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II. PUBLIC LAW

ADMINISTRATIVE LAW

*Charles A. Reynard**

To the discerning observer of the administrative process, whether critic or advocate, the record of the court during the past term is more revealing for what *was not* done than for what appears in the decided cases. It would seem to be of more than casual significance that at a time when it has been said that the individual's rights are more directly influenced by the action of administrative agencies than ever before,¹ the court should have occasion to review decisions of administrators in only two cases.² Even more significant, perhaps, is the fact that in both cases, the decisions of the agencies were sustained against attack of alleged illegality.

In the first of these cases, *Burke v. Louisiana Public Service Commission*,³ the court was called upon to do no more than apply the established principle of administrative law, that the orders of an agency, issued within the scope of allowable authority, will not be set aside unless shown to be discriminatory or wholly lacking in reason. The plaintiff had applied to the commission for an order compelling a railroad to supply its services to him through the medium of an existing spur track located adjacent to his premises. Service was already being furnished to another shipper on the opposite side of the spur. The commission, after finding that the spur track in question was a public one (having been constructed by the railroad with its own funds upon land which it owned) thereby entitling the plaintiff to make application, nevertheless denied his request and dismissed the complaint on the ground that the practical inconvenience resulting from a railroad's attempting to serve two shippers on one spur outweighed the

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1. "The continuity of the common man's radio programs, the security of his bank deposits, his protection against unfair discrimination in employment, his right to have light and power at reasonable rates, his protection against fraud and chicanery in our securities markets, his right to cheap railroad travel—to mention only a few of the necessities of modern life—these are some of the new liberties which makes up the right of today's common man to the pursuit of happiness, and these liberties for their protection today seek the administrative and not the judicial process." James M. Landis, *The Development of the Administrative Commission, An Address before the Swarthmore Club of Philadelphia, February 27, 1937.*

2. *Burke v. Louisiana Public Service Commission*, 215 La. 451, 40 So. (2d) 916 (1949); *State ex rel. Cody v. Caldwell Parish School Board*, 41 So. (2d) 461 (La. 1949).

3. 215 La. 451, 40 So. (2d) 916 (1949).

merits of plaintiff's claim to service.⁴ An undoubtedly influential fact of the case was that plaintiff was already being served by another railroad over a spur located on another part of his premises, which service, however, he contended was inadequate.

On appeal the commission's order was affirmed by the district court as well as the supreme court, the latter considering in some detail the question of law, that is, whether the spur in question was a public or private spur but almost summarily disposing of the question on the merits, that is, the power of the commission to enter the order denying the service. Invoking the customarily accepted test which the court itself acknowledged as "the well established jurisprudence of this state,"⁵ it refused to set aside or modify the order in the absence of a showing that it was "unreasonable, arbitrary or discriminatory."⁶ Such a showing had not even been attempted by the plaintiff who apparently relied solely upon the theory that the establishment of the public character of the spur entitled him to service as a matter of law. This contention the court rejected, concluding that the constitutional powers of the commission⁷ embrace the authority to deny as well as compel service, a construction that seems wholly reasonable in the light of the commission's purposes and functions.

The second case, *State ex rel. Cody v. Caldwell Parish School Board*,⁸ appears to be a notable instance of judicial cognizance of the practical problems of administration and willingness to acquiesce in reasonable measures adopted by the agency for their solution. Miss Cody, the plaintiff, was a school teacher who had been teaching for more than the three years required by the general school law⁹ to qualify her as a "permanent teacher" possessed of tenure. About the middle of May, 1948, near the close of the school year, her principal, at the request of the defendant

4. In the course of its written opinion the commission said: "To consider more pragmatic aspects of the question, the Commission has found in its long experience that it is virtually impossible for two industries to be served in tandem, by one spur; for in order to spot or pull out cars at the farther industry it is necessary for the switch engine to pull out the cars already spotted at the nearer industry and thus interrupt the loading and unloading operations of the industry nearer the main line. This disturbance not only creates serious difficulties for the industry but is seriously burdensome to the carrier in its switching operations, particularly where the spur branches directly from the main line and there is no intermediate side track." 215 La. 451, 40 So. (2d) 916, 922.

5. 215 La. 451, 40 So. (2d) 916.

6. *Ibid.*

7. La. Const. of 1921, Art. VI, § 4.

8. 41 So. (2d) 461 (La. 1949).

9. La. Act 100 of 1922, § 48, as amended [Dart's Stats. (Supp. 1949) § 2267 et seq.]

school board, pursuant to a resolution duly adopted by that body, presented her with a written contract covering the next ensuing school year which was to be signed by her not later than June 1, 1948,¹⁰ in the event she wished to continue to hold her position. Such a procedure was customary, "The School Board [having] required all teachers to enter into written contracts before June 1st of each year prior to the adoption of the resolution we have under consideration."¹¹ In requiring executed written contracts it was the avowed purpose of the board, acknowledged by the court, to enable it to comply with a duty enjoined upon it by law,¹² namely to assure a full complement of teachers to meet its requirements for the ensuing year.

Because of personal and domestic difficulties, Miss Cody was unable to come to a decision concerning her availability as a teacher for the 1948-1949 school year until June 21, 1948, when she signed the contract and returned it to the school board. On the next day she was advised by telephone that her place had been tentatively filled by another appointee as the result of her failure to return the signed contract on June 1st. Both the school board and the court, in affirming its action, construed Miss Cody's conduct as a voluntary termination of employment and denied her alternative claims for reinstatement or compensation.

