

EDU #3339-99
C # 390-99
EDU #1526-00
C # 666-03R
SB # 5-04

ALBERT ZIEGLER, :
 :
 PETITIONER-APPELLANT, : STATE BOARD OF EDUCATION
 :
 V. : DECISION
 :
 BOARD OF EDUCATION OF THE CITY :
 OF BAYONNE, HUDSON COUNTY, :
 :
 RESPONDENT-RESPONDENT. :
 _____ :

For the Petitioner-Appellant, Bucceri and Pincus (Gregory T. Syrek, Esq.,
of Counsel)

For the Respondent-Respondent, Apruzzese, McDermott, Mastro &
Murphy (Robert J. Merryman, Esq., of Counsel)

Remanded by the Commissioner of Education, November 29, 1999

Decided by the Commissioner of Education, December 22, 2003

Albert Ziegler (hereinafter "petitioner"), who holds an instructional certificate with an endorsement in skilled trades, which was issued to him in 1982, filed a petition of appeal with the Commissioner of Education claiming that the Board of Education of the City of Bayonne (hereinafter "Board") had violated his tenure rights when it terminated his employment during the 1998-99 school year on the grounds that he did not have the appropriate certification for the courses he was teaching: Technology 1 (9-12), Shop (9-10), and Maintenance and Repair (9-12). The petitioner had been employed by the Board as a teacher of employment orientation until 1996 when his position was

eliminated as the result of a reduction in force. He was reemployed for the 1997-98 school year.

Cross motions for summary decision were filed, and on October 8, 1999 an administrative law judge ("ALJ") recommended granting the petitioner's motion, concluding that he was entitled to reinstatement. The ALJ determined that the petitioner had achieved tenure in the district and that his certification qualified him for the courses at issue.

On November 29, 1999, the Commissioner rejected the ALJ's conclusion that the issue of the petitioner's entitlement to reinstatement could be resolved in summary fashion. He therefore remanded the matter to the Office of Administrative Law for further proceedings.

In a decision on remand issued on August 8, 2003, the ALJ again concluded that the petitioner was entitled to reinstatement with back pay. The ALJ explained:

Skilled Trades-Employment Orientation reflected a program, which envisioned an evaluation process, a teaching and basic skill phase and an actual hands-on practice of skills.

As originally conceived, Special Needs students would be given a more broad based exposure to various skilled trades than [sic] what is presently occurring at Bayonne High School. However, petitioner argues that the "slimmed down" nature of the exposure does not preclude Ziegler under his certification from teaching the basics of woodworking and carpentry. The testimony of the teachers in this matter, confirmed that those courses, which primarily encompass Special Needs Students (that are now all Special Needs students) taught only rudimentary skills accompanied by rather simple individual projects. The description of Employment Orientation in the fact-sheet indicates "Employment Orientation is designed to develop sound work habits and attitudes in basic vocational and interpersonal skills through the use of vocational evaluation and simulated work in basic vocational instruction."

Ziegler's endorsement as a Teacher of Employment Orientation having been discontinued in 1982 or 1983 indirectly creates the debate involved herein. The absence of the certification leads to an absence of updated requirements. Thus, in the twenty years that Ziegler has had the certification, no attention has been paid to its standards and requirements of its possession. The present duties of teachers of Shop 9, Shop 10, Maintenance and Repair and Industrial Technology are far less demanding when applied exclusively to Special Education students and come just as close to the student anticipated in the course of employment orientation in that employment orientation was in fact designed for Special Education and Special Needs students. The description by the teachers presently teaching the four courses confirms that their duties do not extend much past the rudimentary introduction to skilled trades with an emphasis on woodworking.

Initial Decision, slip op. at 6-7.

On December 22, 2003, the Commissioner rejected the ALJ's recommendation. The Commissioner concluded that the courses at issue were subject area vocational courses requiring appropriate specialized certification and, therefore, were beyond the scope of the petitioner's certification. The Commissioner found that the courses differed in kind, and not merely in degree, from the employment orientation classes the petitioner previously had taught. The Commissioner reasoned:

Shop 9, Shop 10, Maintenance & Repair and Industrial Technology as they are presently taught at Bayonne High School may well be at the lower end of the vocational education spectrum in content level and student capacity, and may share overlapping elements with the third and culminating phase of Employment Orientation as described above. But that does not alter their fundamental nature as specific subject-area courses requiring appropriate subject-area certification, rather than as broad-based introductions to the world of work covered by a generalist endorsement expressly limited in its authorization to exploring the aptitudes and interests of special needs students, enhancing their overall work-readiness, and providing them with introductory exposure to a variety of trades so as to prepare them for entry into actual vocational education programs.

The record in this matter is clear that, as claimed by the Board, Employment Orientation is no longer offered as a discrete program in the Bayonne School District; rather, the District has incorporated elements of Employment Orientation into its regular vocational class structure. But petitioner's qualification to teach Employment Orientation does not concomitantly qualify him to teach the classes into which it has been subsumed....

Commissioner's Decision, slip op. at 18-19. (Footnotes omitted.)

Consequently, the Commissioner concluded that the petitioner did not hold the appropriate certification for the courses he had been teaching in 1998-99, and he dismissed the petition.

The petitioner filed the instant appeal to the State Board. After a thorough review of the record, we reverse the decision of the Commissioner.

