1958

Administrative Law: Final Examination (January 1958)

William & Mary Law School

ADMINISTRATIVE LAW

Final Examination

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1. The Telegraphers Union filed a complaint with the National Railway Adjustment Board that the X Carrier was violating a contract between the two because the Carrier was using Smith, a member of the Railway Clerks Union, in one of its offices for a job which should go to a member of the Telegraphers Union. The Carrier answered and said the argument was really between the two Unions and that because the National Railway Adjustment Act required that notice be given to all parties involved, due notice should be given to Smith & the Clerks Union. The Board refused to give such notice.

The Carrier now asks the Federal District Court for an injunction against the Board, requiring them to give notice to Smith & the Clerks Union. The Board claims that they are not entitled to notice and even if they are entitled to it, such notice need not be given in this case because both Smith and the Clerks Union had actual notice. The Board's procedure, however, allows only those who are given formal notice to be heard.

Are Smith and the Clerks Union entitled to notice and if so is formal notice necessary?

2. The Lumber and Sawmill Union filed a complaint before the N.L.R.B. alleging that the X Lumber Company was guilty of unfair labor practices in that it discharged an employee for insufficient reasons. A hearing was held before an examiner who issued an intermediate report accompanied by findings. The findings said that the employee was wrongfully discharged and also that the company had conducted itself in a way which indicated a general hostility in the past to the Union's activities. The Board adopted the intermediate report as its final decision and issued an order directing the company to reinstate the employee and further "to cease and desist from in any manner interfering with the rights of the employees under the National Labor Relations Act."

The Board requested the District Court to enforce the order. The X Lumber Company answered and asked the court to set the order aside.

What grounds would the company allege for having the order set aside, and how should the court rule?

3. Two applications were submitted to the Interstate Commerce Commission requesting a certificate of convenience and necessity to operate a railroad between two named points. One application was by the X Railway and one was by the Y Railway. In the X Railway application, Y was allowed to answer as an interested party and in the Y Railway application, X was allowed to answer as an interested party. The applications were heard before separate hearing examiners. The hearings were substantially coordinated but not technically consolidated. The examiners made separate reports to the ICC, but the Commission dealt with both applications in a single report. The X Railway application was granted but the Y application disallowed.

The Y Railway brought an action to have the order of the ICC set aside because it alleged that evidence appearing in only one record was used to support findings in both cases. To this allegation the ICC demurred. Judgment for whom and why?

4. On 3 October, Cohen who was an employee of the Textile Company and also an organizer of the Textile Workers Union, passed out application cards to the entire 72 workers of the Textile Company. On 4 October, Cohen who was then out of town, called Flanagan, the President of the Company, telling him that he had application cards from 40 workers and, therefore, he would like to bargain with the Company as the representative of the workers in the plant. Flanagan expressed doubt as to the fact that Cohen represented a majority of the workers and refused, after Cohen suggested, to call in the New York Mediation Board to conduct an election. The Union filed a compalint with the N.L.R.B. who appointed a hearing examiner. The examiner took the evidence, including the testimony of Flanagan and Cohen, and finding that Flanagan in "good faith" refused to bargain, made an intermediate report recommending dismissal of the complaint.

The full Board reversed the examiner and upon finding that Flanagan lacked "good faith" in his refusla to bargain, issued a cease and desist order against the Textile Company. Upon petition to the District Court to enforce the order, the Company answered asking that the order be set aside.

Judgment for whom?

5. Some refusals of opportunity to be heard rely heavily on the idea that hearings are not feasible when a large number of parties may be affected. These cases stem from Bi-Metallic Co. v. Colorado which permitted a blanket increase in valuation of all Denver property without opportunity for taxpayers to be heard. Mr. Justice Holmes declared for an unanimous Court: "Where a rule of conduct applies to more than a few people it is impracticable that everyone should have a direct voice in its adoption . . . There must be a limit to individual argument in such matters if government is to go on." The Court distinguished Londoner v. Denver, which required opportunity to be heard where a local board determined "whether, in what amount, and upon whom" a tax for paving a street should be levied for special benefits, on the ground that, "A relatively small number of persons were concerned, who were exceptionally affected, in each case upon individual grounds."

Other courts, following this lead, have emphasized the number of parties or have made it the sole criteria.

Requiring a trial in the Londoner case and refusing to require it in the Bi-Metallic case may have been thoroughly sound. But the cases should not be interpreted as supporting the proposition that the requirement of a hearing should depend upon the number of parties.

What should the proper interpretation be?

6. The Price Control Act of 1958 requires that every wholesaler keep records as to all sales that he makes; and in addition, he must keep these records for inspection by government inspectors. In June of 1958 the O.P.A. issued a subpoena to X requiring him to appear and to bring his records to a hearing being conducted by the O.P.A. on a complaint that X has violated the Act. X's attorney asks the hearing examiner if X is immune from prosecution for any evidence he gives, in light of the Compulsory Testimony Act which withdraws the privilege against self-incrimination and confers immunity from prosecution upon any person giving evidence in obedience to a subpoena. The examiner replies that X is entitled to whatever privilege the Act confers. X then produces the records and answers questions concerning them. To a question whether he had violated the Act in any way not shown by the records, X replied that he had violated the Act in one respect in January of 1958.

The O.P.A. turned over to the Attorney General's Office the transcript of its hearing and the Attorney General started a prosecution against X for the violation of the Act in January of 1958 to which he had testified. X claimed immunity from prosecution under the Compulsory Testimony Act. Will he prevail?

7. a) The Secretary of Agriculture after appropriate hearing, in which Staley was not a party, issued an order fixing the standard of identity for sweetened condensed milk. The order requires that sweetened condensed milk may not contain any corn syrup, a product produced by Staley. Staley petitions the District Court asking it to review the order of the Secretary. The statute under which the Secretary acted stated that "any person adversely affected" may seek judicial review. The Secretary claims that Staley has no standing to seek judicial review. Is the Secretary right?

b) The Secretary of Agriculture after appropriate hearing, in which X Cane Sugar Co. was not a party, issued an order allowing, henceforth, for canners of fruit to use dextrose or corn syrup in canning fruit without disclosing on the label that cane sugar was not used. The X Cane Sugar Co. petitions the District Court asking it to review the order of the Secretary. The statute under which the Secretary acted is the same as in question 7.a). Does X Cane Sugar Co. have standing?