

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. On July 31, 2014 it was awarded a contract by respondent Passaic County Educational Services Commission (PCESC) for one transportation route which required this type of vehicle. Petitioner challenges respondent’s determination that it did not qualify to receive contracts for four other routes for which it submitted the lowest bid. Acknowledging that said routes called for 16-passenger yellow school buses, which petitioner does not own or operate, petitioner nonetheless urges that the 16-passenger bus requirement is an unnecessary and prejudicial impediment to its ability to compete. Respondent contends that petitioner has not met any of the standards for emergent relief. It further requests – citing three other petitions and emergent relief applications filed with the Department against PSESC on the “exact same issue of whether PCESC must award petitioner student transportation routes which require 16 passenger yellow school buses when petitioner does not have 16 passenger school buses” – that petitioner be enjoined from “meritless, harassing, and continuous petitions” filed with the Commissioner.

The ALJ found, *inter alia*, that: petitioner failed to show the presence of any of the four standards for emergent relief – *i.e.*, that the petitioner will suffer irreparable harm if relief is not granted, the legal right underlying petitioner’s claim is settled, the petitioner has a likelihood of prevailing on the merits of the underlying claim, and when the equities and interests of the parties are balanced, the petitioner will suffer greater harm than the respondent if relief is not granted; and petitioner’s litigation and re-litigation of the same issue – *i.e.*, petitioner’s contention that it has been discriminated against in the awarding of contracts for bus routes because it owns seven-passenger minivans instead of the requisite 16-passenger yellow school buses – must stop. The ALJ ordered that petitioner’s application for emergent relief, as well as the underlying petition, be dismissed; further, the ALJ ordered that petitioner is foreclosed from filing a new petition which raises the same issues.

Upon comprehensive review, the Commissioner concurred with the ALJ’s determination that petitioner has not met the standards for a grant of extraordinary relief, but did not adopt the ALJ’s summary dismissal of the petition. He found, instead, that there are factual issues in the instant controversy that require resolution and that petitioner has not been afforded a hearing on the merits. Accordingly, the Commissioner remanded the matter to the OAL, not for a re-visitation of legal issues which have already been decided in prior litigation between the same parties, but for an initial decision which addresses disputed material facts and adjudicates the merits. The Commissioner stressed that the burden of proof is on the petitioner to identify specific statutes and/or regulations which he contends have been contravened by 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.

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Before the Commissioner is a controversy concerning respondent’s awards of contracts for transportation services. Upon careful review of the record and proposed Initial Decision of the Office of Administrative Law (OAL), and for the reasons that follow, the Commissioner remands the matter to the OAL for further proceedings.

On June 18, 2014, respondent solicited bids for transportation services for the 2014-2015 school year. The bids were opened on July 31, 2014, and petitioner won a contract for one of the routes. By way of a petition to the Commissioner – filed on August 11, 2014 and transmitted to the Office of Administrative Law (OAL) on August 18, 2014 – petitioner challenged four of the other contract awards. He maintained that as low bidder he should have won those contracts – notwithstanding that they called for sixteen-passenger yellow school buses, which he does not own or operate. An application for emergent relief accompanied the August 11, 2014 petition. On September 5, 2014, the Administrative Law Judge (ALJ) heard argument on the emergent relief motion. The decision issued by the ALJ on the same date both denied the motion and dismissed the petition.

While the Commissioner concurs with the ALJ’s determination that petitioner did not meet the standards for a grant of extraordinary relief, he does not adopt the ALJ’s summary dismissal

of the petition. Petitioner's exceptions, filed on September 19, 2014, reasonably object to the fact that he has been denied a hearing on the merits. While it is true that a number of the issues in this case have previously been adjudicated by both the OAL and the Commissioner, there remain factual issues in the instant controversy that require resolution. For example, petitioner has raised a factual issue regarding two documents, both of which are entitled "Coordinated Student Transportation Information Sheet."

More specifically, in its papers opposing petitioner's application for emergent relief, respondent included a blank form entitled "Coordinated Student Transportation Information Sheet." The form was presented to demonstrate how respondent gathered from the districts the information it needed to determine the type and number of vehicles it should solicit from transportation providers for a given school year. At the bottom of the form is printed the following inquiry:

"Type of Vehicle sending district requires: (Yellow School Bus or Minivan) \_\_\_\_\_  
(If left blank 16 passenger yellow school bus will be provided)"

By way of contrast, petitioner submitted – with his exceptions – a filled-in form which is also entitled "Coordinated Student Transportation Information Sheet." According to petitioner, this filled-in form – which contains information about a special education student – was sent to him by respondent to inform him about the route for which he had won a contract. The form does not include the above quoted inquiry about required vehicles which is printed at the bottom of respondent's exhibit.

Petitioner maintains that respondent's blank form is a fabrication because it conflicts with his own exhibit, which exhibit he assumes is the real form used by respondent to elicit information from the districts about transportation needs. (This assumption is also fueled by the ALJ's rejection of petitioner's request for the production of copies of Coordinated Student Transportation Information Sheets which have been filled-out by the districts and returned to respondent.) Petitioner assumes that since the filled-out "Coordinated Student Transportation Information Sheet" provided to him by respondent did not include a line requesting vehicle

requirements, it must have been respondent – not the districts – which determined the type of vehicles that would be used to transport students. To buttress this argument, petitioner refers to a note which purportedly memorializes a statement from a Prospect Park board member, advising that it is respondent who decides which vehicles to use. In petitioner’s view, respondent’s alleged regulation of the types of vehicles which would be utilized allowed respondent to favor companies which owned and operated sixteen-passenger yellow buses – to the detriment of petitioner and taxpayers, and in violation of unspecified State “rules.”

The foregoing is exactly the type of contested issue which should be settled by fact-finding, based upon witness testimony or, at the least, certifications. Moreover, it is not the only factual issue in the present controversy which has been left unresolved. Accordingly, the Commissioner remands the instant matter to the OAL, not for a re-visitation of legal issues which have already been decided in prior litigation between the same parties, but for an initial decision on the merits – setting forth determinations regarding disputed material facts and legal conclusions which the factual findings implicate. Petitioner has the burden to prove the facts which he alleges, and to identify specific statutes and/or regulations which he contends have been contravened by respondent.

IT IS SO ORDERED. <sup>1</sup>

ACTING COMMISSIONER OF EDUCATION

Date of Decision: October 16, 2014

Date of Mailing: October 16, 2014

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<sup>1</sup> 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*.