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Administrative Law - Judicial Review of Administrative Decisions in North Dakota

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COMMENT

ADMINISTRATIVE LAW—JUDICIAL REVIEW OF ADMINISTRATIVE DECISIONS IN NORTH DAKOTA

INTRODUCTION

Administrative Law is more and more becoming an important factor in the practice of law. Recently the President signed into law a new Federal Administrative Procedure Act.[1] In 1941 our own Legislature enacted the Administrative Agencies Uniform Practice Act, which in the words of the statute "... shall apply to all claims and proceedings filed in or commenced by an administrative agency subsequent to July 1, 1941." [2]

The scope of this article is not to review the procedure set out in the Administrative Agencies Uniform Practice Act but to trace the scope of judicial review given to administrative decisions and to show the effect of the new Act upon such review. A brief comparison of the North Dakota system and the Federal system will also be undertaken.

GENERAL RULES OF JUDICIAL REVIEW OF ADMINISTRATIVE DECISIONS

As a general rule, the Administrative Agency's finding of fact is conclusive upon a reviewing court and not open to judicial review if supported by evidence, or substantial evidence.[3] The reason for this is usually stated as being because the Agency is suppose to possess the special knowledge and expertness that is required to pass upon such questions. On the other hand, as to questions of law, the court may substitute its own judgment for that of the Agency. In doing this, however, the Agency's decision on points of law is nevertheless persuasive and given weight.[4]

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1 60 Stat. 237

2 Section 28-3222, N. D. Rev. Code 1943.

3 Consolidated Edison Co. v. National Labor Relations Board, 305 U. S. 197, 83 L. Ed. 126, 59 S. Ct. 206 (1938)

4 State v. Great Northern R. Co., 130 Minn. 57, 153 N. W. 247, Ann. Cas. 1917B 1201 (1915); In Securities and Exchange Commission v. Chenery Corp. et al, 67 S. Ct. 1575 (1947) our Supreme Court has now taken a stand that when a new principle has been announced by an administrative agency, if based upon substantial evidence and is consistent with the authority granted by Congress, it is not open to change by the courts. A strong dissent in this case feels that the court is allowing the administrative agency to decide questions of law.

The U. S. Supreme Court has defined substantial evidence as follows: " 'Substantial Evidence' is more than a mere scintilla, and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." [5]

REVIEW OF WORKMEN'S COMPENSATION CASES IN NORTH DAKOTA

The Workmen's Compensation Act when first enacted provided that, "The Bureau shall have full power and authority to hear and determine all questions within its jurisdiction, and its decision shall be final." The Act then proceeded to give the claimant a right of appeal to the District Court where he was entitled to a "... trial in the ordinary way." [6] This provision was construed in *Gotchy v. N. D. Workmen's Compensation Bureau.*[7] The parties had stipulated that the case should be tried without a jury, in the District Court, under the so-called Newman Act.[8] When the case was before the Supreme Court, the court stated, "Accordingly we are of the opinion that this appeal is a special proceeding pursuant to the Compensation Act; that it is not triable de novo upon appeal to this court. The findings of the trial court, therefore, are presumed to be correct unless clearly opposed to the preponderance of the evidence." In this case, therefore, the Supreme Court definitely stated that an appeal from the Workmen's Compensation Bureau was not a case that could be tried under the Newman Act, and could not be reviewed de novo in the Supreme Court but was a special statutory proceeding. The review then given by the Supreme Court, after the appellant has had a "trial in the ordinary way" is not a review anew, but the findings of the trial court are presumed to be correct unless clearly opposed to the preponderance of the evidence.[9]

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[5] Consolidated Edison Co. v. National Labor Relations Board, *supra.*

[6] Laws of 1919 Chapter 162, Section 17

[7] 49 N. D. 915, 194 N. W. 663 (1923)

[8] Laws of 1919 Chapter 8; This act provides for appeals in cases tried by the court without a jury. Among other things, this statute allows appellant to obtain a review of the entire case by the Supreme Court, if he so requests such an extensive review.

[9] Gotchy v. N. D. Workmen's Compensation Bureau is cited with approval in the following cases: Altman v. N. D. Workman's Compensation Bureau, 50 N. D. 215, 195 N. W. 287, 28 A. L. R. 1337 (1923); Dehn v. Kitchen, 54 N. D. 199, 209 N. W. 364 (1926); Klemmens v. Workman's Compensation Bureau, 54 N. D. 496, 209 N. W. 972 (1926); Pfeiffer v. N. D. Workman's Compensation Bureau, 57 N. D. 326, 221 N. W. 894 (1928).

