COMMENTS

SCOPE OF JUDICIAL REVIEW OF ADMINISTRATIVE ACTION

The absence of a clear-cut doctrine on the scope of judicial review of administrative action compels a "recognition of a wide margin for judicial discretion" [1] in determining whether to disturb administrative findings or to substitute the court's own judgment. The core of the problem is the inquiry into a possible criterion or criteria to guide the exercise of that discretion.[2] A review of our Supreme Court decisions will disclose the broad freedom it enjoys. Not solely by formulas and theories but equally so by its feel of what the situation requires and the confidence it may rightly repose on administrative tribunals is its reaction to challenged administrative performance determined. That is how things are. Not so, in theory. For the statutory grant of power to the judiciary to review administrative awards or decisions usually speaks in terms of the law-fact distinction.

I. STATUTORY GRANT OF POWER

No general provision of law exists setting forth the scope of judicial review of administrative action. The statute creating the administrative agencies must be consulted to locate judicial authority on such matter.

Where such authority is granted, the emphasis is usually placed on whether the action to be reviewed involves a question of law or of fact. Thus, under the Industrial Peace Act, this adherence to the law-fact distinction is shown by the provision that "findings of the Court (of Industrial Relations) with respect to questions of fact if supported by substantial evidence on the record shall be conclusive." [3] In the Minimum Wage Law, it is expressed in the words "the review by the Court shall be limited to questions of law, and findings of facts by the Secretary of Labor when supported by substantial evidence shall be conclusive." [4] As regards the Public Service Commission it is provided that

> "the Supreme Court is hereby given jurisdiction to review any order, ruling or decision of the Commission and to modify or set aside such order, ruling or decision when it clearly appears that there was no evidence before the Commission to support reasonably such order, ruling or decision, or that the same is contrary to law, or that it was without the jurisdiction of the Commission." [5]

With respect to the Civil Aeronautics Board the theory is embodied in the words

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[1] DAVIS ON ADMINISTRATIVE LAW, p. 926.
[2] *Ibid.*, p. 926.
[3] Sec. 6, Republic Act No. 875.
[4] Sec. 7, Republic Act No. 602.
[5] Sec. 35, Commonwealth Act No. 146.

"The Supreme Court may review any order, ruling, or decision of the Board and modify or set aside such order, ruling, or decision when it clearly appears that there was no evidence before the Board to support reasonably such order, ruling, or decision, or that the same is contrary to law or that the Board has no or has exceeded its jurisdiction." [6]

To the same effect, the Public Land Act provides that "his (Director of Lands) decisions as to questions of facts are conclusive when approved by the Secretary of Agriculture and Commerce." [7]

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[6] Sec. 49, Republic Act No. 776.

[7] Sec. 4, Commonwealth Act No. 141.

Other statutes provide:

a. *Patent Office*

(Sec. 61, Republic Act No. 165). The applicant for a patent or for the registration of design, any party to a proceeding to cancel a patent or to obtain a compulsory license, and any party to any other proceeding in the Office may appeal to the Supreme Court from any final order or decision of the Director.

(Sec. 68, Republic Act No. 165). The Supreme Court may, on petition filed within five days after the filing of the answer, allow the parties to adduce additional evidence material to the matter at issue, which shall constitute a supplementary record to be considered in connection with the record on appeal.

(Sec. 7, Republic Act No. 637, amending sec. 78 of Republic Act No. 165). The Director of Patents may prescribe rules and regulations governing the recognition of attorneys, agents or other persons representing applicants or other parties before his office in patent and trade mark cases, * * *. And the Director of Patents may, after notice and opportunity for a hearing suspend or exclude * * * from further practice before his office any person, attorney or agent shown to be incompetent or disreputable, or guilty of gross misconduct, or gross discourtesy or disrespect towards any Patent office official or examiner * * *. And the action of the director may be reviewed upon the petition of the person so refused recognition or so suspended or excluded, by the Supreme Court under such conditions and upon such proceedings as said Court may by its rules determine.

