

Administrative Law - Effect of Rate-Fixing Agreements on Commission

Raleigh Newman

Repository Citation

Raleigh Newman, *Administrative Law - Effect of Rate-Fixing Agreements on Commission*, 26 La. L. Rev. (1965)
Available at: <https://digitalcommons.law.lsu.edu/lalrev/vol26/iss1/12>

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NOTES

ADMINISTRATIVE LAW—EFFECT OF RATE-FIXING AGREEMENTS ON COMMISSION

To encourage new industry and afford additional fire protection, the Town of Arcadia agreed to join plaintiff water company in petitioning the Louisiana Public Service Commission for a rate increase. Plaintiff, in exchange, agreed to increase its water capacity by constructing additional facilities.¹ The petition was filed and the Commission granted the requested increase conditioned upon completion of the new facilities.² The facilities were subsequently completed and the increased rate increase, the town and the Commission appealed. The Supreme Commission reduced the increased rates to residents but required plaintiff to charge private industry and the town for the additional fire protection afforded by the improvements.³ Arcadia protested, contending that the charges to the town violated plaintiff's franchise obligation to provide Arcadia with free water service for fire protection and other town services. The Commission thereupon ordered free water service to Arcadia, prohibited any additional rate increase to private industry and maintained the previously reduced consumer rates.

1. Cook & Co. agreed to locate a plant in Arcadia if a sufficient water supply were furnished. Since the present water facilities were inadequate, it became apparent that additional facilities (mainly an overhead storage tank) had to be constructed. It was estimated that the construction of the new storage tank and other incidental facilities would cost the water company \$116,000.00. The water company determined that their annual revenues would have to be increased by \$28,500.00 to meet the construction costs. Thus the Arcadia Board of Aldermen passed a resolution empowering the mayor to petition the commission jointly with the water company for a rate increase which would provide the required additional revenue.

A secondary purpose for the enlarged water facilities was to improve the fire protection for the town. The Fire Prevention and Rating Bureau recommended that construction of a 250,000 gallon overhead storage tank was necessary in order for Arcadia to have adequate fire protection.

2. The increased rates were applicable to residential consumers. Private industry was charged a nominal fee while the town was guaranteed free water for fire protection and other town services.

3. At the hearing, it was shown that the charge for 6,000 gallons of water per month before the rate increase was \$2.90 and under the order the charge was now \$7.05 per month. The Commission indicated that it wanted a more equitable distribution of the costs of the added facilities since the residential consumer rates had benefited the town and private industry. As a result of the hearing, an order was issued which reduced the cost of 6,000 gallons per month to \$4.95 for residential consumers. Also, the town was to be charged for its water, and the rates for private industry were increased from \$10.00 per month for each ten-inch main to \$200.00 per month.

After plaintiff instituted the present suit to reinstate the original rate increase and the town intervened in support of the latest order, the Commission suspended the increased fire protection charges on industry. The district court reinstated the original rate increase, the town and the Commission appealed. The Supreme Court affirmed. *Held*, the Commission is not bound by rate-fixing contracts between utility companies and municipalities; however, the Commission's orders reducing the agreed-upon increases in water rates and causing the impairment of the obligation of the contract are unreasonable. *Louisiana Gas Serv. Co. v. Louisiana Pub. Serv. Comm'n*, 245 La. 1029, 162 So. 2d 555 (1964).

It is fundamental that a contract has the effect of law between the contracting parties, may not be revoked unless by mutual consent, and must be performed in good faith.⁴ The privilege to contract is subject to the valid exercise of the state's police power,⁵ which cannot be restricted by contract.⁶ This power, however, must be exercised for an end which is in fact public, and the means must be reasonably adapted to the accomplishment of that end and must not be arbitrary.⁷ Moreover, it is well established that the rate fixing falls within the ambit of the state's police power.⁸ Therefore, it is clear that the Commission is not bound by private rate-fixing agreements between a municipality and a public utility company.⁹

One of the primary functions of the Commission is rate regulation of public utilities.¹⁰ The rates set by the Commission must be just and reasonable,¹¹ and they are subject to

4. LA. CIVIL CODE art. 1901 (1870).

5. LA. CONST. art. IV, § 15: "No ex-post facto law, nor any law impairing the obligation of contracts, shall be passed; nor shall vested rights be divested, unless for purposes of public utility, and for just and adequate compensation previously paid." See, *e.g.*, *Treigle v. Acme Homestead Ass'n*, 297 U.S. 189 (1936); *City of Alexandria v. Toness*, 216 La. 923, 45 So.2d 79 (1950); *State ex rel. Porterie v. Walmsley*, 183 La. 139, 162 So. 826 (1935).

6. LA. CONST. art. XIX, § 18. See note 5 *supra*. See also Note, 20 LA. L. REV. 624 (1960).

7. U.S. CONST. art. I, § 10. See, *e.g.*, *Treigle v. Acme Homestead Ass'n*, 297 U.S. 189 (1936).

8. LA. CONST. art. VI, §§ 4, 5. See, *e.g.*, *Baton Rouge Waterworks Co. v. Louisiana Pub. Comm'n*, 156 La. 539, 100 So. 710 (1924).

9. However, it is possible that a municipality may be delegated the responsibility to fix rates compulsorily and by agreement. See Note, 20 LA. L. REV. 624 (1960).