In 1935 our Legislature amended Sec. 17 of Chapter 162 of the Laws of 1919 to the effect that on appeal to the Supreme Court, the appellant is entitled to a trial de novo.[10] This was allowed in *Weisgerber v. Workmen's Compensation Bureau.* At this point then, the appellant is entitled to a "trial in the ordinary way" in the District Court, and a trial de novo in the Supreme Court.

In 1941 the Legislature enacted the Administrative Agencies Uniform Practice Act.[12] In *Schmidt v. Workmen's Compensation Bureau,*[13] the court ruled that the plaintiff could not begin a separate and distinct action in the District Court but must first present his claim to the Bureau. The court held that the jurisdiction of the District Court was appellate only. This undoubtedly means that although the plaintiff is entitled to a "trial in the ordinary way", in the District Court, he must first present his claim to the Bureau and the Bureau must first deny him compensation upon some ground going to the basis of the claimant's right to share in the fund. And in the District Court the parties are confined to the record filed with the court as to the matter of evidence. It is worthy of note here that although the court was confined to the record, witnesses were heard in the District Court.[14]

Apparently the only change made by the Administrative Agencies Uniform Practice Act upon the method of judicial review of Workmen's Compensation Cases is that upon appeal to the District Court the evidence is confined to the record filed with the court.[15] The appellant is still entitled to a trial de novo in the Supreme Court.[16]

REVIEW OF PUBLIC SERVICE COMMISSION CASES

One of the main issues argued in *In Re Minneapolis, S. P. & S. Ste. M. R. Co.*[17] was whether or not the order as issued by the Board of Railroad Commissioners was appealable. As

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10 Laws of 1935 Chapter 286, Section 6

11 70 N. D. 165, 292 N. W. 627, 128 A. L. R. 1482 (1940).

12 Laws of 1941 Chapter 240

13 73 N. D. 245, 13 N. W. 2d 610 (1943)

14 See testimony Schmidt v. Workman's Compensation Bureau, *supra,* pages 250-251

15 Schmidt v. Workman's Compensation Bureau, *supra,;* See Laws of 1941 Chapter 240, Section 19

16 Groff v. State, 72 N. D. 554, 9 N. W. 2d 406 (1943); Starkenberg v. Workman's Compensation Bureau, 73 N. D. 234, 13 N. W. 2d 395 (1944)

17 30 N. D. 221, 152 N. W. 513 (1915)

to the merits of the arguments pro and con we are not here concerned. We are only concerned with the procedure on appeal, where appeal is allowed. In effect the court here held that the Railroad Company could appeal to the District Court and have a trial de novo there and if still aggrieved may appeal to the Supreme Court, which could relieve from the order of the Commission. The Supreme Court goes further and states, "The weight of the findings of the Board originally made in the matter is a question different from the power of the courts over the issue on which such findings are offered as evidence. No doubt cases may arise where the findings of the Commission . . . (citations here) . . . may necessarily be of an expert character, and because thereof, entitled to great weight . . . . " From this it appears that ordinarily the findings of the Commission are given little weight and the District Court may, of its own accord, determine the issues. Justice Bruce and District Judge Burr dissented in this case. Justice Bruce points out that according to the majority view, the District Court is given the power to make the administrative decision which the Legislature has granted to the Commission by statute.

In Chapter 192 of the Session Laws of 1919, the Legislature made provision for the Board of Railroad Commissioners to regulate, control and fix rates, charges and services of all public utilities. Sections 34, 35, and 42 of this Act provide for judicial review of the Commission's orders. These sections were construed in *State ex rel Hughes v. Milhollan.*[18] In speaking of judicial review of the Boards orders the court states: " . . . we are of the opinion that the Legislature intended that the orders of the Commissioners must be based upon evidence submitted to them at the hearing or hearings; and that on appeal the validity and lawfulness of the orders must be determined by the evidence contained in the record and certified to the court; and that in reviewing such orders the court must exercise its own independent judgment upon such facts and the law applicable thereto." The court goes on to say that when an appeal is taken from the Board, the appeal will be determined upon the evidence and the law, " . . . giving whatever weight to which they may be entitled, if *any* to the findings of the Commissioners upon disputed questions of fact. . . "

[18] 50 N. D. 184, 195 N. W. 292 (1923)

It is apparent here that the court felt that upon an appeal to the District Court the appellant would be entitled to an independent weighing of the evidence by the District Court. Sections 34, 35, and 42 of the Laws of 1919, Chapter 192 do not state that the appellant is entitled to a trial de novo in the District Court, but apparently the review given by the court goes that far.