Up to this point, no reasonable person could differ with the result of the case, or the court's statement that "The School Board has the right to adopt reasonable rules in aid of its administrative authority."¹³ Such power has frequently been implied¹⁴ but in

10. There is an inconsequential conflict in the testimony (resolved against the plaintiff) of the plaintiff and the principal concerning the exact date on which the contract was to be signed and returned to the board.

11. 41 So. (2d) 461, 462 (La. 1949).

12. La. Act 100 of 1922, § 20, as amended [Dart's Stats. (Supp. 1949) § 2239].

13. 41 So. (2d) 461, 464.

14. *Thackers Distilled Spirits*, 103 U. S. 679, 26 L. Ed. 535 (1881) (regulation of Commissioner of Internal Revenue prescribing forms of reports issued under a statute expressly authorizing only the prescription of "rules and regulations to secure a uniform and correct inspection, marking and gauging of spirits"); *United States v. Bailey*, 34 U. S. 238, 9 L. Ed. 113 (1835) (regulation of Treasury Department requiring all claims to be submitted under oath promulgated under a statute directing it "to adjust and settle those claims for half-pay of the officers . . . which have not been paid."); *United States v. Threlkeld*, 72 F.(2d) 464 (C.C.A. 10th, 1934), cert. denied 293 U. S. 620, 55 S. Ct. 215, 79 L. Ed. 708 (1934) (power to acquire land by eminent domain for road construction held to be impliedly possessed by Secretary of Interior under statute authorizing him "to establish such service and prescribe such rules and regulations as he might deem necessary for the preservation of the forests and the regulation of their occupancy and use"). But cf. *Melancon v. Mizell*, 37 So. (2d) 52 (La. App. 1948), noted in (1949) 9 LOUISIANA LAW REVIEW 535 (under statute creating Pest Control Commission and authorizing it "to make rules and regulations covering qualifications of applicants," the court refused to

this case the board had express statutory authorization to promulgate "such rules and regulations for its own government, not inconsistent with law or with the regulations of the Louisiana state board of education, as it may deem proper."¹⁵

With the situation in this posture, we come then to consider the provisions of Act 353 of 1948, relied upon by counsel for Miss Cody, which provides as follows:

"No person shall be appointed to teach without a written contract for the scholastic year in which the school is to be taught, and who shall not hold a certificate provided for by this Act or a grade sufficiently high to meet the requirements of the school, and it is made the duty of the parish superintendent of schools to ascertain definitely before contracting with a teacher that such teacher holds a certificate issued by the Louisiana State Board of Education; *provided, however, that this section shall not be construed as requiring a written contract to be made for any scholastic year with regular and permanent teachers enjoying tenure.*" (Italics supplied.)

This statute, amending Section 49 of Act 100 of 1922, added the italicized proviso, which, superficially at least, lends strong support to the displaced school marm. Certainly a conceptualist would assert that in order to sustain the action of the school board in this instance, the court would be required to do just precisely what the legislature has forbidden, namely, to construe the statute "as requiring a written contract to be made for [a] scholastic year with regular and permanent teachers enjoying tenure."

A seemingly sufficient answer to the claim based on the statute is the fact that the act in question was not signed by the governor until July 6, 1948, more than two weeks after the plaintiff was told that she had been replaced, and more than a month subsequent to the date set by the board. Under the circumstances, therefore, it is impossible to say that her actions were taken in the light of or that any reliance was placed upon the terms of the act. On the other hand, it is, of course, arguable that the action of the board in adhering to its previously adopted position constituted a violation of the statute on its effective date and continued thereafter. In any event, the court did not discuss this possibility, but predicated its conclusion, first, on the ground already stated that the board was to be deemed to possess the

imply power to promulgate a regulation requiring such applicants to provide bond guaranteeing performance of their contracts.)

15. Act 100 of 1922, §20, as amended [Dart's Stats. (1939) §2239].

power to adopt reasonable rules to assist the accomplishment of its functions, and, second, as a matter of statutory construction (particularly in the light of the considerations supporting the first ground) the proviso in the 1948 act, while stating that *it* should not be construed to require written contracts, did not in terms—or by necessary implication “prohibit School Boards from requiring written contracts with permanent teachers.” The result reached by the court is unquestionably a proper one, according with what was undoubtedly the legislative purpose leading to the enactment of Act 353 of 1948, namely, to excuse non-compliance with the written contract requirement of the prior law where school boards regarded such action to be unnecessary and not otherwise. “It was never contemplated that the tenure law would be employed for the purpose of defeating the functions of a School Board or as a means of ignoring or refusing to obey rules of the board adopted in aid of its administrative authority.”¹⁶

CONSTITUTIONAL LAW

*Charles A. Reynard**

In the course of the term the court had occasion to apply established principles of constitutional law to the facts of particular cases (discussed below) but by far the most important decision of interest to students of the subject was *Orleans Parish School Board v. Louisiana State Board of Education*.¹ Truly a product of “the jurist’s art”² the opinion in that case is almost certain to be condemned by some as judicial acquiescence in legislative disregard of constitutional limitations. Indeed, it was condemned as such by Judge McCaleb in his dissenting opinion. But to others, aware of the importance of the role played by political, social and economic considerations in constitutional interpretation, the decision will simply reflect the action of the court, as one organ of government, responding to the needs of a developing social and economic order.

The constitutional provision in question was Article XII, Section 14, relating to state school funds. That section in its present form, after enumerating the various sources from which it shall be constituted, states “that the Legislature must and shall provide, by appropriate tax levies, appropriation or otherwise, a

16. 41 So. (2d) 461, 464.

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1. 41 So.(2d) 509 (La. 1949).

2. Hamilton, *The Jurist's Art* (1931) 31 Col. L. Rev. 1073.