The regulations in effect when the petitioner received his certification in 1982 provided that applicants who presented six years of approved full-time experience in a skilled trade were eligible for certification in "Skills trades (Experience Background)" without the requirement of a bachelor's degree. In Polo v. Board of Education of the Vocational Schools of the County of Bergen, decided by the State Board of Education, November 3, 1993, aff'd, Docket #2119-93T2 (App. Div. 1995), we recognized that, although the certification regulations in effect prior to 1984 did not specify the scope of the authorization to teach under the skilled trades endorsement or list any trades under that endorsement, it was evident from the language of the regulations that they were intended to authorize the holder of a skilled trades endorsement to teach trades in which he or she had demonstrated the mandated six years of experience.¹

¹ In so doing, we rejected Mr. Polo's argument that his skilled trades endorsement should extend to all subject areas and trades that he had actually taught under that endorsement.

As in Polo, resolution of the matter now before us is necessarily dependent on whether the scope of the petitioner's skilled trades endorsement encompasses the courses at issue so as to authorize him to teach them. We reiterate in that regard that the regulations in effect in 1982 when the petitioner received his certification did not include a list of authorized trades under the skilled trades endorsement.² Employment orientation was described in a "Fact Sheet" prepared by the Department of Education's Division of Vocational Education in 1985 as:

a significant and integral component of the schools' career development sequence for special needs, handicapped or disadvantaged students. It is designed to assist special needs students to develop sound work habits and attitudes and basic vocational and interpersonal skills through the use of vocational evaluation, simulated work and basic vocational instruction. Because Employment Orientation offers in-school, hands-on vocational experiences, it is the major link between career exploratory and awareness activities and specific vocational training for special needs students.

Stipulation of Facts, Attachment.

The record reveals that the petitioner applied for and was issued a provisional certificate as a "Teacher of Skilled Trades (Employment Orientation)" in March 1981 after he received an offer of employment teaching employment orientation. Documents submitted by the petitioner in support of his application for certification, which are attached to the parties' Stipulation of Facts, verified that he had more than six years

² We note that, contrary to a claim made by the Board in exceptions filed to the report of our Legal Committee in this matter, the listing of specific skilled trades cited by the Board, was reproduced from a certification "handbook" issued by the Department of Education and does not accurately reflect the substance of the applicable regulations. Polo, supra. In contrast to the handbook, the actual certification regulations in effect in 1982, which had been promulgated by the State Board of Education pursuant to the requirements of the Administrative Procedure Act ("APA"), N.J.S.A. 52:14B-1 et seq., simply provided for an endorsement in skilled trades and did not include a list of authorized trades under that endorsement. Since the guidelines in the handbook were not regulations promulgated by the State Board pursuant to the requirements of the APA, they could not serve to authorize the issuance of an endorsement in a specific skilled trade.

full-time experience as a carpenter. In July 1982, the petitioner, on the basis of his documented experience as a carpenter, was issued a standard instructional certificate with a skilled trades endorsement.³

Our review of the record confirms the ALJ's finding that the responsibilities of the courses at issue "do not extend much past the rudimentary introduction to skilled trades with an emphasis on woodworking." Initial Decision, slip op. at 7. As the ALJ found, Shop 9 was taught on a very basic level and focused on the basic skills and tools used in woodworking; Shop 10, which was a progression from Shop 9, also emphasized woodworking; Maintenance and Repair was designed to give special needs students basic instruction in simple repairs that might be the subject of janitorial or general maintenance work, including carpentry, masonry, electrical, painting and decorating; and Industrial Technology was similar to Shop 9 but with more detail, ranging from the use of simple tools to the construction of basic wood joints and other more sophisticated woodworking skills.

By virtue of the petitioner's possession of a skilled trades certification, which was issued to him on the basis of his requisite years of experience as a carpenter, he was authorized to teach skilled trades courses in carpentry. See Polo, supra. Moreover, given the nature of employment orientation, which provides an introduction to the basic skills required in a variety of trades, the holder of a skilled trades endorsement, regardless of the particular experience which qualified him or her for that endorsement,

³ Consistent with the regulations in effect at that time, the petitioner applied for certification in 1981 as a "Teacher of Skilled Trades," Stipulation of Facts, Attachment, and the Department of Education's records indicate that he was issued a standard certificate in July 1982 as a "Teacher of Skilled Trades." Id. Since the regulations promulgated by the State Board of Education pursuant to the Administrative Procedure Act in effect at that time did not authorize the issuance of an endorsement in a specific skilled trade, see, supra, n.2, the fact that the paper certificate issued to the petitioner in 1982 designates his certification to be as a "Teacher of Employment Orientation" is of no moment and has no legal significance.

is authorized by virtue of such certification to teach employment orientation. Since the courses at issue herein were basic skilled trades courses with an emphasis on carpentry, and since the record indicates that Maintenance and Repair, in particular, provided special needs students with an introduction to basic vocational skills, including carpentry, we conclude that the petitioner's skilled trades endorsement authorized him to teach those courses. Given this determination, it is not necessary for us to consider whether the courses at issue bear any similarity to courses the petitioner previously had been assigned to teach.

Accordingly, we conclude that the petitioner was improperly terminated from his tenured employment during the 1998-99 school year. We therefore reverse the decision of the Commissioner and direct the Board to reinstate the petitioner with back pay and emoluments, less mitigation, to a teaching assignment within the scope of his skilled trades certification in accordance with our decision herein. Since the record does not permit a finding with regard to damages, we remand this matter to the Commissioner for the limited purpose of determining the specific amount of damages to which the petitioner is entitled.

We do not retain jurisdiction.

Attorney exceptions are noted.

Ernest P. Lepore abstained.

July 6, 2005

Date of mailing _____