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Administrative Law - Judicial Review - Pennsylvania Local Agency Law - Exclusive Remedies

David B. Adams

ADMINISTRATIVE LAW—JUDICIAL REVIEW—PENNSYLVANIA LOCAL AGENCY LAW—EXCLUSIVE REMEDIES—The Pennsylvania Supreme Court has held that a party aggrieved by the adjudication of a local agency who fails to take the statutory appeal provided by the Local Agency Law is precluded from contesting the merits of the agency's order at a subsequent enforcement proceeding.

Erie Human Relations Commission ex rel. Dunson v. Erie Insurance Exchange, 348 A.2d 742 (Pa. 1975).

Four days after being discharged from his position with the Erie Insurance Exchange (Exchange), Sanford Dunson, a black man, registered a complaint with the Erie Human Relations Commission (Commission)[1] alleging unlawful racial discrimination in his discharge.[2] The Commission, after an investigation and two informal hearings at which all parties were present, found the firing to have been racially motivated and ordered[3] Dunson's reinstatement. The Exchange declined to do so, whereupon the Commission scheduled the matter for a formal hearing.[4] At the conclusion of the hearing the Commission issued findings of fact and an opinion[5] reaffirming

1. The Commission was established by the Erie Human Relations Commission Ordinance (EHRCO), ERIE, PA., CODIFIED ORDINANCES 19-1963, art. 151, §§ 1-13 (1968). The text of this ordinance appears in Brief for Appellant at 22a-43a, Erie Human Relations Comm'n *ex rel.* Dunson v. Erie Ins. Exch., 348 A.2d 742 (Pa. 1975) [hereinafter cited as Brief for Appellant].

2. Erie Human Relations Comm'n *ex rel.* Dunson v. Erie Ins. Exch., 348 A.2d 742, 743 (Pa. 1975). The EHRCO makes it an unlawful practice for any employer to discharge an employee because of his race if the individual is best able and most competent to perform the services required. The Ordinance also gives the Commission the power to receive and investigate such complaints. ERIE, PA., CODIFIED ORDINANCES 19-1963, art. 151, §§ 6(a), 7(b) (1968).

3. The chancellor in the court of common pleas thought this immediate issuance of an order to be an improper approach under the provisions of the EHRCO. He detected an absence of the "conference, conciliation and persuasion" which the state supreme court in Pennsylvania Human Relations Comm'n v. Chester School Dist., 427 Pa. 157, 175, 233 A.2d 290, 299 (1967), held to be an element of the similarly worded Pennsylvania Human Relations Act, PA. STAT. ANN. tit. 43, §§ 951-63 (1964). He also noted that under the EHRCO, orders are to be issued following formal hearings, not after informal investigatory proceedings. Erie Human Relations Comm'n *ex rel.* Dunson v. Erie Ins. Exch., Civil No. 73 (C.P. Erie Co., February 20, 1973). This unreported opinion appears in Brief for Appellant, *supra* note 1, at 44a-50a.

4. The Commission is empowered to proceed with a formal hearing in the event it fails to eliminate the discriminatory practices by its informal methods. ERIE, PA., CODIFIED ORDINANCES 19-1963, art. 151, § 8 (1968).

5. All testimony at the formal hearing is to be transcribed and given under oath. The Commission is to then issue findings of fact based upon all evidence received at the hearing

its earlier conclusion, and again ordered the Exchange to reinstate Dunson.[6] The Exchange made no effort to comply with the Commission's order, nor did it appeal the Commission's findings and conclusion.

A suit was filed on behalf of the Commission in the Court of Common Pleas of Erie County seeking a mandatory injunction to force compliance with the order.[7] At this enforcement proceeding the Exchange filed preliminary objections asserting that the complaint failed to allege sufficient grounds upon which to base a finding of racial discrimination, and that the findings of fact supporting the complaint did not adequately identify the reason for the discharge.[8] The court of common pleas upheld the Exchange's objections and dismissed the suit.[9]

The Commission appealed from that decision to the Commonwealth Court of Pennsylvania.[10] During oral argument the commonwealth court injected sua sponte the issue of the relevance of the Local Agency Law (LAL)[11] which had been enacted to implement

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and order the offending party to take such steps as the Commission thinks necessary to effectuate the purposes of the Ordinance. *Id.*

6. The notice received by the Exchange also included a description of the enforcement procedure available to the Commission. The EHRCO provides for certification of the record and the case to the City Solicitor who shall seek enforcement of the order against any person who fails to comply within ten days. Fines of up to $100.00 per violation may be imposed on any person who fails, refuses or neglects to obey the order within the period allowed. *Id.* §§ 10(a), 11.

