

COMPASS GROUP USA, INC., :
D/B/A/ CHARTWELLS, :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

SODEXHO SCHOOL SERVICES, : DECISION
ATLANTIC CITY BOARD OF EDUCATION, :
FREDRICK NICHOLS, SUPERINTENDENT :
OF ATLANTIC CITY SCHOOLS, :
RA SHUN STEWART, INDIVIDUALLY AND :
JOHN DOES A., B., AND C., :

RESPONDENTS. :

SYNOPSIS

Petitioner – formerly the contracted food service provider for the Atlantic City School District – filed an appeal seeking rescission of the food services contract between Sodexho School Services (Sodexho) and the Board for the 2007-08 school year. The petition claimed that the vote by which the contract was awarded was improper as it included the votes of sending district board members, contrary to *N.J.S.A. 18A:38-8.1* and relevant school law decisions. Respondent Sodexho requested legal fees.

The ALJ found that: the initial vote awarding the contract to Sodexho – on May 1, 2007 – was contrary to statute and school law decision; the second vote awarding the contract to Sodexho – on June 26, 2007 – was proper, valid and in accordance with applicable law; the second vote was not arbitrary, capricious, unreasonable, or the result of fraud or mistake.

Upon full review and consideration of the record, the Commissioner adopted the Initial Decision as the final decision in this matter and dismissed the petition. In so doing, she clarified that the Commissioner does not have plenary authority to award counsel fees to a successful complainant in an education controversy.

<p>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.</p>

OAL DKT. NO. EDU 4664-07
AGENCY DKT. NO. 151-6/07

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	:	
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_____	:	

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Exceptions of petitioner Compass Group USA, Inc., D/B/A/ Chartwells (“Chartwells”) and those of respondent Sodexho School Services (“Sodexho”), along with reply exceptions of respondent Atlantic City Board of Education were filed in accordance with the provisions of *N.J.A.C.* 1:1-18.4, and fully considered by the Commissioner in reaching her determination herein.

The parties’ exceptions essentially recast and reiterate their arguments advanced before the Administrative Law Judge (ALJ) below. As it is determined that these were considered and addressed by the ALJ in his decision, they will not be revisited here.

Upon full review and consideration of the entire record, which included a transcript of proceedings conducted at the OAL on August 2, 2007, the Commissioner agrees with the ALJ that the June 26, 2007 vote of the Board (excluding votes of the sending district

members) awarding Sodexo the food service contract for the 2007-08 school year was legal and proper. The Commissioner further concurs with the ALJ – for the reasons clearly presented in his decision – that this vote was neither arbitrary, capricious and/or unreasonable, nor was it the result of fraud or mistake.

Finally, it is noted that Sodexo, in its exceptions, again renews its request for legal fees. In this regard, the Commissioner is compelled to clarify that it is long established that, notwithstanding that the Commissioner of Education “has fundamental and indispensable jurisdiction over all disputes and controversies arising under the school laws[,] *N.J.S.A. 18A:6-9*,” (*Hinfey v. Matawan Regional Board of Education*, 77 *N.J.* 514, 525 (1978)), she does not have plenary authority to award counsel fees to a successful complainant in an education controversy. (*See Balsley v. North Hunterdon Regional High School*, 117 *N.J.* 434, 442-43 (1990); also see *State, Department of Environmental Protection v. Ventron Corp.*, 94 *N.J.* 473 (1983)) As such, the relief sought cannot be granted as a matter of law, as an award of attorney fees or costs of suit is not within the Commissioner’s scope of authority.

Accordingly, the Initial Decision of the OAL is adopted for the reasons detailed therein and the instant petition of appeal is hereby dismissed.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: December 7, 2007

Date of Mailing: December 7, 2007

* 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.*