

477-03

H.A. DeHART & SONS, :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE : DECISION

TOWNSHIP OF WEST DEPTFORD, :

GLOUCESTER COUNTY, AND :

HOLCOMB BUS SERVICES, INC., :

RESPONDENTS. :

SYNOPSIS

Petitioner, unsuccessful bidder, sought emergent relief enjoining respondent Board from taking further action upon the awarding of a contract for pupil transportation services to respondent bus company, setting aside the award of contract and directing the award to petitioner. Petitioner contended respondent company made changes to its original bid violating the bidding laws.

The ALJ concluded that petitioner should be granted the relief it requested insofar as enjoining the Board from proceeding on the award of the transportation contract to respondent since the legal right for disqualification was settled and the harm to petitioner would be irreparable. The ALJ, however, concluded that awarding the contract to petitioner without an immediate rebidding opportunity for the Board would place an economic burden upon the taxpayers, which may be mitigated through a rebidding for the contract; rebidding eliminates the need to review the contentions of the Third Count of the petition (petitioner did not know that the Board no longer required the successful bidder to bear the cost of a bus route coordinator). The ALJ ordered the bids received on July 17, 2003 rejected and ordered the Board to solicit the receipt of new bids for the 2003-04 school year. The ALJ ordered the remaining issues contained in the petition dismissed as moot.

The Commissioner concurred with the ALJ that, under all of the circumstances, the appropriate resolution of this matter is a prompt rebid, which also serves to moot any remaining matters in dispute.

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.

August 14, 2003

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The record of this matter and the Initial Decision on Motion for Emergent Relief of the Office of Administrative Law have been reviewed. Although applicable rules make no provision for the filing of exceptions to Administrative Law Judge (ALJ) Orders on motion for emergent relief, *N.J.A.C.* 1:1-12.6, Respondent Holcomb’s submission of August 12, 2003¹ has been considered by the Commissioner in rendering his decision herein, as has the Board’s submission of August 13, 2003, since the ALJ’s decision also serves as the OAL’s recommended Initial Decision on the merits pursuant to *N.J.A.C.* 1:1-18.3.

Upon review and consideration, the Commissioner concurs with the ALJ that, regardless of what Respondent Holcomb’s intent may have been, its bid as actually

¹ Respondent Holcomb’s submission seeks a “stay” of the ALJ’s Order to reject all bids and rebid the contract at issue. However, since the ALJ’s ruling serves as a recommendation to the Commissioner and is, in itself, of no force and effect, respondent’s submission is considered as exceptions to the Initial Decision, to be considered by the Commissioner pursuant to *N.J.A.C.* 1:1-18.4 before rendering a final decision. The Board objects to Holcomb’s request for “stay” and urges the Commissioner to decide the matter without delay, but excepts to the ALJ’s recommended order on grounds that any “defect” in Holcomb’s bid, which the Board does not concede, was not material.

submitted is not properly responsive to published specifications governing aides for the designated bus routes.² The Commissioner further concurs that, under all of the circumstances, the appropriate resolution of this matter is a prompt rebid, which also serves to moot any remaining matters in dispute.

Accordingly, for the reasons expressed therein, the Initial Decision of the Office of Administrative Law, directing timely rebid of the contract in dispute and dismissing the remainder of the Petition of Appeal as consequently moot, is adopted as the final decision in this matter.

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

Date of Decision: August 14, 2003

Date of Mailing: August 15, 2003

² In this regard, the Commissioner notes that Holcomb's entries in the "Per Diem Aide/Attendant Cost (If Applicable)" column for routes 308 and 310 ("N/A") are identical to its entries on routes where the Board did *not* require an aide or attendant.

³ 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.*