

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 ON MOTIONS
 :
 BOARD OF EDUCATION OF THE CITY :
 OF BAYONNE, HUDSON COUNTY, :
 :
 RESPONDENT-RESPONDENT. :
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Remanded by the Commissioner of Education, November 29, 1999

Decided by the Commissioner of Education, December 22, 2003

Decided by the State Board of Education, July 6, 2005

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

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

The petitioner, who holds an instructional certificate with an endorsement in skilled trades, which was issued to him by the State Board of Examiners in 1982, filed a petition with the Commissioner claiming that the Bayonne 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 Bayonne 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.

An Administrative Law Judge (“ALJ”) concluded that the petitioner was entitled to reinstatement with back pay, finding that the duties of the courses at issue did not extend much past the rudimentary introduction to skilled trades with an emphasis on woodworking.

The Commissioner rejected the ALJ’s conclusions and dismissed the petition, concluding that the petitioner did not hold the appropriate certification for the courses he had been teaching in 1998-99. The Commissioner found that the courses at issue were subject area vocational courses requiring appropriate specialized certification and, therefore, were beyond the scope of the petitioner’s skilled trades endorsement.

In a decision issued on July 6, 2005, we reversed the determination of the Commissioner. Stressing that resolution of this matter was necessarily dependent on whether the scope of the petitioner’s skilled trades endorsement encompassed the courses at issue so as to authorize him to teach them, we observed that 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. Although the certification regulations in effect at that time did not specify the scope of the authorization to teach under the skilled trades endorsement or list any trades under that endorsement, we reiterated that 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 had demonstrated the requisite experience. Polo v. Board of Education of the Vocational Schools of the County of

Bergen, decided by the State Board of Education, 94 N.J.A.R.2d (EDU) 36, aff'd, 95 N.J.A.R.2d (EDU) 105 (App. Div. 1995).

Upon review of the record, we found that documents submitted to the Department of Education in support of the petitioner's application for certification verified that he had more than six years full-time experience as a carpenter and that the Department had issued the petitioner a standard instructional certificate with a skilled trades endorsement in July 1982 on the basis of that documented experience. We agreed with the ALJ that the responsibilities of the courses at issue did not extend much past the rudimentary introduction to skilled trades with an emphasis on woodworking. By virtue of the petitioner's possession of a skilled trades certification, which the State Board of Examiners issued to him on the basis of his documented experience as a carpenter, we concluded that he was authorized to teach skilled trades courses in carpentry. Moreover, given the nature of employment orientation, which provides an introduction to the basic skills required in a variety of trades, we concluded that the holder of a skilled trades endorsement, regardless of the particular experience which qualified him or her for that endorsement, was authorized by virtue of such certification to teach employment orientation. Since the courses at issue were basic skilled trades courses with an emphasis on carpentry, we concluded that the petitioner's skilled trades endorsement authorized him to teach them.

Hence, we concluded that the petitioner was improperly terminated from his tenured employment, and we directed the Bayonne Board to reinstate him with back pay and emoluments, less mitigation, to a teaching assignment within the scope of his skilled trades certification. Since the record did not permit a finding with regard to

damages, we remanded this matter to the Commissioner for the limited purpose of determining the specific amount of damages to which the petitioner was entitled.

On July 20, 2005, the Bayonne Board filed the instant motions seeking reconsideration of our decision of July 6 and supplementation of the record with a copy of an employment application submitted by the petitioner to the Board in 1983. The Board contends, inter alia, that the proposed exhibit raises factual questions about the petitioner's work experience as a carpenter.

Upon review of the papers filed, we deny the Board's motions and reaffirm our decision of July 6. We reiterate in so doing that the Department of Education issued the petitioner a standard instructional certificate with an endorsement in skilled trades in 1982 on the basis of documentation submitted in support of his certification application. That documentation, which was stipulated to by the parties during these proceedings, included a Statement of Practical Experience dated March 7, 1981, which was completed by the Department of the Army, 469th Engineer Battalion, verifying that the petitioner had been employed as a carpenter during the period from May 14, 1963 through September 22, 1969. Stipulation of Facts, Attachment.

In its motion to supplement, the Board points to a section of its proposed exhibit in which the petitioner listed under Military Service, "Special Forces (Green Berets)," during the period from May 1963 through September 1969. The Board submits that "[i]t is unclear, how petitioner could have served in the Special Forces as a Green Beret and at the same time worked full-time as a carpenter...." Brief in Support of Motions, at 4.

"A new development or new evidence relating to established facts or a material misapprehension concerning an essential matter which is critical to an agency determination can constitute a reasonable basis for reconsideration by the agency." In

re Trantino Parole Application, 89 N.J. 347, 365 (1982), citing Trap Rack Industries, Inc. v. Sagner, 133 N.J. Super. 99, 110.