The court points out in *State v. Great Northern R. Co.*[19] that on an appeal to a District Court from the Board of Railroad Commissioners the court is confined to the record. Reference is made in this case to the fact that no witnesses were heard by the court but that the decision of the court was based upon a review of the testimony before the Board and certified to the court. The Supreme Court also states that its decision is to be based upon the same record.

The court also in this case refers to *State ex rel Hughes v. Milhollan, supra,* and states, "While we exercise our own independent judgment, this judgment must necessarily be influenced to some extent by the judgment of the Board, in a matter primarily before it and of which it has such special facilities for judging of which we are denied."

A trial de novo is given one appealing from the Board of Railroad Commissioners by Section 29 of Chapter 164 of Session Laws of 1933. The Supreme Court construed this section in *Re Tri State Motor Transp. Co.*[20] The court states, "We are of the opinion that that part of Section 29, Chapter 164 of the Session Laws of 1933 which provides for a trial de novo on demand, means a trial on appeal as in cases tried without a jury, that is, upon all the evidence taken before the Commission upon which they made their findings." The court also refers to Section 4609c35 of the 1925 Supplement to the Compiled Laws of 1913 and states that the District Court is confined to the record of the hearing before the Commission.

In construing Section 29 as to mean a "trial on appeal as in cases tried without a jury" the Supreme Court infers that upon appeal from the District Court after the trial de novo the appellant may ask for a trial de novo in the Supreme Court.[21]

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[19] 56 N. D. 822, 219 N. W. 295 (1928)

[20] 67 N. D. 119, 270 N. W. 100 (1936)

[21] Section 28-2732 Rev. Code 1943 which provides for a trial anew in the Supreme Court upon an appeal of a case tried without a jury.

Section 29, Chapter 164 of the Session Laws of 1933 did not greatly enlarge judicial review of the Board's decisions because prior to this enactment the review being given was very extensive, so much so that the District Court had authority to substitute its findings for those of the Board.[22]

The Administrative Agencies Uniform Practices Act [23] became effective July 1, 1941. However the Act did not apply to *In Re Theel Brothers Rapid Transit Co.*[24] because the Act states that it is to become applicable in proceedings filed in or by an agency subsequent to July 1, 1941.[25] In this case the proceeding was started before the Public Service Commission in September 1940. Upon appeal to the District Court the appellants, who were protesting the application made before the Commission, asked for a retrial of the cause and a review of the order. This was granted and the District Court set aside the Commission's order. An appeal was then taken to the Supreme Court and the appellant, who was the applicant in the proceeding before the Commission, asked for a trial de novo.

It is interesting to note that our Supreme Court states that, "The orders made by the Commission must be based upon findings, and the findings must be based upon substantial evidence." The court does not state what they mean by substantial evidence but they cite *Lowden v. Ill. Com. Commission,*[26] wherein no clear cut definition of substantial evidence is given but it is inferred that the evidence to be substantial must support a conclusion that is reasonable. This inference was also apparent to our Supreme Court, because in the next paragraph after the one quoted above the court states, "The only question for determination on appeal to the Supreme Court from an order of the District Court, reversing the Public Utilities Commission is the sufficiency of the evidence to show that the order is not unreasonable or arbitrary."

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[22] In support of this conclusion, *see* In Re Minneapolis, S. P. & S. Ste. M. R. Co., *supra,* and to the cases previously referred to herein where the Supreme Court has made these statments, "...and that in reviewing such orders the court must exercise its own independent judgment upon such facts and the law applicable thereto..." State ex rel Hughes v. Milhollan, *supra;* and "... which requires the District Court to inquire into and determine the lawfulness of the decision or the final order of the board..." State v. Great Northern R. Co., *supra.*

[23] Laws of 1941, Chapter 240

[24] 72 N. D. 280, 6 N. W. 2d 560 (1942)

[25] Section 28-3222 Rev. Code 1943

[26] 376 Ill. 225, 33 N. E. 2d 430, 39 PUR (NS) 482 (1941)

References to substantial evidence appear again in *In Re Hanson.*[27] In this case the Commission made certain findings to which the Supreme Court makes these references, "The primary jurisdiction to determine administrative questions of the character involved is with the Commission and if the preponderance of the evidence supports the findings of the Commission, courts do not substitute their judgment for that of the Commission." The court here cited *Theel v. Great Northern R. Co., supra.*[28] Later in the case the court states that the findings of the Commission cannot be said to be arbitrary, capricious or unreasonable when there is substantial evidence from which to draw reasonably the inference of the facts. Still later the court quotes a New York decision which construes the expression "supported by the evidence" to mean that there must be more than a mere scintilla of evidence to justify a finding upon which legal rights and obligations are based.