b. *Commission on Elections*

(Sec. 5, Republic Act No. 180). Any decision, order or ruling of the Commission on Elections may be reviewed by the Supreme Court by writ of *certiorari* in accordance with the Rules of Court or with such rules as may be promulgated by the Supreme Court.

c. *Securities and Exchange Commission*

(Sec. 4, Republic Act No. 635, amending the first paragraph of sec. 35, Commonwealth Act No. 83). *Court review of orders:*—(a) Any person aggrieved by an order issued by the Commission in a proceeding under this Act to which such person is a party or who may be affected thereby may obtain a review of such order in the Supreme Court of the Philippines by filing in such court within 30 days after the entry of such order a written petition praying that the order of the Commission be modified or set aside in whole or in part. * * * Upon filing of the transcript, such court shall have exclusive jurisdiction to affirm, modify, and enforce or set aside such order, in whole or in part. * * * The Commission may modify its findings as to the facts, by reason of the additional evidence so taken, and it shall file such modified or new findings, and its recommendation if any, for the modification or setting aside of the original order."

It may be noted that this is the same provision as the amended one; the only

When there is no specific statutory authority, the aggrieved party may utilize the usual extraordinary legal remedies referred to in the Rules of Court as special civil actions, for correcting an abuse of discretion or a lack or excess of jurisdiction. For this purpose reliance may be had upon the general provisions found in the Rules of Court.

Thus, a case may be brought to the Supreme Court by certiorari

> "where any tribunal, board, or officer exercising judicial functions, has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion, and there is no appeal nor any plain, speedy and adequate remedy in the ordinary course of law. * * *"[8]

Another remedy that an aggrieved party may avail of is that of mandamus which under the Rules of Court is proper

> "when any tribunal, corporation, board or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled and there is no other plain, speedy and adequate remedy in the ordinary course of law * * *"[9]

In the exercise of its reviewing authority, the court may also issue a writ of prohibition in any case

> "when the proceedings of any tribunal, corporation, board or person, whether exercising functions judicial or ministerial, are without or in excess of its or his jurisdiction, or with grave abuse of discretion, and there

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difference is the absence of the statement "findings of fact of the Commission shall be conclusive" in sec. 4, Republic Act No. 635.

d. *Monetary Board.*

(Sec. 71, Republic Act No. 337). Any opinion, decision, ruling, or regulation made or issued by the Superintendent of Banks may be appealed to the Monetary Board, which shall have the power and authority to confirm, modify or repeal such opinion, decision, ruling or regulation made or issued as aforesaid; but the action of the Monetary Board with respect thereto shall be subject to judicial review.

[8] Sec. 1, Rule 67; *Manila Railroad Co. v. A. L. Ammen Trans. Co.* (1925), 48 Phil. 266; *Sotto v. Commission on Elections* (1946), 43 O. G. 72; *Claudio v. Zandueta* (1937), 64 Phil. 812; *Bardwill Bros. v. Generoso* (1938), 66 Phil. 736; *Ishi v. Public Service Commission* (1936), 63 Phil. 428; *Stevenson v. Rodriguez* (1936), 63 Phil. 877; *Sison v. Board of Accountancy* (1949), 47 O. G. 2932; *Javellana v. La Paz Ice Plant* (1937), 65 Phil. 14; *Torres v. Mayo* (1939), 69 Phil. 208.

[9] Sec. 3, Rule 67; *Interstate Commerce Commission v. U. S. ex rel. Humbolt Steamship Co.* (1912), 224 U. S. 474; 56 L. ed. 849; 32 S. Ct. 556; *Association of Beverages Employees v. Figueras*, G. R. L-4813, prom. May 28, 1952; *Guzman v. Lichauco* (1921), 42 Phil. 291; *Olsen and Co. v. Herstein and Rafferty* (1915), 32 Phil. 520; *Ortua v. Singson Encarnacion* (1934), 39 Phil. 440; *Blanco v. Medical Examiners* (1924), 46 Phil. 190; *Sotto v. Ruiz* (1921), 41 Phil. 469; *Suarez v. Platon* (1940), 69 Phil. 556; *Manila Hotel Employees Association v. Manila Hotel Co.* (1941), 73 Phil. 374; *Ho Tye v. Marave* (1939), 67 Phil. 56.