7. *See* note 6 *supra.*

8. 348 A.2d at 743. The Exchange claimed that the pleadings did no more than state the legal conclusion, without factual support, that it had been guilty of racial discrimination. Brief for Appellant, supra note 1, at 21a. The complaint consisted mainly of the procedural record of the case from the time of Dunson's dismissal until the time suit was filed. *Id.* at 3a-6a.

9. Erie Human Relations Comm'n *ex rel.* Dunson v. Erie Ins. Exch., Civil No. 73 (C.P. Erie Co., February 20, 1973). The chancellor concluded that in order to violate the terms of the EHRCO it was necessary to show that the person fired had been "best able and most competent to perform the services required" and that the person's race had been the sole cause of the firing. ERIE, PA., CODIFIED ORDINANCES 19-1963, art. 151, §§ 6(a), 4(g) (1968). While he conceded that the findings of the Commission might have shown that racial prejudice was a factor in Dunson's dismissal, they failed to include facts tending to prove racial discrimination as defined by the EHRCO.

10. *See* Erie Human Relations Comm'n *ex rel.* Dunson v. Erie Ins. Exch., 12 Pa. Commw. 267, 315 A.2d 663 (1974).

11. PA. STAT. ANN. tit. 53, §§ 11301-11 (1972). The Local Agency Law (LAL) provides in pertinent part:

> Any person aggrieved by a final adjudication who has a direct interest in such adjudication shall have the right to appeal therefrom. Such appeal, unless otherwise

article V, section 9 of the Pennsylvania Constitution.[12] The court determined that the Local Agency Law was applicable[13] and required a party aggrieved by the action of a local agency to perfect an appeal to the appropriate court of common pleas within thirty days; a failure to take this appeal precluded the aggrieved party from contesting the merits of the agency decision at a later enforcement proceeding.[14] Since the Exchange failed to take such an appeal it was foreclosed from now challenging the agency ruling.

As a result of this adverse decision, the Exchange requested, and the Pennsylvania Supreme Court granted, allocatur. On appeal, the Exchange argued that the commonwealth court's reading of the LAL was erroneous. Noting that the Commission's organic statute was silent concerning appeals from its decisions, the Exchange contended that two methods of attacking the Commission's orders were available to aggrieved parties. They could challenge the merits at an enforcement proceeding, the method allowed prior to the enactment of the Local Agency Law,[15] *or* they could appeal directly to the

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provided by a statute authorizing a particular appeal, shall be taken within thirty days to the court of common pleas of any judicial district in which the local agency has jurisdiction.

Id. § 11307.

12. PA. CONST. art. V, § 9 was added to the constitution in 1968. It reads as follows:

There shall be a right of appeal in all cases to a court of record from a court not of record; and there shall also be a right of appeal from a court of record or from an administrative agency to a court of record or to an appellate court, the selection of such court to be as provided by law; and there shall be such other rights of appeal as may be provided by law.

This new section was not self-executing. Section 7 of the LAL was enacted to provide the right to an appeal which article V sought to confer. *See* note 11 *supra*.

13. 12 Pa. Commw. at 271-72, 315 A.2d at 665. The LAL states that the term "local agency"

means any department, departmental board or commission, independent administrative board or commission, office or other agency of a political subdivision now in existence or hereafter created, empowered to determine or affect private rights, privileges, immunities or obligations by adjudication . . . .

PA. STAT. ANN. tit. 53, § 11302(2) (1972).

14. 12 Pa. Commw. at 272, 315 A.2d at 665.