In this case, we find that the proposed exhibit, an employment application completed by the petitioner in 1983, is not material to the issue before this agency in this matter, i.e., whether the petitioner's skilled trades endorsement qualified him to teach the courses at issue. It is undisputed that the Department of Education issued him a standard instructional certificate with an endorsement in skilled trades in 1982, and the validity of that certificate was not contested. Moreover, the parties stipulated as to the documentation submitted in support of the petitioner's certification application, including the two Statements of Practical Experience in the record. We emphasize in that regard that the Statement of Practical Experience submitted for the period from May 1963 until September 1969 was completed by the Department of the Army and was accepted by the Department of Education as demonstrating that the petitioner had the requisite experience for the issuance of a skilled trades certification. As previously stated, such certification was in fact issued to him by the Department in 1982, and the petitioner was employed in the Bayonne school district under that certificate until the 1998-99 school year.¹

Nor did our decision of July 6, 2005 have the effect of providing the petitioner with retroactive certification in carpentry, as the Bayonne Board argues. As previously

¹ We note that if the petitioner had not demonstrated that he had six years full-time experience in a skilled trade at the time he applied for a standard certificate with an endorsement in skilled trades in 1982, he would not have been eligible for such certification, and he would not have been qualified for any of his subsequent employment with the Bayonne Board. Thus, the Board's contention in the instant motions is, in effect, a collateral challenge to the validity of the petitioner's certificate. We stress in that regard that a challenge to a certificate must be made to the State Board of Examiners, which has the authority to suspend or revoke certificates for inefficiency, incapacity, conduct unbecoming a teacher or other just cause. N.J.S.A. 18A:6-38; N.J.A.C. 6A:9-4.2; N.J.A.C. 6A:9-17.6.

indicated, the Department of Education issued the petitioner a standard instructional certificate with an endorsement in skilled trades in 1982. As required by the regulations in effect at that time, the issuance of such certification was predicated on a showing by the petitioner that he had six years of full-time experience in a skilled trade. Supporting documentation, which was stipulated to by the parties, included two Statements of Practical Experience attesting to the fact that the petitioner had been employed as a carpenter from 1963 until 1969 with the Department of the Army and from 1969 until 1971 with ConRail Corporation. As we recognized in Polo, supra, “...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.” Id. at 4 (emphasis added).

In this case, the petitioner had demonstrated to the State Board of Examiners’ satisfaction that he had six years of full-time experience in carpentry, and, pursuant to the regulations in effect at that time, the Board of Examiners issued him a standard instructional certificate with an endorsement in skilled trades. We again stress in that regard that the petitioner was not issued certification in “skilled trades–carpentry” since such an endorsement did not exist in 1982. As we made clear in our decision of July 6, the regulations in effect at that time “...did not include a list of authorized trades under the skilled trades endorsement.” State Board’s Decision, slip op. at 5. “[T]he 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.” Id., n.2.

As in Polo, the petitioner herein was authorized by virtue of the skilled trades endorsement issued to him in 1982 to teach trades in which he had demonstrated the mandated experience, and we underscore that our decision in this matter, like our determination in Polo, is applicable only to skilled trades endorsements issued on the basis of the specific certification regulations in effect at that time, when the certification regulations simply provided for an endorsement in skilled trades and did not include a list of authorized trades under that endorsement. Thus, by virtue of his possession of a skilled trades endorsement which the Department of Education issued to him in 1982 on the basis of his documented experience as a carpenter, the petitioner was authorized to teach carpentry. See Polo, supra.

We also reject the Bayonne Board’s contention that our decision of July 6 had the effect of overturning prior decisions concerning a county superintendent’s determination of the appropriate certification for a position. It is well established that the State Board of Education is the ultimate administrative decision-maker and fact-finder in school matters, In the Matter of the Tenure Hearing of Tyler, 236 N.J. Super. 478, 485 (App. Div. 1989), certif. den., 121 N.J. 615 (1990); Dore v. Bedminister Tp. Bd. of Ed., 185 N.J. Super. 447, 452 (App. Div. 1982), and it is the State Board which has the ultimate administrative authority for determining the appropriate certification for a position, Timko v. Board of Education of the Bridgewater-Raritan Regional School District, decided by the State Board of Education, July 1, 1992 (subsequent history omitted).

Finally, we emphasize that the Bayonne Board had this proposed exhibit in its possession for over 20 years when our Legal Committee issued its report in his matter on April 19, 2005; yet it did not raise this issue in the exceptions it filed in response to the Legal Committee's report. Rather, it was not until July 20, 2005, after we rendered our final decision in this matter, that the Board first belatedly questioned the petitioner's qualifications for his skilled trades endorsement in the instant motions.

Accordingly, we deny the Bayonne Board's motions and reaffirm our decision of July 6, 2005 in this matter.

Arcelio Aponte, Ronald K. Butcher and Ernest P. Lepore abstained.

September 7, 2005

Date of mailing _____