is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law. * * *" [10]

The availability of habeas corpus to test the legality of detention in deportation cases is now a settled matter.[11] This remedy extends "except as otherwise expressly provided by law to all cases of illegal confinement or detention, by which any person is deprived of his liberty or by which the rightful custody of any person is withheld from the person entitled thereto." [12]

II. LAW-FACT DISTINCTION

The accepted rationalization is to categorize a particular issue as one of "fact" or of "law." [13] Whether or not the court will substitute its judgment for that of the administrative tribunal will depend, according to this theory, upon the presence of a question of law or a question fact. That is, the courts will review administrative adjudications on questions of law, while respecting administrative findings of fact if supported by evidence.[14] Thus the language of judicial review sharply differentiates between "law" and "fact." [15]

This sweeping generalization is the statement of the problem, not its solution. How does one segregate the factual nature of a particular question from its legal attributes? Can one in this situation isolate the former from the latter? Is one identifiable from the other? Professor Brown in hopeless despair said that there is no difference between them, the distinction being "only a bit of legalistic mummery designed to conceal from the uninitiated the fact that the courts decide these questions as they wish." [16] That is clearly to exaggerate, though. Not so extreme is the position taken by

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[10] Sec. 2, Rule 67; *Austria v. Solicitor General* (1941), 71 Phil. 288; *Chiongbian v. De Leon* (1949), 46 O. G. 3652; *Guido v. Rural Progress Administration* (1949), 47 O. G. 1848; *Planas v. Gil* (1939), 67 Phil. 62.

[11] *Lao Tan Bun v. Fabre* (1948), 46 O. G. Supp. to No. 1, 480; *Carmona v. Aldanese* (1930), 54 Phil. 896; *Uy Tana v. Collector of Customs* (1931), 55 Phil. 942; *Tan Phing Co v. Collector of Customs* (1934), 60 Phil. 542; *Ong Liangco v. Collector of Customs* (1933), 58 Phil. 554; *In re Dick* (1918), 38 Phil. 41.

[12] Sec. 1, Rule 102.

[13] Stern, Review of Findings of Administrators, Judges and Juries (1944), 58 *Harv. L. Rev.*, p. 70, 93 *et seq.*

[14] *Ibid.*, at 72: "determinations of administrative bodies on the 'facts' are treated by reviewing courts with considerable though varying degrees of respect. On matters of 'law' however, the reviewing courts feel free to substitute their own judgment.

"When Congress establishes an administrative agency and lays down general standards for it to follow, the agency has the function of filling in the interstices which have been deliberately left open. The duty of the courts in reviewing administrative decision for errors of law is to see that the agency has stayed within the bounds for the exercise of discretion fixed by Congress and that it has applied the statutory standard and no other."

[15] Report of the Atty. General's Committee on Adm. Proc. (1941) 88 cited in Brown, R. A., Fact and Law in Judicial Review (1942), 56 *Harv. L. Rev.* 899.

[16] Brown, *loc. cit., supra,* at 900.

Isaacs: "what today is a question of fact may be a question of law tomorrow." [17] It is equally true that what one judge regards as a question of fact another may regard as a question of law.[18]

What is more natural, then, than for the Supreme Court to take refuge in the acceptance of what has been decided by the administrative tribunal as a determination of fact which when "there is sufficient evidence to support it, is conclusive on the Supreme Court." [19]

While the task is difficult, it is not impossible. [20] True, the law is shot through with this law-fact distinction. But, to say that law and fact are one and the same is to condemn the law as dealing in meaningless verbiage. The law is not susceptible to that reproach.

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[17] The Law and the Fact (1922), 22 *Col. L. Rev.* 8.

[18] DAVIS, *op. cit., supra* note 1 at 926.

[19] *Interprovincial Bus Co. v. Clarete*, G. R. Nos. L-4100 and 4102, prom. May 15, 1952.

