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ADMINISTRATIVE LAW

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The Supreme Court's decision in *Houeye v. St. Helena Parish School Board*[1] gives indication that the court adheres to the principle of only limited review in cases involving quasi-judicial action by an administrative agency such as that involved here. Counsel for the defendant appellee argued persuasively on brief and cited prior jurisprudence[2] that the role of the court was solely that of determining whether the administrative agency had acted arbitrarily and capriciously or outside the limits of its authority in making its determination. On the substantive issue of whether the plaintiff was or was not competent it was thus argued that the court was not free to substitute its judgment but only to determine whether or not the determination of the agency was supported by substantial evidence. The statute granting review of school board action contains, of course, nothing to preclude full substitution of judgment on the part of the reviewing court since the statute merely provides that "the court shall have jurisdiction to affirm or reverse the action of the school board in the matter."[3]

The court did not include an analysis of its review powers in its decision; the plaintiff's contention that "[t]he evidence presented to the School Board . . . utterly failed to establish any evidence of acts of wilful neglect of duty, dishonesty or incompetency" was simply treated as "not sustainable" since the court's review found "at least one of the charges . . . amply supported by the evidence and it alone . . . was sufficiently grave to justify the school board's conclusion that plaintiff was incompetent to serve as principal and teacher."[4]

A contention of plaintiff that the hearing accorded him was not in accordance with his statutory request for a private hearing because of the presence of petitioning group's attorney and one of its members was not sustained, the court taking occasion to

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1. 223 La. 966, 67 So.2d 553 (1953).

2. State *ex rel.* Rathe v. Jefferson Parish School Board, 206 La. 317, 19 So.2d 153 (1944).

3. LA. R.S. 17:443 (1950).

4. 223 La. 966, 972, 67 So.2d 553, 555 (1953).

lay down the rule that in matters such as this "[t]he citizens and patrons preferring the charges were entitled to be reasonably represented at the private hearing in order that the necessary evidence might be introduced in an orderly and effective manner. . . ."[5]

In *Peterson v. City Civil Service Commission*[6] the Supreme Court had occasion to correct a curiously narrow view taken by the commission with respect to its powers in determining the reasonableness of action taken by an appointing authority in dismissing an employee. Plaintiff appealed to the commission, alleging that his dismissal by the Superintendent of Police was without just cause, as was his right under the statute.[7] The commission dismissed the appeal after hearing on the ground that it had no authority to substitute its judgment for that of the appointing authority on questions relating to standards of effective service. The statutory direction to the commission is that: "After hearing and considering the evidence for and against the disciplinary action the commission shall approve or disapprove the action."[8] The district court did not feel bound to so limit itself; after hearing the evidence it ordered the plaintiff reinstated and the Supreme Court affirmed its action. There thus emerges the anomaly of the agency before which the evidence was originally adduced refusing to exercise the discretion vested in it by statute and, on application for mandamus, a district court making this substantive decision instead of ordering the commission to exercise the discretion which it was charged with exercising by statute.

It would appear that the preferable administrative and judicial procedure, and that well within the legislative intent of the statute, would have been a decision on the merits by the commission with judicial review confined to a correction of errors of law and a determination of whether there was substantial evidence to support the commission decision. This is the procedure provided in the Model State Administrative Procedure Act;[9] it is bottomed on the principle that the agency which has primary jurisdiction should make the substantive decision on the evidence with judicial review thereafter confined to a deter-

5. 223 La. 966, 972, 67 So.2d 553, 555 (1953).
6. 224 La. 696, 70 So.2d 592 (1954).
7. LA. R.S. 33:2424 (1950).
8. *Ibid.*
9. HANDBOOK OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS 329, § 12(7) (1944).

mination that the decision was not arbitrary and capricious, *i.e.*, based on substantial evidence, and not erroneous in law. Once established, the practice of according this degree of finality to administrative decisions would conserve judicial time; the review necessary to satisfactorily demonstrate that the decision is founded on substantial evidence is ordinarily less than that which a court would deem necessary if charged with making a new decision on the merits.

Adherence to these tenets of administrative law would not have changed the result in this case since the commission indicated that had it felt free to make the substantive decision it would have been the decision which both the district court and the Supreme Court did in fact make.

In the case of *New Orleans v. Jackson*[10] the court adopted a rule designed to protect employees suspended from duty during the trial of criminal charges against them but not "made whole" by their department upon being acquitted. The court also drew a distinction, not previously drawn, between a temporary suspension, under the city civil service law,[11] imposed as a disciplinary measure, and a suspension for the protection of the service, where an employee has been charged with a crime.

In this instance the employee was a police officer and had been charged with the crime of public bribery. He was suspended from duty by his superior and charged with conduct unbecoming an officer and neglect of duty but no hearing date on the departmental charges was set pending trial of the officer on the criminal charges. Some three and a half years later, after an initial mistrial, the officer was acquitted of the crime with which he had been charged. Upon his request to lift the suspension and restore him to duty he was informed that he had been dropped from the force. He appealed to the city civil service commission and was ordered reinstated with full pay for all time lost. The city reinstated the employee but refused back pay. The case reached the Supreme Court via an appeal from a declaratory judgment by a district court favoring the city and denying plaintiff's plea in reconvention for back pay.

The court found that no express provision had been made for the suspension of an employee pending trial but that suspension was an appropriate step to be taken by the department pend-

10. 224 La. 771, 70 So.2d 679 (1953).
11. LA. R.S. 33:2424 (1950).

ing such trial. Adopting a *dictum* contained in the case of *State* ex rel. *Charles v. Board of Commissioners of Port of New Orleans*,[12] the court quoted with approval the rule that "if, on trial, it is shown that [the employee] has not merited discharge, then his suspension is a mere enforced vacation for which the board must pay him as if he had never been suspended." One Justice concurred separately on the ground that the rule adopted impinges on the discretion of the City Civil Service Commission to reinstate "under the conditions which it deems proper."[13] Such impingement is at least arguable, however, since the commission had in this instance ordered reinstatement with full pay and the decision can be construed as affirming this commission decision.

The court did not discuss the departmental charges against the officer on which no hearing was ever held; in effect they were treated as quashed by the acquittal on the criminal charge. The hard case, which the court was not called upon to decide here, would arise where such charges had been filed, a hearing held and removal based on findings ordered, followed some years later by acquittal. Should the removal stand, despite the later favorable court action? Avoidance of the impasse, where as here departmental charges are based on the same conduct which has given rise to criminal charges, would appear to lie in the procedure which was followed in this case; departmental charges held in abeyance pending a determination on the criminal charge with such determination to be res judicata as to the departmental charges. The rule adopted posits a "speedy trial" under these circumstances; it will be incumbent upon the city to see that it is obtained in order to protect its treasury.

CONSTITUTIONAL LAW

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Significant principles of constitutional law were involved in a small number of cases decided at the term. Several of these decisions are discussed under appropriate substantive headings in other portions of this symposium issue. *Douglas Public Service Corp. v. Gaspard*,[1] declaring the state anti-injunction

12. 159 La. 69, 77, 105 So. 228, 230 (1925).
13. LA. R.S. 33:2424 (1950).

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1. 74 So.2d 182 (La. 1954).