The above two cases show that our court today has a tendency to give greater weight to the findings of the Commission if supported by substantial evidence, than was given when *In Re Minneapolis St. P. & S. Ste. M. R. Co., supra,* and *State ex rel Hughes v. Milhollan, supra,* were decided.

The case of *In Re Northern Pacific Railroad Co.,*[29] brought before the Supreme Court the following three sections of our Code for judicial interpretation. Section 28-3219 which provides that the District Court upon an appeal from the determination of an Administrative Agency, is directed to reverse or modify the decision of the agency if the court finds, among other things, that " . . . the findings of fact made by the Agency are not supported by the evidence." Section 28-3221 provides, "The judgment of a District Court in an appeal from the decision of an Administrative Agency may be reviewed in the Supreme Court on appeal in the same manner as any case in the court without a jury may be reviewed. . . " Section 28-2732 in to far as it is pertinent reads as follows, "On appeal in any action tried by the court, without a jury, whether triable to a jury or not. . The Supreme Court shall try anew the questions of fact specified in the statement or in the entire case if appellant demands a retrial of the entire case. . . "

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[27] 74 N. D. 224, 21 N. W. 2d 341 (1945)
[28] Same case as In Re Theel Bros. Rapid Transit, *supra.*
[29] 74 N. D. 416, 23 N. W. 2d 49 (1946)

In construing these statutes together, our court states, "We think it clear that these statutes, construed together, require a trial de novo in the District Court upon the record, on an appeal from a determination of the Public Service Commission and also a trial de novo upon an appeal from the District Court to this court when as in this case, the statement of the entire case and the specifications of error demand a review of the entire case."

SUMMARY

Under the Administrative Agencies Uniform Practice Act as construed in *In Re Northern Pacific Railroad Co., supra,* a party appealing from the Administrative Agency has a right to demand a trial de novo in the District Court and if not satisfied with the judgment of that court, may appeal to the Supreme Court and have a trial de novo there.

Prior to 1935, no trial de novo was given upon appeal from the Workmen's Compensation Bureau. Nevertheless, whether you called it a trial de novo or not, the appellant was entitled to a trial in the ordinary way upon appeal to the District Court and could appeal to the Supreme Court thereafter.[30]

In 1935 the Legislature provided for a trial de novo upon appeal to the Supreme Court in Workmen's Compensation cases.[31]

Apparently the only change made by the new practice Act in Workmen's Compensation cases was that upon appeal to the District Court the parties are confined to the record filed with the court as to the matter of evidence and thereafter upon appeal to the Supreme Court the appellant may have a trial de novo.[32] In view of *In Re Northern Pacific Railroad Co., supra,* which construes the new Act, the appellant should also be allowed a trial de novo in the District Court hereafter.

On appeals from the Board of Railway Commissioners, the review given is also very broad. Even as far back as 1915 the appellant was entitled to a trial de novo in the District Court and also in the Supreme Court.[33] This, of course, is still the procedure under the new Act. The only change noted was that in the more recent cases the Supreme Court seemed to give

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[30] Gotchy v. North Dakota Workman's Compensation Bureau, *supra.*
[31] Laws of 1935 Chapter 285, Section 6
[32] Schmidt v. Workman's Compensation Bureau, *supra.*
[33] In Re Minneapolis St. P., S. Ste. M. R. Co., *supra.*

some weight to the findings of fact of the Board if supported by substantial evidence.[34]

A brief summary of the scope of review given by the federal courts to the determinations of the Nation Labor Relations Board [35] may serve as a basis for an evaluation of the doctrine in force in this state governing judicial handling of administrative findings. As will appear later, the statutes of North Dakota governing judicial review of administrative findings, differ from the federal statutes concerning judicial review of National Labor Relations Board findings. However, this comparison is made for the purpose of pointing out to the reader that there is a basic difference in the underlying theory of the two systems. North Dakota does not give to the administrative agency the final voice on findings of fact in contrast to the usual situation in the federal system, wherein the administrative agency's finding of fact is conclusive if supported by substantial evidence.