15. In Philadelphia v. Price, 419 Pa. 564, 215 A.2d 661 (1966), the court held that while the absence of an appeal provision in a local agency's organic statute would preclude any recourse to the courts for direct judicial review, it would not preclude a challenge to the validity of the agency order at an enforcement proceeding. 419 Pa. at 568-70, 215 A.2d at 663-64. Since the Commission's enabling legislation, like the ordinance in *Price*, was silent as to appeals, the Exchange reasoned that it likewise had the right to attack the Commission's order at an enforcement proceeding. The Exchange's reliance on *Price*, however, was rejected in *Erie*. *See* text accompanying notes 19-20 *infra*.

court of common pleas as provided by the LAL.[16] The Pennsylvania Supreme Court did not agree. Speaking for the majority, Justice Eagen first noted that the LAL was enacted to provide a "uniform and comprehensive method of appeal" from agency decisions where none had previously existed.[17] In addition, this new procedure had to be considered in light of the "well settled" policy in Pennsylvania that statutory remedies were to be strictly pursued to the exclusion of other available remedies.[18] The court found misplaced the Exchange's reliance on *Philadelphia v. Price*,[19] where a defendant who failed to comply with an order issued by the Philadelphia Human Relations Commission was allowed to attack the merits of that order at an enforcement proceeding. Since that case predated both the constitutional amendment and the passage of the LAL, *Price* was not controlling.[20] The court concluded that the appeal provisions of the LAL had to be viewed as substitutional rather than supplemental. The right to a statutorily provided, direct appeal from an agency adjudication would preclude an aggrieved party from challenging the merits of an agency order at a proceeding brought to enforce it.[21]

Finally, the court disposed of the Exchange's argument that the supremacy clause in the state Human Relations Act[22] required that a party aggrieved by the action of a local human relations commis-

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16. *See* note 11 *supra*.

17. 348 A.2d at 744.

18. *Id.* Justice Eagen cited Pennsylvania Life Ins. Co. v. Pennsylvania Nat'l Life Ins. Co., 417 Pa. 168, 208 A.2d 780 (1965), as authority for this proposition. *Pennsylvania Life Ins.* concerned a decision by the Pennsylvania Insurance Department (PID) that the defendant's use of its proposed name would not be an unfair trade practice since it was not deceptively similar to the plaintiff's name. The PID was specifically covered by the state Administrative Agency Law (AAL), PA. STAT. ANN. tit. 71, §§ 1710.1-.51 (1962), *as amended*, PA. STAT. ANN. tit. 17, § 211.403 (1970), which provided for a comprehensive right of appeal from state agency decisions. The aggrieved plaintiff failed to perfect his appeal under the AAL, but instead filed suit in equity to enjoin the defendant from using its proposed name. The Pennsylvania Supreme Court held that the lower court properly dismissed the suit since the plaintiff had an adequate remedy at law in his right to appeal. The plaintiff was not free to ignore his statutory remedy and invoke an equitable one. 417 Pa. at 173-74, 208 A.2d at 783.

19. 419 Pa. 564, 215 A.2d 661 (1966) (white seller ordered by Philadelphia Human Relations Commission to sell home to Chinese buyer).

20. 348 A.2d at 745.

21. *Id.* at 744.

22. PA. STAT. ANN. tit. 43, §§ 951-63 (1964), *as amended*, (Supp. 1976). The supremacy clause of the state Act provides in part:

> In the event of a conflict between the interpretation of a provision of this act and the interpretation of a similar provision contained in any municipal ordinance, the interpretation of the provision in this act shall apply to such municipal ordinance.

Id. § 962(b).

sion be given the same right as a party aggrieved by an order of the state Human Relations Commission—an opportunity to challenge the order at an enforcement proceeding.[23] Justice Eagen determined that the supremacy clause of the state Human Relations Act could only be triggered by a difference of interpretation between the state Act and a local ordinance.[24] The clause did not require parity of enforcement procedures contained in the two laws, but only that similar substantive provisions be interpreted in accordance with the Commonwealth's Act. The court concluded that the variations in the enforcement provisions of the state Act and the Erie Human Relations Commission Ordinance (EHRCO) amounted to a clear difference rather than a problem of interpretation, hence no supremacy question was presented.[25] Justice Roberts, the lone dissenter, took issue with this part of the majority opinion.[26] He felt that the court's definition of conflict of interpretation was too narrow. He approached the question from the standpoint of the different opportunities the two laws afforded parties seeking to challenge an agency order, rather than the ambiguities in statutory language. Justice Roberts was convinced that if the EHRCO purported to deny an aggrieved party the right to contest the merits of an agency order at an enforcement proceeding while the state Act allowed such a challenge, the Commonwealth's Act would take precedence and the Exchange's challenge would have to be allowed.[27]

The principal issue presented by *Erie* was whether the appeal provisions of the Local Agency Law should be deemed the exclusive method of challenging an agency order. Previous to the enactment

