

AUTOFLEX FLEET, INC.,

Appellant,

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Order No. OR25-03

ORDER

On July 28, 2021, the State Board issued a decision in *AutoFlex Fleet, Inc. v. Montgomery Cnty. Bd. of Educ.*, MSBE Op. No. 21-40 (2021), affirming the decision of the Montgomery County Board of Education (“local board”) denying AutoFlex Fleet, Inc.’s (“AutoFlex”) challenge to the local board’s award of a contract for the provision of a school bus electrification program to Highland Electric Transportation, Inc. (“HET”). On petition for judicial review, the Circuit Court for Montgomery County affirmed the State Board’s decision. *AutoFlex Fleet, Inc. v. Montgomery Cnty. Bd. of Educ.*, Case No. 486843V (April 28, 2022).

On appeal, the Appellate Court of Maryland vacated the judgment of the Circuit Court for Montgomery County finding error for the Circuit Court’s failure to judicially notice the facts that Montgomery County Public Schools (“MCPS”) suspended Mr. Ewald and Mr. Watkins pending criminal investigation into financial misconduct involving an MCPS vendor on the mistaken ground that the Circuit Court could not consider material outside the administrative record.¹ *In the Matter of AutoFlex Fleet, Inc.*, 261 Md. App. 627, 663 (2024)(Case No. 486843V). The Appellate Court further found that MCPS’s announcement of Mr. Ewald’s and Mr. Watkins’ suspensions and the related criminal investigation were superseded by their later guilty pleas, and the Appellate Court took judicial notice of their pleas and proffers. *Id.* at 662-663. The Appellate Court remanded the case and instructed the Circuit Court to remand the matter to the State Board, to in turn remand the matter to the local board for further proceedings consistent with the opinion of the Appellate Court. *Id.* at 689. The Appellate court directed the local board to conduct “administrative review of the augmented evidentiary record” to “consider what, if any, significance such evidence has for this procurement, the resulting HET Contract, and AutoFlex’s challenges to it.” *Id.* at 688-689.

After denying reconsideration, on June 3, 2024, the Appellate Court of Maryland issued a Mandate remanding to the Circuit Court and directing action consistent with the Appellate Court’s Opinion. No. 0539, Sept. Term 2022, CSA-REG-0539-2022. On June 6, 2024, the Circuit Court issued an order vacating its judgment and remanding the matter to the State Board for further remand to the local board. Case No. 486843V. On June 25, 2024, the State Board remanded the matter to the local board for further proceedings consistent with the opinion of the Appellate Court. *See AutoFlex Fleet, Inc. v. Montgomery Cnty. Bd. of Educ.* MSBE Order No. OR24-11 (2024).

On December 20, 2024, the local board advised the State Board that it had conducted administrative review of the procurement matter consistent with the opinion of the Appellate Court. The local board submitted a letter dated December 18, 2024, signed by the local board President, stating that “it found no evidence that the two Former Employees unfairly manipulated MCPS’s procurement

¹ These facts occurred after the issuance of the State Board’s decision.

proceedings or otherwise improperly influenced or impacted MCPS's award of the contract to HET." The letter explains the review as follows:

On August 30, 2024, Stephanie Williams, General Counsel, sent a letter to the Montgomery County Office of the Inspector General ("OIG") asking that the OIG review this matter. The OIG responded on September 16, 2024, indicating that the OIG conducted an investigation into this matter in September 2022 focused on whether MCPS complied with applicable laws, regulations and policy when soliciting and awarding the contract to procure electric school buses. The Board understands that the OIG's review considered whether two Former Employees unfairly manipulated MCPS's procurement proceedings in favor of Highland Electric Transportation ("HET"), whether MCPS had failed to consider or disclose AutoFlex's status as a disabled veteran contractor, or any other pretextual reasons for selecting HET over other bidders. That investigation found no wrongdoing and determined that MCPS appeared to comply with applicable law, regulation and policy in soliciting and awarding the contract.

Following review of the findings of the OIG's prior investigation, the Board determined that ... one remaining issue that had not been reviewed was whether MCPS used any undisclosed criteria in selecting the contract awardee. Accordingly, on November 20, 2024, the Board directed the local superintendent of schools to conduct an administrative review of that issue and ... [i]n closed session on December 5, 2024, the superintendent presented the findings of that review ... that there was no evidence that MCPS used any undisclosed criteria in selecting the contract awardee or applied the criteria to AutoFlex improperly or in a manner that unfairly favored HET.

The September 16, 2024, response from the OIG indicates that the OIG office conducted a "preliminary investigation" that was predicated on a complaint received through the OIG hotline alleging that the contract with HET was improperly awarded and that Charles Ewald and Todd Watkins, who were involved in the HET contract award process, were placed on administrative leave pending an investigation related to the misuse of MCPS funds. The OIG investigation process included review of "relevant documents" and interviews of "MCPS employees and bid review panelists involved with the solicitation and award." In concluding that MCPS "appeared to comply" with applicable law, regulation, and policy in soliciting and awarding the contract, the OIG stated that "[p]articipating panelists reported that they believed the process was fair and impartial and did not recall any conversations that indicated a preference for one vendor over another" and that the "MCPS Procurement and Office of General Counsel staff asserted to us that the procurement followed appropriate procedures." The OIG "did not substantiate that a pre-existing relationship existed between MCPS staff and the vendors."

The OIG response contains no findings of fact and no list of the "relevant documents," reviewed, fails to identify who were the interviewed employees and bid review panelists, and provides no indication whether the interviews were conducted under oath.