[20] At this point, it would be helpful to quote some passages from the more distinguished authorities on what are questions of fact and questions of law.

Thayer in "Preliminary Treatise on Evidence" (1896), p. 191, (quoted in Brown, *loc. cit., supra* at note 14, p. 901) defines a question of fact as a question of the "existence, reality, truth of something; or the 'rei veritas.' Questions of law are those which are concerned with the inquiry whether there be any such rule or standard, the determination of the exact meaning and scope of it, such as the conformity of it, in the mode of its enactment with the requirement of a written constitution."

"Questions of fact in a given controversy are those questions which may be determined without reference to any rule or standard prescribed by the State—that is, without reference to law." Brown, *loc. cit., supra* note 15, at p. 901.

"In each case, the fact is ascertained by observation; there can be no question of judgment or opinion. A person charged with the duty of deciding a question of law, is expected to decide it by applying a technique of legal reasoning by precedent, by analogy, by the application of general principles and certain adherence to logical form." Henderson (1924), The Federal Trade Commission in GELLHORN, ADMINISTRATIVE LAW (1947), 950.

"A question of fact usually calls for proof. A question of law usually calls for argument. * * * All writers agree that when one of two different versions of events must be accepted a question of fact is raised; and that when one of two different rules of law must be accepted, a question of law must be raised. When there is but one account of what happened and the application of acceptable rules of law to that account is problematical, a question of law results. * * * By definition, propositions of fact are descriptive of what happened and are bare of dispositive effect themselves. Conclusions of law are more than that; they stand for description plus decision that at least starts the process of disposing of described cases." Morris, Law and Fact (1942), 55 *Harv. L. Rev.*, 1304, 1314, and 1331.

"Questions as to what the evidence shows, whether directly or by inference, are factual, and are to be treated as such under the formulas applicable to review of findings of administrators. Questions as to the nature of the general rule to be applied are legal, on which the reviewing court must reach its own independent conclusion except where a matter is committed by the legislature to the administrative decision; in such cases question of law is whether the administrative body has acted within its statutory authority." Stern, *loc. cit., supra* note 13 at 122.

Conceptually, questions of law are those that deal with a rule, principle, doctrine or standard. Questions of fact are concerned with what actually happened, with events and circumstances.

A. QUESTIONS OF LAW

To the courts, however, a question of law is not strictly one which deals with a rule, standard, doctrine or principle. Policy frowns upon an undeviating adherence to this conceptual distinction. Decisions clearly so indicate. Where the question is one of power or abuse thereof, it is clearly one of law. That is so in a government of laws and not of men.

1. *Lack of power*

A question of law is presented where the issue is whether the administrative tribunal has acted without or in excess of jurisdiction.[21] The power or jurisdiction of the administrative agencies is outlined by the law of their creation. Where the power assumed was not authorized by Congress, courts are free to assert their reviewing authority. Conversely, where the jurisdiction exercised is within the statutory grant, the decision reached by the agency will not be disturbed by the courts.

In *Goseco v. Court of Industrial Relations*,[22] the issue raised was whether the Court of Industrial Relations, had the power of reconsidering its decision. It was clearly one of law. The Supreme Court in upholding the administrative agency stated:

> "to rule that the respondent court * * * went beyond the bounds of its jurisdiction, is to uproot the very purpose of the law and to countenance the very mischief which it seeks to avoid, namely, the subjection of the respondent court to the technicalities of procedure. This is one of the cases where this court by self-imposed limitation, should decline to override the judgment of the Court of Industrial Relations."

The point raised, being one of power, was unavoidable for the Supreme Court, but by auto-limitation, it refrained from substituting its judgment for that of the Court of Industrial Relations.

Similarly a question of law was presented in *National Labor Union v. Court of Industrial Relations*,[23] namely whether the administrative agency could validly order the return of the strikers to work even though they had committed acts of vandalism. The Supreme Court answered in the negative.

