meet the standards for emergent relief set forth in *Crowe v. De Gioia*, 90 N.J. 126 (1982); adopted the ALJ's order dismissing petitioner's motion for such relief; and returned the matter to the Office of Administrative Law (OAL) for adjudication of the underlying issues.

On October 17, 2014, respondent filed a motion for summary disposition. The motion emphasized the undisputed fact that the specifications for the routes at the heart of this controversy called for sixteen-passenger yellow school buses, which petitioner does not own or

operate. Petitioner responded to the summary disposition motion by expressing his opinion that he could not receive justice before the assigned ALJ or the Newark OAL.

In petitioner's view, the ALJ had failed to enforce his discovery requests and had therefore made inaccurate factual findings in prior proceedings – which inaccurate findings had, in turn, led to improper legal analysis by the ALJ. As a result, petitioner concluded that a fair adjudication was not possible before the ALJ who had been presiding over the case. He consequently asked that the instant case 1) be sent back to the Commissioner without trial or judgment, OR 2) be heard before another ALJ at another OAL venue, OR 3) be heard before another ALJ in the Newark OAL, OR 4) “in case the previous options are not possible by laws,” be heard in front of the assigned ALJ in the Newark OAL on the scheduled date of November 18, 2014 (this last alternative being, in petitioner's view, “the unfavorable option to me.”)

The ALJ declined to recuse herself and did not address petitioner's demand for a different forum. In her Initial Decision, she found no genuine issues of fact and granted summary disposition to respondent. She determined that respondent's action in rejecting petitioner's bids was not arbitrary, capricious or unreasonable, since petitioner could not satisfy the specifications for the routes here at issue.

Petitioner filed exceptions on November 17, 2014, which – in addition to challenging the ALJ's rejection of his requests for a new ALJ and venue – objected to the fact that he had been denied a plenary hearing, complained that the ALJ relied on the legal conclusions set forth in prior decisions concerning emergent relief, and asked the Commissioner to order that the matter be decided on the merits.

At the outset, the Commissioner notes that appeal of the ALJ's determination that recusal is not warranted in this case must be made to the Chief Judge and Acting Director of the OAL pursuant to *N.J.A.C. 1:1-14.10(j)*. Likewise, the request to transfer the case to another venue is also governed by *N.J.A.C. 1:1-14.10(j)*. However, the Commissioner does see a need to review the matrix created by petitioner's multiple petitions and applications for emergent relief.

One dimension of the matrix of petitioner's appeals is their subject matter. Petitioner has challenged two aspects of respondent's management of the soliciting and awarding of contracts for transportation services: 1) the legitimacy, *vel non*, of the contract specifications, and 2) the appropriateness, *vel non*, of respondent's awards to vendors whose bids were higher than petitioner's bids.

The other dimension of the matrix of proceedings instituted by petitioner is the nature of the standards applicable to each pleading. Clearly, petitioner's motions for emergent relief must be governed by the standards set forth in *Crowe v. DeGioia*, 90 *N.J.* 126 (1982). However, different standards control the adjudication of the underlying merits of the petitions.

Accordingly, petitioner is justified in objecting to any reliance by the ALJ upon legal analyses set forth in prior orders or decisions concerning emergent relief. For instance, the ALJ may not rely on the Commissioner's analysis – in his Decision No. 345-14E – that emergent relief in the instant case was unwarranted. In that decision the Commissioner determined – based solely upon the papers and allegations made concerning the appropriateness of emergent relief – that he could not conclude that petitioner was likely to succeed on his legal claims. Such a determination does not, in and of itself, preclude the possibility that a plenary hearing with full exploration of evidence and legal arguments might change the legal calculus.

Having made that observation, however, the Commissioner finds sufficient basis in the instant Initial Decision to adopt its conclusion that petitioner's challenge to the above-referenced four awards must fail. Petitioner must show by a preponderance of the evidence that it was arbitrary, capricious and/or unreasonable of respondent to award contracts to vendors whose bids were higher than petitioner's bids. The ALJ expressly stated that petitioner had not met that standard. Petitioner could not be awarded the contracts in question because he does not own and operate the sixteen-passenger yellow school buses which the contracts called for in their specifications. As the foregoing is an undisputed fact, summary disposition in respondent's favor was appropriate.

Petitioner contests the appropriateness of summary disposition by maintaining that disputes of certain material facts preclude it. Those facts relate to documents, some or all of which may have been used by respondent to create the specifications for its transportation services solicitation, including the specification regarding sixteen-passenger yellow school buses. Petitioner also seeks to buttress his claim that disputes of fact about the documents preclude summary disposition in this case, by referring to the circumstances of a prior controversy. More specifically, on October 16, 2014, the Commissioner remanded OAL Dkt. No. EDU 10510-14, Agency Dkt. No. 222-8/14, to the ALJ for fact-finding – to ascertain the derivation, nature and purpose of the above-referenced documents, and to determine whether petitioner is correct about their significance. (*See*, Commissioner Decision No. 419-14, October 16, 2014.) This is where the subject matter dimension of the above-referenced matrix comes into play.

The issue at the heart of the instant case is petitioner's challenge to the appropriateness of respondent's contract awards. The issue that precipitated the aforementioned

petition – docketed as EDU 10510-14, Agency Dkt. No. 222-8/14 – was the legitimacy of respondent’s specifications, namely, the requirement of sixteen-passenger yellow buses for most of the transportation routes. As mentioned above, fact-finding on that issue has been ordered, and will be effectuated in the course of the proceedings in that case. The ALJ’s determination in the instant case that petitioner’s bids were appropriately rejected as unresponsive fully resolves the instant controversy. In sum, the Commissioner will not here rehash, seriatim, every legal issue which has been raised by petitioner in every pleading, regardless of whether petitioner designated said issues as the basis for the instant petition.

Accordingly, summary disposition is granted to respondent and the petition docketed as EDU 8063-14, Agency Dkt. No. 162-6/14 is dismissed.

IT IS SO ORDERED.¹

ACTING COMMISSIONER OF EDUCATION

Date of Decision: December 18, 2014

Date of Mailing: December 18, 2014

¹ This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L.* 2008, *c.* 36, *N.J.S.A.* 18A:6-9.1.