23. The Exchange argued that courts asked to enforce Commission orders were apparently limited to the issue of enforcement *vel non* since the EHRCO conferred no greater power on those courts. Conversely, courts enforcing state Human Relations Commission orders had the power to enforce, modify or set aside, in whole or in part, any orders of that agency. *See id.* § 960. In the Exchange's view, this indicated that courts called upon to enforce orders of the state commission would have the power to allow challenges to the validity of state commission orders despite the appeal available under the AAL. If an opposite conclusion was reached with regard to courts dealing with the EHRCO, then that result would require the application of the supremacy clause to align the local procedure with that of the state Act. In finding no conflict between the state Act and the EHRCO, the Pennsylvania Supreme Court left open the question of whether the Pennsylvania Human Relations Act permitted challenges to the merits of a state Commission adjudication in the enforcement proceeding brought to force compliance with the order. 348 A.2d at 745.

24. 348 A.2d at 745.

25. *Id.*

26. *Id.* at 746 (Roberts, J., dissenting).

27. *Id.*

of the LAL, a party aggrieved by the adjudication of a local agency had a right to direct pre-enforcement review only if that right was granted in the agency's organic statute.[28] All other review was obtained collaterally, either by failing to comply with the agency order and defending against it at the enforcement proceeding, as in *Price,* or, by suing for injunctive relief in appropriate circumstances.[29] The Local Agency Law, however, conferred the right to a direct appeal to all parties having a direct interest in the adjudication of a local agency.[30] The Pennsylvania Supreme Court's determination that the LAL provided a remedy wholly displacing, rather than augmenting, the right to challenge local agency orders at enforcement proceedings is clear; however, the reasons for that decision are not as easily discernible.

Erie involved a party in an equity suit who had failed to take an available appeal from the adjudication of an administrative agency; its factual setting could lead to an inference that either the doctrine requiring exhaustion of administrative remedies[31] or the doctrine of equitable restraint[32] could provide an adequate basis for the court's decision. However, a conclusion that either of the two doctrines supports the decision is unfounded. The exhaustion rule requires that a party aggrieved by the action of an administrative agency pursue all available procedures for obtaining review or redress within the agency before he challenges the order in court.[33] In *Erie* there were no further administrative procedures for the Exchange

28. *See* Philadelphia v. Price, 419 Pa. 564, 568, 215 A.2d 661, 663 (1966).

29. An aggrieved party seeking injunctive relief must show that the order of the agency is final, that the harm caused will be irreparable, and that no adequate legal remedy is available to him. If it is possible that the order or regulation of the agency will not be enforced as stated, injunctive relief will be denied until such time as its consequences become certain. *See, e.g.*, Abbott Labs v. Gardner, 387 U.S. 136 (1967) (pre-enforcement injunction granted against FDA regulation).

30. *See* note 11 *supra*.

31. *See* McKart v. United States, 395 U.S. 185 (1969) (reviewing the purposes and rationale of the exhaustion doctrine). *See generally* K. DAVIS, ADMINISTRATIVE LAW TREATISE § 20 (1958) [hereinafter cited as DAVIS]; L. JAFFE, JUDICIAL CONTROL OF ADMINISTRATIVE ACTION ch. 11 (1965) [hereinafter cited as JAFFE].

32. *See generally* J. POMEROY, A TREATISE ON EQUITY JURISPRUDENCE § 176 (5th ed. 1941).

33. The exhaustion doctrine has been explained as being grounded in principles of separation of powers and deters courts from interfering with decisions of other governmental branches until all contemplated action has been completed. It also finds its roots in the finality doctrine; as long as a possibility exists that an agency will give the desired relief to the aggrieved party, no definite harm has resulted and there is nothing for the court to adjudicate. *See* JAFFE, *supra* note 31, at 424-25.

to pursue. The EHRCO did not provide for rehearings, nor did it create a higher administrative body with the power to review orders of the Commission. Since the Exchange did not fail to pursue any administrative recourse available to it, the exhaustion rule could not have been applied in these circumstances.

The doctrine of equitable restraint also fails to explain the result in *Erie*. The doctrine requires that a party seeking to invoke the aid of a court of equity must first pursue all adequate legal remedies available to him.[34] An application of the doctrine results in the court refusing to hear the suit at the outset; the court is concerned with the legal remedies available to the plaintiff who is seeking to have the court *act*, not with the defendant who seeks to *prevent* the court from acting.[35] Therefore, the fact that the Exchange had an adequate legal remedy was of no consequence under this doctrine because it was not the party invoking the aid of the court.

