

ALBERT ZIEGLER, :  
PETITIONER, :  
V. : COMMISSIONER OF EDUCATION  
BOARD OF EDUCATION OF : DECISION  
THE CITY OF BAYONNE, :  
HUDSON COUNTY, :  
RESPONDENT. :  
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SYNOPSIS

Petitioner, former shop teacher, alleged the Board violated his tenure rights when it terminated his contract two months into the 1998-99 school year on the assertion that he was not certified for the courses to which he was assigned.

ALJ determined that petitioner was a tenured teacher since he satisfied the requisite criteria for tenure acquisition -- he worked in a position requiring an instructional certificate; he held the appropriate endorsement (an endorsement, here the Teacher of Employment Orientation endorsement, is not invalidated when the Office of Licensing and Credentials discontinues its issuance); and he served the requisite period of time. (*N.J.S.A. 18A:28-5*) Having concluded petitioner was tenured, the ALJ found that petitioner was entitled to be reemployed by the Board since his endorsement permits him to teach courses which the Board continues to offer.

Commissioner concurred with the ALJ that petitioner had acquired tenure, pursuant to *N.J.S.A. 18A:28-5*. Commissioner, however, was not persuaded that the issue of petitioner's entitlement to reinstatement was one which should be resolved in a summary fashion. Commissioner remanded the issue of improper termination and entitlement to reinstatement to the OAL for further fact-finding.

OAL DKT. NO. EDU 3339-99  
AGENCY DKT. NO. 21-2/99

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Both parties filed exception and reply arguments, in accordance with *N.J.A.C.* 1:1-18.4, and these arguments were considered by the Commissioner in issuing his decision.

Upon careful and independent review of the record in this matter, the Commissioner determines to affirm in part, and reverse in part, the recommended decision of the ALJ. Initially, for the reasons carefully outlined by the ALJ in his decision, the Commissioner concurs that, under these circumstances, petitioner has acquired tenure.

However, in order to determine whether the Board improperly terminated petitioner on November 23, 1998 and whether petitioner is entitled to reinstatement to his tenured position of employment (Petition of Appeal at p. 3), it is also necessary to examine what skills are required to be taught, and are actually taught, by a teacher of Shop 9, Shop 10, Maintenance and Repair and Industrial Technology.

In this connection, petitioner asserts that the four courses he taught in the early part of the 1998-99 school year, notwithstanding that they were identified as “Industrial Arts” courses, were essentially “Employment Orientation” courses. Petitioner avers that

[g]iving the course titles such as Shop 9 and Shop 10 does not make them Industrial Arts courses, if, in fact, the curriculum is the same as that taught in Employment Orientation. I prepared Course Requirements for the students in my Maintenance and Repair, Shop 10, Shop 9 and Industrial Technology Classes. (Exhibit UU) These requirements are the same as I have always taught, including my Employment Orientation classes.

The course titles may have changed, but the subject matter is still Employment Orientation. Students in 1998-99 received general introductory or exploratory instruction in various trades. The Board is attempting to make a distinction that has no real difference. \*\*\*\*” (Petitioner’s Certification at p. 13, paragraphs 27 and 28)

The Board, however, maintains its position that the courses, which petitioner was teaching in the 1998-99 school year, prior to his termination, *are* properly designated as Industrial Arts courses, which petitioner is not certified to teach. The Board contends that

It is clear from the descriptions of the Employment Orientation program that the program is a highly structured program designed to evaluate a student’s aptitude, teach skills related to finding a job, develop work habits and provide introductory training in the occupational area suited to the student’s aptitudes and abilities in consultation with the student’s counselor and parent(s). *Such a program does not exist in Bayonne High School.* (emphasis added) (Board’s Post-Hearing Reply Brief at p. 4)

\*\*\* [The courses taught by petitioner in the 1998-99 school year] are not designed to evaluate and profile students based on their individual aptitudes and abilities. Instead, these are basic instructional courses designed to provide students, who are interested, with a minimum of training and knowledge in a particular area such as wood working, carpentry, plumbing, electricity or small appliance repair. (*Id.* at p. 6)

Notwithstanding these assertions, the Commissioner notes that the record shows the following: petitioner's Professional Improvement Plan for the 1995-96 school year was prepared *after* petitioner's position was placed under the auspices of the Industrial Arts program and at that time petitioner was teaching the *same courses* he taught at the time of his termination in 1998.<sup>1</sup> The plan states that petitioner shall strive:

[t]o offer a curriculum of occupational and related academic experiences structured on a highly individual basis and flexible enough to meet the varied needs of the students.

[t]o evaluate each student in terms of his or her employment potential and apply the appropriate instructional techniques to make them employable; to provide a basic introductory course that would span the various skilled trades, to his or her liking. (Petitioner's Certification, Exhibit V)

Additionally, as the ALJ notes, the Board's resolution adopted at its meeting of January 26, 1998, assigned petitioner to the position of "Teacher of Employment Orientation." (*Id.* at Exhibit Z)

Therefore, based on the record as a whole, including the parties' arguments in support of their respective motions for summary decision which clearly dispute the skills which are taught within the Board's Industrial Arts program, as well as their arguments on exception,<sup>2</sup> the Commissioner is not persuaded that the issue of petitioner's entitlement to reinstatement is one which should be resolved in summary fashion, pursuant to *N.J.A.C.* 1:1-12.5.

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<sup>1</sup> Certification of Dr. Richard Malanowski, at p. 2, paragraph 6.

<sup>2</sup> The Commissioner notes, in particular, the Board's argument that the ALJ, "never looked at the actual scope of the employment orientation endorsement; never considered the description of the courses which he now finds that petitioner is authorized to teach; and never explained how courses which are taught by individuals who hold industrial arts and/or teacher of skilled trades certification can now be taught with an employment orientation endorsement. The Administrative Law Judge has, without factual or legal support, concluded that employment orientation is the same as industrial arts. Such conclusion is unsupported factually and legally and is beyond the authority of an Administrative Law Judge." (Board's Exceptions at p. 9)

This matter, therefore, is remanded to the OAL for further fact-finding as necessary to determine (1) the actual duties of, and skills taught by, a teacher of Shop 9, Shop 10, Maintenance and Repair and Industrial Technology within the Board's Industrial Arts Program; (2) whether petitioner's endorsement as a Teacher of Employment Orientation permits him to teach any or all of these courses; and (3) if petitioner *is* entitled to teach any or all of these courses, what back pay and emoluments are now due as a result of his improper termination.

In so remanding, the Commissioner notes that, contrary to the Board's position, *nothing* in the record of correspondence from either the County Superintendent or the Office of Licensing and Credentials provides a reasonable basis for its continued assertion that its decision to terminate petitioner was a "good faith reliance on the advice of Department officials." (Board's Reply at p. 2)

Accordingly, the Initial Decision of the ALJ is affirmed to the extent that the Commissioner concurs that petitioner has acquired tenure, pursuant to *N.J.S.A.* 18A:28-5. As to petitioner's claim that he was, therefore, improperly terminated and is entitled to reinstatement, the Commissioner remands this issue to the OAL for proceedings in accordance with parameters set forth above.<sup>3</sup>

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

November 29, 1999

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<sup>3</sup> 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.* 6:2-1.1 *et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.