2. *Procedure to be observed in questions of law: due process*

While there may be a substantive grant of power, still the action of the administrative agency may be subject to judicial correction if legal objection could be taken to the procedure followed. Admin-

[21] *Metran v. Paredes* (1947), 45 O. G. 2835.
[22] 68 Phil. 444 (1939).
[23] 68 Phil. 732 (1939).

istrative procedure is, in a general fashion, regulated by rules provided for by the legislative enactments under which the administrative bodies operate. Even more exigent is the command that in justiciable cases before them, as held in *Ang Tibay v. Court*,[24] they cannot entirely ignore or disregard the fundamental and essential requirements of due process. According to Justice Laurel in that case:

> "There are cardinal primary rights which must be respected even in proceedings of this character:
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> 1. The first of this rights is the right to a hearing, which includes the right of the party interested or affected to present his own case and submit evidence in support thereof.
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> 2. Not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the tribunal must consider the evidence presented.
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> 3. While the duty to deliberate does not impose the obligation to decide right, it does imply a necessity which cannot be disregarded, namely, that of having something to support its decision. A decision with absolutely nothing to support it is a nullity, at least, when directly attacked.
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> 4. Not only must there be some evidence to support the finding or conclusion but the evidence must be substantial.
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> 5. The decision must be rendered on the evidence presented at the hearing or at least contained in the record and disclosed to the parties affected.
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> 6. The Court of Industrial Relations or any of its judges, therefore must act on its own independent consideration of the law and facts of the controversy and not simply accept the view of a subordinate in arriving at a decision.
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> 7. The Court of Industrial Relations should in all controversial questions render its decision in such manner that the parties to the proceeding can know the various issues involved, and the reasons for the decisions rendered. The performance of this duty is inseparable from the authority conferred upon it."

Technical rules of evidence need not be observed, however.[25]

Thus, in proceedings for deportation where an alien has been denied due process of law, the order of deportation is subject to full review by the court.[26] In cases of *Halili contra Comision de Servicio Publico*[27] *and Halili v. Public Service Commission and Cam Transit Inc.*,[28] the court reversed the decisions of the Public Service Commission because they were rendered without notice to the petitioner and without giving him an opportunity to oppose the application.

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[24] 69 Phil. 635 (1940) at 642-644.

[25] See section 5 (b), Republic Act No. 875; Sec. 23, Act No. 3108; *Philippine Shipowners' Association v. Public Utility Commission* (1926), 51 Phil. 957.

[26] *Ang Eng Chong v. Collector of Customs* (1912), 23 Phil. 614.

[27] G. R. No. L-5960, prom. June 17, 1953.

[28] G. R. No. L-5948, prom. April 29, 1953.

a. Substantial evidence rule

The substantial evidence test is a test of the quantitative sufficiency of evidence to support quasi-judicial determination.[29] According to this rule, the evidence to support the finding must be "substantial." "Substantial" means something more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[30] But just what is relevant to a reasonable man, only the court can decide. In ascertaining the sufficiency of the evidence supporting an administrative finding of fact, the court ordinarily reviews the whole record of the case.[31]

The court has, therefore, a wide margin of discretion. This desirable flexibility in the reviewing authority of the court should not be so extended, however, as to justify orders without a basis in evidence having a rational probative force. Mere corroborated hearsay or rumor does not constitute substantial evidence.[32]

Bearing in mind the standards set forth by this rule, what then must support an administrative order to merit judicial non-interference? As above stated, the validity of an administrative order will depend upon the sufficiency of the evidence upon which it is based. The following cases illustrate what evidence is substantial and sufficient to preclude the court from substituting its jugment.

Testimonal evidence showing that the passenger buses were overcrowded and overflowing and not sufficient in number to the great danger and discomfort of the passengers, was held sufficient to sustain the Public Service Commission's order granting the respondent regular certificate of Public Conveniences for the operation of an auto truck service with a proposed equipment of 35 units.[33] An order of the Public Service Commission granting the application which order was based on evidence presented by the applicant tending to show that

> "on the line applied for, there is a great volume of passengers which cannot be adequately handled by the present operator; that he has been operating his service continuously and satisfactorily since 1947; that his operation starts from a point within the San Andres Subdivision, a thriving and progressive community, with thousands of residents who have built their permanent homes; that oppositor does not operate his buses as far as the place"

was upheld by the Supreme Court in *Halili vs. Balane.*[34] With respect to an order authorizing a cold storage company to sell ice in a municipality where the petitioner has his cold storage, the following facts were found to be sufficient basis: the notable growth and

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[29] Benjamin, Judicial Review of Administrative Adjudication (1948), 48 *Col. L. Rev.* 886.