In *Erie*, the court did state that its decision was based on the "well settled" rule that when statutory remedies are provided, the procedure prescribed by the statute must be strictly pursued to the exclusion of other means of redress.[36] This rule enunciated by the court finds its origin in the Act of March 21, 1806,[37] which has been the basis for Pennsylvania's policy that multiple remedies shall be avoided, wherever possible, by demanding exclusivity of any available statutory remedy.[38] In contrast to the facts in *Erie*, however,

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34. *See, e.g.*, Knup v. Philadelphia, 386 Pa. 350, 126 A.2d 399 (1956) (injunction will not issue where plaintiff failed to appeal zoning revision to Zoning Board of Adjustment); Kane v. Morrison, 352 Pa. 611, 44 A.2d 53 (1945) (failure to challenge election petitions in court of common pleas, as provided by law, precludes issuance of injunction to halt printing of ballots).

35. Equity cases where a defendant has been penalized for not having availed himself of an earlier appeal are usually based on grounds other than this principle of equity. *See, e.g.*, Commonwealth v. Lentz, 353 Pa. 98, 44 A.2d 291 (1945) (failure to perfect appeal to court which was expressly given exclusive jurisdiction); Bartron v. Northhampton, 342 Pa. 163, 19 A.2d 263 (1941) (agency ruling may not be challenged in a court other than the one expressly given exclusive jurisdiction); Philadelphia v. Sam Bobman Dep't Store Co., 189 Pa. Super. 72, 149 A.2d 518 (1959) (failure to exhaust appeal procedures within agency).

36. 348 A.2d at 744.

37. Act of March 21, 1806, ch. 2686, §§ 1-14, [1806] Laws of Pa. 326, providing in part:

> [I]n all cases where a remedy is provided, or a duty enjoined, or anything directed to be done by any act or acts of Assembly of this commonwealth, the directions of the said acts, shall be strictly pursued, and no penalty shall be inflicted or any thing done agreeably to the provisions of the common law, in such cases, further than shall be necessary for carrying such act or acts into effect.

Id. § 13 (now codified at PA. CONSOL. STAT. ANN. tit. 1, § 1504 (Supp. 1976)).

38. *See* O'Neill v. Lawrence, 43 Dauph. 121, 127, 27 Pa. D. & C. 441, 448 (C.P. 1936),

the Act traditionally had been invoked by the Pennsylvania courts in cases where the exhaustion doctrine could have been applied, and in cases where courts of equity would have normally denied relief based on considerations of equitable restraint.[39] Although the statute was never mentioned in the *Erie* opinion, it was instrumental in every case cited by the court as authority for its conclusion that the LAL provisions provided the exclusive avenue of redress available to parties aggrieved by local agency action.[40] Moreover, the cases cited by the court involved circumstances where the Act was applied to deny relief to plaintiffs, whereas *Erie* involved a defendant being sued to force compliance with an allegedly erroneous order. Since the court's cited authority did not provide a precedent for applying the rule of the Act to defendants, possibly the court was persuaded that the sweeping language in those cases warranted an application of the rule to the facts in *Erie*.[41] Yet in federal cases the

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where the court recognized: "It is not the policy of our law to multiply remedies." The cases cited in *Erie* contain passages of similar tenor. *See, e.g.*, Ermine v. Frankel, 322 Pa. 70, 72, 185 A. 269, 270 (1936) ("[w]here a remedy or method of procedure is provided . . . such remedy or procedure is exclusive"); White v. Old York Road Country Club, 318 Pa. 346, 349-50, 178 A. 3, 5 (1935) ("a statutory remedy must be followed to the exclusion of other common law remedies").

39. *E.g.*, Blank v. Board of Adjustment, 390 Pa. 636, 136 A.2d 695 (1957) (failure to appeal issuance of variance to court of common pleas, as provided by law, precluded plaintiff from obtaining injunctive relief); Pittsburgh Coal Co. v. Forward Township School Dist., 366 Pa. 489, 78 A.2d 253 (1951) (taxpayer who failed to appeal initial assessment precluded from suing in equity to recover money paid under unconstitutionally imposed tax); Vogt v. Port Vue Borough, 170 Pa. Super. 526, 85 A.2d 688 (1952) (suit to enjoin borough manager from revoking building permit improper where plaintiff failed to perfect statutory appeal to zoning review board).

