

EDU # 10755-96
C # 241-98
SB # 61-98
APP. DIV. #A-1714-98T1
M-6122-98

BOARD OF EDUCATION OF THE :
TOWNSHIP OF MIDDLE, CAPE MAY :
COUNTY, :

PETITIONER-APPELLANT, : STATE BOARD OF EDUCATION

V. : DECISION

NEW JERSEY STATE DEPARTMENT OF :
EDUCATION, OFFICE OF COMPLIANCE, :
: :
RESPONDENT-RESPONDENT. :
_____ :

Decided by the Commissioner of Education, June 3, 1998

Decided by the State Board of Education, October 7, 1998

Remanded by the Appellate Division, June 4, 1999

For the Petitioner-Appellant, Cooper, Perskie, April, Niedelman, Wagenheim & Levenson (John R. Armstrong, Esq., of Counsel)

For the Respondent-Respondent, Mary E. Rubinstein, Deputy Attorney General (John J. Farmer, Attorney General of New Jersey)

This matter arose from an audit conducted by the Office of Compliance of the Department of Education (hereinafter "Department"), which led to its administrative determination that the Board of Education of the Township of Middle (hereinafter "Board") had violated the Public Schools Contracts Law, N.J.S.A. 18A:18A-1 et seq., when it entered into certain contracts without the benefit of competitive bids. As a result

of such violation, the Director of Compliance recommended that the Board remit a penalty in the amount of \$138,361 to the Department.

The Board challenged that determination by filing a petition of appeal with the Commissioner of Education, who transmitted the matter to the Office of Administrative Law for hearing. The Board argued that: 1) absent rulemaking, the Commissioner did not have the authority to conduct the audit, 2) even if he had the authority, the Commissioner had not properly delegated it to the Office of Compliance, 3) neither the Commissioner nor the Office of Compliance had the authority to exact the penalty at issue, and 4) fundamental fairness had required that the Office of Compliance articulate the legal and factual basis for its determination before imposing an administrative penalty.

In a summary decision, the Administrative Law Judge (“ALJ”) rejected the Board’s arguments. The ALJ concluded that N.J.S.A. 18A:4-35 granted the Commissioner the authority to conduct the audit or to delegate that function to the Office of Compliance without the necessity of rulemaking. The ALJ also found that the services for which the Board had contracted were not unspecifiable services under N.J.A.C. 6:20-8.1(a) and, as a result, that the Board had violated the Public School Contracts Law when it entered into those contracts without bidding. Finding that recoupment was within the Commissioner’s authority, the ALJ concluded that it was proper for the Department to recoup the \$138,361 in State aid that had been improperly expended by the Board.

The Commissioner adopted the ALJ’s decision and granted the Department’s cross-motion for summary decision. The State Board of Education affirmed the

Commissioner's decision, and the Middle Board appealed to the Appellate Division. However, while the appeal was pending before the Appellate Division, the Department of Education filed a motion for a final remand of the matter. The Appellate Division issued an order granting the Department's motion, and the matter was remanded to the State Board. Accordingly, we remand this matter to the Commissioner for such additional proceedings as may be necessary to dispose of it.

June 7, 2000

Date of mailing _____