[30] *Ang Tibay v. Court* (1940), 69 Phil. 635.

[31] See *ibid.*; also *Halili v. Floro,* G. R. No. L-3465 prom. Oct. 25, 1951.

[32] *Consolidated Edison Co. v. National Labor Relations Board,* 59 S. Ct. 206.

[33] *Halili v. Floro, supra* note 31.

[34] G. R. No. L-3364, prom. April 11, 1951; see also *Manila Yellow Taxicab v. Public Service Commission,* G. R. No. L-2877, prom. April 26, 1951.

progress of the city shown by increase of population, expansion of its territorial limits and its conversion into a chartered city, coupled with its increased commercial and industrial activities. Testimony from persons as to their inability to obtain service from the petitioner on various occasions was admitted.[35]

In *Manila Electric Co. v. National Labor Union*,[36] the Supreme Court sustained a Court of Industrial Relations order to readmit three laborers, which order was based on lack of justifiable cause for dismissal. The Court found that

> "the claim of bad faith on the part of those laborers put forward by the petitioners had not been established nor can it be fairly inferred from the facts. The fear expressed by the petitioner that if these men should be reemployed in the garage department they will commit acts of sabotage has been found by the court to be far-fetched. The said court further found that the actuations of the petitioner in the whole controversy were motivated by a carefully laid out plan to get rid of these three laborers and to discriminate against them as union. This finding of fact should not be disturbed * * *"

The reviewing power of the Court recognized under the rule is thus confined to determining whether the facts as found to have been proven by the administrative tribunal warrant the administrative determination. As pointed out above, substantially supported findings preclude judicial substitution of judgment. Consequently, a review is proper when the conclusion reached has no basis or is inconsistent with the facts established.

Thus, in the case of *Scottish Union and National Insurance Co. v. Macadaeg*,[37] it was held that the finding of the Insurance Commissioner was not conclusive upon the Court because it was "based only upon the examination of books and records of the withdrawing company."

In *Philippine Movie Pictures Workers Association v. Premiere Productions, Inc.*,[38] a decision of the Court of Industrial Relations authorizing the lay-off of workers on the basis of an ocular inspection without receiving full evidence to determine the cause or motive of such lay-off was held as not sufficiently supported by the evidence. The Court said:

> "It appears that when the case was called for hearing to look into the merit of the urgent petition of respondent seeking to lay-off 44 men

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[35] *Negros Ice and Cold Storage Co. v. Public Service Commission and Bacolod Ice and Cold Storage Co.*, G. R. No. L-2846, prom. Sept. 29, 1951.

[36] *Manila Electric Co. v. National Labor Union* (1940), 70 Phil. 617.

[37] G. R. No. L-5717 and 5751-5756, prom. Aug. 30, 1952. Under sec. 202-C of Republic Act No. 447, the Insurance Commissioner may permit a foreign insurer to withdraw and get back the securities it had deposited for the benefit of policy holders when he finds that such foreign insurer "has no outstanding liabilities to residents of the Philippines. The Insurance Commissioner had issued such a permit upon ascertaining from the books of the company that the same has no outstanding liability."

[38] G. R. No. L-5621, prom. March 25, 1953.

> who were working in three of its departments on the ground of lack of work because its business was suffering financial losses during the current year, the court decided to make ocular inspection of the studios and filming premises of respondent following request made to that effect by its counsel, and in the course of said inspection Judge Roldan proceeded to interrogate the workers he found in the place in the presence of the counsel of both parties. The testimony of those interrogated were taken down and the counsel of both parties were allowed to cross-examine them. Judge Roldan also proceeded to examine some of the records of respondent company among them the time records of some workers which showed that while the workers reported for work, when their presence was checked, they were found to be no longer in their premises. And on the strength of the findings made by Judge Roldan in this ocular inspection he reached the conclusion that the petition for lay-off was justified because there was no work for the laborers to do in connection with the different jobs assigned to them."