40. *See* note 41 *infra*.

41. The *Erie* court stated:

> Moreover, it is well settled that "where statutory remedies are provided, the procedure prescribed by the statute must be strictly pursued, to the exclusion of other methods of redress . . . . This is particularly true of *special statutory appeals from the action of administrative bodies.*"

348 A.2d at 744 (emphasis in original). The quote was taken from Colteryahn Sanitary Dairy v. Milk Control Comm'n, 332 Pa. 15, 1 A.2d 775 (1938), a case involving a totally different question than was present in *Erie*. *Colteryahn* held that parties who failed to introduce relevant evidence at price hearings before the Milk Board were precluded from introducing the evidence on appeal. The proposition taken from *Colteryahn* was based on three cases involving parties aggrieved by agency action who sought injunctive relief while ignoring their available remedy at law. Each of the cases, therefore, was distinguishable from *Erie*. *See* Ermine v. Frankel, 322 Pa. 70, 185 A. 269 (1936) (suit for mandamus to compel board of elections to change plaintiff's party registration improper when statutory appeal not taken); White v. Old York Road Country Club, 318 Pa. 346, 178 A. 3 (1935) (suit to enjoin construction of gas station improper where plaintiff failed to perfect statutory appeal to court of

difference between the positions of the moving party and the party who must defend against the suit has been perceived as significant enough to justify holding that even a failure to exhaust administrative remedies would not necessarily preclude a defendant from raising all possible defenses at an enforcement proceeding.[42] Since *Erie* was a case of first impression, it is troublesome that the court overlooked not only this contrary federal precedent, but also the significant distinction between *Erie* and those cases used as authority for the decision.

The court's holding that the appeal provisions of the LAL are to constitute the exclusive procedure for challenging the order of a local agency was not an inevitable one. There is nothing in the language of the Local Agency Law indicating that its appeal provisions were intended to be in lieu of a party's right to defend his position at an enforcement proceeding.[43] Neither is there any apparent legislative or administrative purpose involved which would require such a conclusion.[44] Federal courts called upon to determine

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common pleas); Taylor v. Moore, 303 Pa. 469, 154 A. 799 (1931) (suit for mandamus to compel issuance of building permit improper where plaintiff failed to appeal refusal to court of common pleas as provided by law).

42. For example, in United States v. McCrillis, 200 F.2d 884 (1st Cir. 1952), the court decided that a landlord's failure to appeal a rent regulation to the agency review board did not bar a challenge to the validity of the regulation at the enforcement proceeding. The court observed

> [t]he discretionary rule adopted by courts of equity to the effect that a petitioner will be denied equitable relief where he has failed to pursue an administrative remedy under which he might obtain the same relief, is wholly misapplied when invoked against a landlord who is not seeking equitable relief but is merely defending himself against an enforcement action.

Id. at 885.

43. The LAL simply states that parties such as the Exchange "shall have the right to appeal" and then prescribes the procedure for exercising that right. PA. STAT. ANN. tit. 53, § 11307 (1972).

44. Some of the factors suggested as indicative of a need for an exclusive appeal procedure include: (1) necessity for finality and regularity of interpretation; (2) need to prevent a multiplicity of suits; and (3) complexity of the subject matter. *See* Yakus v. United States, 321 U.S. 414, 429-33 (1944). None of these considerations appear to be applicable in *Erie*. The first factor generally arises when an agency designed to deal with an emergency is involved since it is essential for the agency to quickly establish a uniform and unquestioned body of law in order to accomplish its goal. There is nothing to indicate that local agencies in general, or the Commission in particular, were created to respond to such an emergency, or that the Commission would be any less effective if made to proceed without a provision for exclusive appeals. The second factor was apparently not significant in *Erie* because the decision does not decrease the number of suits which will be brought. *See* note 49 and accompanying text *infra*. It is difficult to understand how the third factor could be applied in *Erie*. The courts

whether a specified appeal procedure should constitute the exclusive recourse available to persons affected have generally found exclusivity only when the statutory language or agency purpose required it.[45] Furthermore, violation of an agency order, like violation of a statute, has always been an acceptable method of challenging its validity;[46] by holding that the merits of an administrative order may be challenged only by perfecting an appeal under the LAL, *Erie* effectively eliminates resort to this alternative procedure. *Erie* also increases the possibility that an agency order will be enforced without having its merits subjected to judicial scrutiny. Such a result is generally regarded as an undesirable abdication of the judiciary's authority to oversee the acts of administrative agencies.[47] Finally, the decision in *Erie* was not necessary in order to promote judicial economy. While *Erie* will guarantee that an agency order's validity will be litigated only once, the doctrine of collateral estoppel[48] was available before this case to accomplish the same end.[49]