On December 24, 2024, the State Board received from AutoFlex an "Opposition Statement of the Appellant" arguing that the local board failed to justify or adequately explain the findings of the administrative review held in closed session on December 5, 2024. It also argued that the local board's reliance on the OIG's "preliminary investigation" which concluded that MCPS "appeared to comply" with the applicable law, regulations, and policy in soliciting and awarding the contract is insufficient to demonstrate that proper administrative review of the matter has been completed. In addition, AutoFlex's Opposition Statement reargues the merits of the case, introduces new facts and arguments, and includes attachments without identifying whether the documents are already a part of the record.

The local board filed a motion to strike AutoFlex's Opposition Statement arguing that the submission goes beyond the scope of the remand and that there is nothing in the Appellate Court's Opinion or Mandate that authorizes AutoFlex to file a motion, brief, or any additional submission in the case. The local board highlights that the remand instructions were directed solely at the local board and its obligation to consider the judicially noticed information concerning the Ewald and Watkins convictions while undertaking its "administrative review of the augmented evidentiary record." AutoFlex responded that stands by its Opposition Statement and "will await further investigation into this matter..." (MacDonald Email 12/29/24).

We strike AutoFlex's Opposition Statement to the extent that it seeks to reargue the case and submit evidence outside of the record. We agree with the local board that neither the Appellate Court, nor the Circuit Court, nor the State Board suggested that AutoFlex should or could be involved in the local board's administrative review of the augmented evidentiary record or be permitted to add anything more to the record at this juncture. The Appellate Court has accepted into the record by judicial notice the Ewald and Watkins pleas and proffers and directed that the local board conduct administrative review of the augmented record, without more.

Regarding the December 18th letter from the local board President advising the State Board of its decision after conducting administrative review, we find the letter deficient in satisfying the remand directive. It is our view that the letter is conclusory in nature and lacks any specificity regarding the facts and issues considered and how the local board analyzed them to reach its decision. We have long held that a local board must convey a basis for its decision in order for the State Board to perform its quasi-judicial function so that it can conduct a meaningful review on appeal. *See Young v. Prince George's Cnty. Bd. of Educ.*, MSBE Op. No. 17-12 (2017); *Catherine H. v. Prince George's Cnty. Bd. of Educ.*, MSBE Op. No. 17-02 (2017); *Brown v. Baltimore City Bd. of Sch. Comm'rs*, MSBE Op. No. 15-18 (2018); *Richardson v. Baltimore City Bd. of Sch. Comm'rs*, MSBE Op. No. 13-29 (2013); *Mohan G. v. Montgomery Cnty. Bd. of Educ.*, MSBE Op. No. 08-15 (2008). We expect a local board to provide a detailed analysis of how the evidence in the record supports its decision. *See Samuel R. v. Anne Arundel Cnty. Bd. of Educ.*, MSBE Op. No. 19-10 (2019). Without such an explanation, it is impossible for the State Board to understand the local board's decision-making and compliance with the Appellate Court's remand instructions.

We point out that the Appellate Court provided the local board with a roadmap of issues for consideration in reviewing the augmented record inclusive of the Ewald and Watkins pleas and proffers, noting:

Such evidence bears on the core credibility and factual disputes central to AutoFlex's challenges to the HET Contract. Patently, the Ewald and Watkins conviction and Proffers could impact a factfinder's view of AutoFlex's claims that MCPS showed favoritism toward HET based on its affiliation with ATB, that it made material mistakes in evaluating competing proposals, and that the Contract is tainted by an appearance of impropriety.

For example, when scoring the HET proposal higher than AutoFlex and two other competitors, did Mr. Ewald or Mr. Watkins factor in their existing off-the-books account with HET's affiliate, ATB? Did Mr. Ewald factor in his theft scheme from the account? Likewise, information relating to the roles played by Mr. Ewald and Mr. Watkins is relevant to AutoFlex's allegations that MCPS made material mistakes in evaluating its proposal, including using unannounced selection criteria, misinterpreting pricing proposals, and misreporting that AutoFlex is not a minority contractor.

Consequently, the local board must review the Contract in light of the adjudicated facts supporting the convictions of Ewald and Watkins who were integrally involved in managing MCPS's bidding process, evaluating responding proposals, and awarding the Contract to HET. In particular, the Appellate Court listed factors to consider whether Ewald and Watkins impacted MCPS's award of the Contract to HET. These factors include whether they unfairly manipulated the procurement proceedings by favoring HET, used undisclosed selection criteria, failed to consider or disclose AutoFlex's status as a disabled veteran contractor, or otherwise asserted pretextual reasons for selecting HET over other bidders. *Id.* at 686-687. It is precisely these factors the State Board expected the local board to consider and decide so the State Board can consider whether these two officials impacted MCPS's award of the contract to HET. The local board's December 18, 2024, letter is insufficient to show how the local board considered these factors and made its ruling for concluding that Ewald's and Watkins' conduct did not unfairly manipulate MCPS's procurement proceedings or otherwise improperly influence or impact MCPS's award of the contract to HET.

Accordingly, for the reasons stated above, it is this 25th day of February 2025, by the Maryland State Board of Education,

ORDERED that this matter is again remanded to the Montgomery County Board of Education to issue a decision with rationale consistent with the Opinion of the Appellate Court of Maryland and consistent with this Order. AutoFlex's Opposition Statement is stricken to the extent that it reargues the merits of the case, introduces new facts, arguments, and evidence.

MARYLAND STATE BOARD OF EDUCATION


Joshua L. Michael
President