10. LA. CONST. art. VI, §§ 4, 5.

11. LA. CONST. art. VI, § 4: "The commission shall have and exercise all necessary power and authority to supervise, govern, regulate and control . . . and other public utilities in the State of Louisiana, and to fix reasonable and just and joint line rates . . ." (Emphasis added.) See, *e.g.*, *United Gas Pipe Line Co. v. Louisiana Pub. Comm'n*, 241 La. 687, 130 So. 2d 652 (1961).

full review by the courts.¹² Determination of just and reasonable rates depends upon each particular situation, there being no requirement of uniformity.¹³ The findings of the Commission must be accorded great weight and should not be disturbed on review in the absence of a clear showing of abuse of power.¹⁴

In the instant case, the court classified the rate-fixing as an indirect problem dependent upon whether the rate-fixing contract between plaintiff and the town had been breached or impaired. After finding that the parties had entered into a valid contract, the court admonished the Town of Arcadia for urging a reduction of water rates manifestly contrary to the town's agreement with plaintiff water company.¹⁵ More significantly, the court stressed that the Commission was not inhibited from acting in the public interest by the rate-fixing contract between plaintiff and the town and was definitely not bound by the contract. However, the court concluded with the somewhat ambiguous statement that the Commission's orders reducing the agreed-upon increase in rates and "causing the violation of the obligation of contract was unreasonable and is subject to reversal."¹⁶ In concluding the Commission's orders

12. LA. CONST. art. VI, § 5; LA. R.S. 45:1192 (1950). However, orders of the Commission are accorded great weight and are not overruled on judicial review unless they are arbitrary, unreasonable and reflect a clear abuse of power. See, e.g., *Louisiana Tank Truck Carriers, Inc. v. Louisiana Pub. Serv. Comm'n*, 244 La. 909, 155 So.2d 15 (1963); *Texas & Pac. R.R. v. Louisiana Pub. Serv. Comm'n*, 240 La. 669, 124 So.2d 902 (1960).

13. *Bluefield Water Works & Imp. Co. v. Public Serv. Comm'n of West Virginia*, 262 U.S. 679, 692 (1923): "What annual rate will constitute just compensation depends upon many circumstances and must be determined by the exercise of a fair and enlightened judgment, having regard to all relevant facts. A rate of return may be reasonable at one time and become too high or too low by changes affecting opportunities for investment, the money market and business conditions generally." In *LaSalle Tel. Co. v. Louisiana Pub. Serv. Comm'n*, 245 La. 99, 157 So.2d 455 (1963), the court held that a return of 3.9% was sufficient under the circumstances. In *Southwestern States Tel. Co. v. Louisiana Pub. Serv. Comm'n*, 244 La. 1, 150 So.2d 543 (1963), a 5.53% return was found.

14. See, e.g., *Louisiana Tank Truck Carriers, Inc. v. Louisiana Pub. Serv. Comm'n*, 244 La. 909, 155 So.2d 15 (1963); *Texas & Pac. R.R. v. Louisiana Pub. Serv. Comm'n*, 240 La. 669, 124 So.2d 902 (1961).

15. The court declared that Arcadia "should not now be heard to urge the matter of reduced rates, as such action is contrary to its contractual obligation." 245 La. at 1055, 162 So.2d at 564. It can be argued that the court was unwarranted in its admonition of the town for, prior to the town's intervention in the instant suit, the town had not urged reduction of the agreed-upon increased consumer rates but had merely objected to the town being charged for fire protection when its franchise guaranteed free water service for fire protection and other town services. While the above argument may have been valid prior to the town's appearance in the present case, it cannot be denied that the town intervened on the Commission's side and adopted all the contentions of the Commission, thus, in effect, urging reduction of the agreed-upon increased rates.

16. 245 La. at 1056, 162 So.2d at 564.

were unreasonable, it is difficult to ascertain whether the court gave *great weight*, *some weight*, or *no weight* to the consideration that the orders prevented enforcement of the rate-fixing agreement. Since the court clearly asserted that the Commission was not bound by the agreement before it declared that the contractual obligation had been impaired by the orders, it is suggested that *no weight* was given this consideration.

While the court stated that the instant case was not a true rate case but one dealing with the impairment of the obligation of contract, it is submitted that the case was decided on the misuse of state police power in fixing unreasonable rates. The court evidently concluded that the Commission was acting within its granted powers in ordering modification of rates, but that in this instance the police power was exercised unreasonably because it forced the water company to operate at a loss.¹⁷ The language in the decision pertaining to impairment of the obligation of contract was unnecessary because the court recognized that a contractual obligation is not a restraint on the exercise of state police power. The result could have been obtained by relying solely on rate regulation principles. Further, it is conceivable that the language pertaining to the impairment of the obligation of contract could lead to the erroneous conclusion that municipal agreements on utility rates can restrict the Commission's rate-fixing power. Manifestly, such a conclusion is inconsistent with the well-settled principle that the sole limitation on the Commission's rate-fixing power is that it must be exercised in a just and reasonable manner.

Raleigh Newman

ADOPTION — REQUIREMENT OF RECORDATION

A succession proceeding raised the issue of validity of an adoption of a major by the deceased, where the act of adoption had not been properly recorded prior to the death of the adoptor. The parties had executed a notarial act in compliance with the statutory provisions but failed to record the instrument im-

17. It is suggested that the actual basis for the decision was that the water company needed \$28,500.00 additional annual revenue to pay for the added facilities and the Commission's actions caused it to operate at an annual deficit of \$13,500.00.