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of common pleas are the forums for appeal both under the LAL and for the enforcement proceedings under the EHRCO; they have no greater expertise when they sit as a court of law than when they sit in equity.

45. *See, e.g.*, Yakus v. United States, 321 U.S. 414 (1944). *Yakus* dealt with the provisions of the Emergency Price Control Act which stated that price regulations enacted by the Office of Price Administration (OPA) could only be judicially reviewed by a specially created Emergency Court of Appeals and then by the Supreme Court. In holding that this precluded a defendant from challenging the validity of a price regulation at a criminal proceeding, the Supreme Court noted that Congress had clearly expressed an intent to confer exclusive jurisdiction on the new court. According to the Court, not only was the statutory language unmistakably straightforward, but also a centralized and exclusive route of appeal was necessary in order for the OPA to adequately cope with the inevitable threat of wartime inflation. Finality of price regulations and regularity of judicial interpretation were essential to the accomplishment of the congressional purpose. The decision in *Yakus* was subsequently explained as having "resulted by prescription of the statute, rather than by application of the accepted rule in courts of equity that equitable relief would be denied to a petitioner who had failed to exhaust available administrative remedies." Smith v. United States, 199 F.2d 377, 381 (1st Cir. 1952) (defendant allowed to challenge the validity of rent regulations under the rent control act which did not contain provision for the exclusive appeal found in the Emergency Price Control Act).

46. *See, e.g.*, DAVIS, *supra* note 31, at § 23.07.

47. *See* Greater Boston Television Corp. v. FCC, 444 F.2d 841, 850-52 (D.C. Cir. 1970), *cert. denied*, 403 U.S. 923 (1971) (reviewing the nature of the judicial duty to supervise agency action). *See generally* JAFFE, *supra* note 31, at 589-90.

48. *See generally* M. GREEN, BASIC CIVIL PROCEDURE 207-12 (1972).

49. In the event an appeal was taken to the court of common pleas challenging the validity of an order, the decision of that court could be pleaded by the successful party to estop the unsuccessful party from relitigating the issue at a later enforcement proceeding. If no appeal

Erie now makes it imperative that parties who are aggrieved by the order of a local agency, and who wish to obtain judicial review of that order, file an appeal in the court of common pleas within thirty days. Should they fail to appeal, they face the prospect of being forced to comply with an arguably invalid order without having had an opportunity to raise that invalidity as a defense. The only issues left to be resolved when a local agency seeks to have its unappealed order enforced involve the defendant's reasons for having failed to comply.[50] *Erie* has thus elevated the adjudications of local agencies to the same level as trial court proceedings: unless appealed, the determinations in each are to be accepted as correct. The basis for this increased confidence in the ability of local agencies to perform their quasi-judicial function with limited opportunity for review by a court remains unexplained.

Perhaps the most striking aspect of *Erie* is the irony involved in its result. The supreme court was faced with a piece of legislation ostensibly enacted to increase an aggrieved party's ability to obtain judicial review of an agency order; yet, the court construed the Local Agency Law to increase the possibility that an agency order will be enforced without effective judicial review of its merits. Whether *Erie*'s construction of the LAL is satisfactory to those who enacted the law is unknown, but it seems unlikely that the court's reliance on the policy behind the Act of March 21, 1806 could have been anticipated by the legislature when it passed the LAL. If the Local Agency Law was indeed enacted to provide aggrieved parties expanded opportunities to challenge agency action, *Erie* will require the General Assembly to return to that law and express its purpose in more explicit terms.

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was taken, the issue of the order's validity would be the subject of litigation for the first time at the enforcement proceeding. In either case, the validity of the order would only be litigated once.

50. *See* 12 Pa. Commw. at 272, 315 A.2d at 665.