

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

RICHARD E. ROBERTS,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 97-5890
	)	
DEPARTMENT OF BUSINESS AND	)	
PROFESSIONAL REGULATION,	)	
ELECTRICAL CONTRACTORS	)	
LICENSING BOARD,	)	
	)	
Respondent.	)	
<hr/>	)	

RECOMMENDED ORDER

Robert E. Meale, Administrative Law Judge of the Division of Administrative Hearings, conducted the final hearing by videoconference in Tallahassee, Florida, on February 10, 1998. Petitioner, Petitioner's attorney, Petitioner's witness, and the court reporter participated by videoconference in Fort Myers, Florida. Respondent and Respondent's attorney participated by videoconference in Tallahassee.

APPEARANCES

For Petitioner: J. Michael Hussey, Attorney  
Post Office Box 540  
Fort Myers, Florida 33902-0540

For Respondent: William M. Woodyard  
Assistant General Counsel  
Department of Business and  
Professional Regulation  
1940 North Monroe Street  
Tallahassee, Florida 32399

### STATEMENT OF THE ISSUE

The issue is whether Petitioner is entitled to a passing score on his examination for electrical outdoor sign specialty certification.

### PRELIMINARY STATEMENT

By undated letter, Petitioner demanded a hearing to challenge the scoring of the certified outdoor sign examination on July 17, 1997. In the letter, Petitioner alleged that the test improperly covered material outside of his specialty of outdoor signs.

At the hearing, Petitioner called one witness and offered into evidence no exhibits. Respondent called two witnesses and offered into evidence nine exhibits. One exhibit was admitted as Administrative Law Judge Exhibit 1. All exhibits were admitted.

The court reporter filed the transcript on March 10, 1998.

### FINDINGS OF FACT

1. Petitioner has been in the outdoor sign business since 1975 when he began as a sign painter. A short time after entering the business, he became involved in the construction of electrical signs.

2. Petitioner is the president of a company that earns \$700,000 annually from the construction and installation of

electrical signs. The company is licensed, and its qualifier is a general contractor.

3. Petitioner has never been a licensed electrical contractor, nor has he ever worked as an electrical journeyman.

4. On July 17, 1997, Petitioner took the electrical outdoor sign examination for the fourth time, and, for the fourth time, he failed the exam. He earned a 67, and 75 is the minimum passing score.

5. After receiving his grade for the July 1997 test, Petitioner protested questions 3, 4, 14, 24, 42, 51, 60, 61, 72, 96, 97, 98, 99, and 100 as related to unlimited electrical contracting or alarm contracting, rather than outdoor sign electrical contracting. With leave of the Administrative Law Judge, Petitioner added at the hearing several other questions to his challenge: 18, 25, 32, 33, 35, 44, 50, 53, 55, 57, 68, and 70.

6. At the hearing, Petitioner conceded that certain questions applied to electrical sign contracting. These questions were 14, 35, 44, 51, 53, and 55. These questions clearly apply to electrical sign contracting.

7. At the hearing, Petitioner conceded that several questions were related to electrical sign contracting, but not exclusively to electrical sign contracting. These questions were 25, 32, 33, 42, 50, 57, 60, 68, and 70. These questions

apply to electrical sign contracting and possibly to general electrical contracting as well.

8. The remaining questions are 3, 4, 18, 24, 61, 72, 96, 97, 98, 99, and 100 are, like the questions discussed in the preceding two paragraphs, applicable to electrical sign contracting. Like all the challenged questions, except for question 42, these questions involve subject matter that is within the scope of the work authorized by the specialty certificate that Petitioner seeks. As to the concrete that is the subject of question 42, some working knowledge of this aspect of the construction industry is needed to fulfill one's obligations to the customer.

#### CONCLUSIONS OF LAW

9. The Division of Administrative Hearings has jurisdiction over the subject matter. Section 120.57(1), Florida Statutes. (All references to Sections are to Florida Statutes. All references to Rules are to the Florida Administrative Code.)

10. The burden of proof is on Petitioner, as the applicant. Department of Transportation v. J. W. C. Company, Inc., 396 So. 2d 778 (Fla. 1st DCA 1981).

11. To prevail, Petitioner must show that Respondent arbitrarily or capriciously denied him credit on the challenged questions through a grading process devoid of logic or reason, or that Respondent arbitrarily or capriciously

graded these questions. See, e.g., Harac v. Department of Professional Regulation, 484 So. 2d 1333 (Fla. 3d DCA 1986).

It would be sufficient, for instance, to show that Respondent was testing subjects outside the scope of the subject certificate.

32. Rule 61G6-6.002 provides:

The certification examinations for those persons desiring to be licensed as certified specialty electrical contractors pursuant to Rule 61G6-7.001 shall consist of the same areas of competency and be graded in the same manner as the certification examination, except that the technical portion of the specialty electrical contractor certification examinations shall relate only to the particular specialty in which certification is desired.

13. Interpreted literally, Rule 61G6-6.002 restricts specialty examinations to the specialty, so that electrical sign examinations may not contain any questions concerning electricity generally unless they apply directly to electrical signs. However, this reading might prevent testing an applicant in areas in which he would be certified to work if he or she passes the exam.

14. The better interpretation of this rule is that it means that the technical portion of the exam may not contain material that relates only to other specialties and not to the specialty being tested--in this case, electrical signs. Under this reading of the rule, a question is valid even if it does not relate exclusively to the specialty that is the subject of

the test, as long as the question bears in some way on the specialty that is the subject of the test.

15. In this case, all of the challenged questions are within the scope of the specialty of electrical sign contracting. All questions except question 42 involve activities covered by the specialty certificate sought by Petitioner. Question 42 validly inquires into a general matter involving the concrete industry, with which a modest level of familiarity would be helpful in the electrical sign contractor's work.

RECOMMENDATION

It is

ORDERED that Respondent dismiss Petitioner's challenge to the July 1997 electrical outdoor sign examination.

DONE AND ENTERED this 22nd day of April, 1998, in Tallahassee, Leon County, Florida.

---

ROBERT E. MEALE  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675      SUNCOM 278-9675  
Fax Filing (850) 921-6847

Filed with the Clerk of the  
Division of Administrative Hearings  
this 22nd day of April, 1998.

COPIES FURNISHED:

J. Michael Hussey, Attorney  
Post Office Box 540  
Fort Myers, Florida 33902-0540

William M. Woodyard  
Assistant General Counsel  
Department of Business and  
Professional Regulation  
1940 North Monroe Street  
Tallahassee, Florida 32399

Lynda L. Goodgame, General Counsel  
Office of the General Counsel  
Department of Business and  
Professional Regulation  
1940 North Monroe Street  
Tallahassee, Florida 32399-0792  
Ila Jones, Executive Director  
Board of Employee Leasing Companies  
Department of Business and  
Professional Regulation  
1940 North Monroe Street  
Tallahassee, Florida 32399-0792

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this recommended order. Any exceptions to this recommended order must be filed with the agency that will issue the final order in this case.