Until the passage of the Federal Administrative Procedure Act, *supra,* there was no federal law governing all the various administrative agencies. Congress had, in setting up each agency provided in the statute the methods for judicial review of that agency's orders.[36] The new Act in Section 10 provides for a method of judicial review but does not supersede nor repeal the methods already given to the various agencies by the statute creating that agency. The new Act therefore did not change the method and extent of review provided by the National Relations Act, *supra.* In *Olin Industries v. National Labor Relations Board,*[37] the court points out that the legislative history of Section 10 of the Federal Administrative Procedure Act, *supra,* shows that that section was to be merely declaratory of the existing law "... and that it neither confers jurisdiction on this court above and beyond that which it already has, nor grants to aggrieved parties any rights that they did not have under the National Labor Relations Act."

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[34] In Re Northern Pacific R. Co., *supra.*

[35] 29 U. S. C. A. Section 151—160

[36] 29 U. S. C. A. Section 160 (e) (f), Labor-Management Relations Act of 1947
49 U. S. C. A. Section 16 (12) Interstate Commerce Commission
26 U. S. C. A. Section 1101 Tax Court of the United States
26 U. S. C. A. Section 1141 Tax Court of the United States

[37] 72 F. Supp. 226, 1947

It will also be noted that Section 10 of the National Labor Relations Act of 1935 [38] was not substantially changed by the Labor-Management Relations Act of 1947.[39] Therefore the method and extent of review at the present time is substantially the same as was given before the passage of the Federal Administrative Procedure Act of 1946, *supra*, and the Labor-Management Relations Act of 1947, *supra*.

Section 10 of the Labor-Management Relations Act, *supra*, differs somewhat from our North Dakota review sections 28-3215, 28-3218, 28-3219.[40] However, neither the L.-M. R. A. nor these North Dakota statutes provide for a trial de novo. Sections 10 (e) and (f) of the L.-M. R. A. expressly provide that the Board's findings of fact are to be conclusive if supported by "substantial evidence." Our North Dakota statutes do not contain such a provision, but Section 28-3219 does provide that the evidence considered by the court shall be confined to the record filed with the court, and that the court shall affirm the decision of the agency unless it shall find among other things, "... that the findings of fact made by the agency are not supported by the evidence..." Section 28-3221 of the North Dakota Rev. Code of 1943 provides for the review in the Supreme Court to be the same as is given in a case tried to the court without a jury. This means a trial de novo, as Section 28-2732 so provides.

Under the National Labor Relations Act, *supra*, where there is "substantial evidence" to support the findings made by the Board the court cannot put its decision in the place of the decision of the Board. What the U. S. Supreme Court has meant by substantial evidence is quoted above from the *Consolidated Edison Case* [41] as being, "... such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." It is apparent here, then, that the review given by our North Dakota courts is much more extensive than that given under the Nation Labor Relations Act, *supra*. In North Dakota, the appellant is entitled to a trial anew, while under the N. L. R. A., if there is "substantial evidence" to support the findings of the Board, then such findings are conclusive.

In North Dakota under Section 28-2732 our Supreme Court,

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[38] 29 U. S. C. A. Section 160
[39] 29 U. S. C. A. Seition 160, as amended.
[40] N. D. Rev. Code 1943
[41] 305 U. S. 197, 83 L. Ed. 126, 59 S. Ct. 206 (1938)

"... shall try anew the questions of fact specified ..." Because of the *Northern Pacific Railway Case, supra,* the District Court also has the power to try anew the question of fact specified in an administrative law case.

From this brief comparison of the Labor-Management Relations Act, *supra,* and our North Dakota statutes on judicial review of administrative orders, it is apparent that North Dakota does not give much weight to the agency's finding of fact—an agency that is supposedly an expert in its field. Our courts may take the evidence and weigh it independently.

Whether the federal procedure, as evidenced by the L.-M. R. A. (or N. L. R. A.) decisions, or the North Dakota procedure, is the better could only be determined by a complete investigation of the results produced under both. Such an investigation is not within the scope of this article. It is worthy of note, however, that the U. S. Supreme Court has this to say about judicial review of administrative decisions, "It is of paramount importance that courts not encroach upon this exclusive power of the Board if effect is to be given the intention of Congress to apply an orderly, informed, and specialized procedure to the complex administrative problems arising in the solution of industrial disputes. *As it did in setting up other administrative bodies, Congress has left questions of law which arise before the Board—but not more—ultimately to the traditional review of the judiciary. Not by accident, but in line with a general policy, Congress has deemed it wise to intrust the findings of facts to these specialized agencies.*[42] It is essential that courts regard this division of responsibility which Congress as a matter of policy has embodied in the very statute from which the Court of Appeals derived its jurisdiction to act." [43]

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[42] Italics supplied by writer

[43] Labor Board v. Waterman S. S. Co., 309 U. S. 206, 208, rehearing denied in 309 U. S. 696, (1939)