At first reading, it would seem that an ocular inspection is not a sufficient basis for a decision of the Court of Industrial Relations. A closer analysis would, however, show that the reversal here was due to the fact that the inspection was not undertaken during working hours, and consequently the report was fatally defective. Had the ocular inspection been held while work was in progress, there is little doubt that the Court of Industrial Relations would have been sustained. Again, it is a matter of the sufficiency of the evidence supporting the decision, regardless of the manner the evidence was obtained.

It may happen that an order of the administrative tribunal is an amendment to, or corollary of, a previous decision concerning the same subject-matter. If the subsequent order is not supported by the facts as established in the prior one, the subsequent order will be set aside. Suppose the original decision was not in accordance with the facts therein established, while the amended decision, though not based on the same set of facts is warranted by another set of facts set forth therein. Should the amended order still be set aside? It will probably not, at least where the demands of due process were complied with in the process of establishing the factual basis of the amended order.[39]

The foregoing cases demonstrate what findings would justify a reversal of administrative fiindings of fact. A doubt, however, is presented as to whether, under the substantial evidence rule, the court would set aside the conclusion of an administrative agency on the ground that it is "clearly erroneous." American decisions seem to indicate that the substantial evidence test is applied to administrative determinations while the "clearly erroneous" rule finds appli-

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[39] *Halili v. Public Service Commission and Cam Transit Co., supra* note 28.

This seems a reasonable inference from *ibid.*: "* * * and even if there was really an error in the original decision fixing the routes, in that the said routes were not in accordance with the evidence submitted the issuance of the order without proper notice to the petitioner and opportunity on the part of the latter to be heard in relation to the petition, is a violation of the petitioner's right not to be deprived of his property without due process of law."

cation in judicial decisions. Scrutiny of our Supreme Court's decisions discloses, however, that now and then the court apparently did apply the "clearly erroneous" rule to administrative agencies.

Thus, in *Cebu Portland Cement Co., v. Philippine Land, Air and Sea Labor Union,*[40] the Court said:

> "It will be noticed from the decision that the Court of Industrial Relations found as a fact that Carlos Flores was suspended by the management because he became drunk on May 22, 1949, as a result of which he had trouble with his co-workers and superiors in the cement plant which resulted in a fight between him and one P. Resaba in the course of which a slight physical injury was inflicted on Flores for which Resaba was convicted in the justice of the peace court. In the same decision the court however, makes the erroneous conclusion that injustice was committed on Flores by punishing him with indefinite suspension while Resaba the aggressor was not punished by the management. Because of this discrepancy between the findings and the conclusion of the court, we carefully examined the records of the case. From our examination we find that the suspension of Flores was not due to his fight with Resaba, but to his having arrived to his post 25 minutes late and very drunk, and that when he was told by his co-workers and instructed by his superiors to go home and not to work because in his state of drunkeness he was liable to damage the very valuable and delicate instrument and equipment of the company under his charge, he not only refused to obey the suggestions and the order but created trouble in the plant. Manhandling some of his co-employees provoked Resaba to strike him and even insulted his superiors and his chief. Under the circumstances we find that his indefinite suspension was fully warranted."

The case warrants a closer analysis. It seems to effect an extension of the judicial power of review. It has been consistently held that the courts should sustain administrative findings of fact provided they are supported by substantial evidence even though the conclusion reached by the agency is different from that which the court, acting on the same set of facts, would have arrived at. The doctrine here seems to deviate from the accepted path and may circumscribe the freedom of action of administrative bodies. Under this case, where the Court is inclined to reverse an administrative finding of fact, it will only have to declare the agency's conclusion erroneous and proceed to draw a quite different conclusion. In the process, the Court may practically refind the facts. The court could have avoided this implication had it merely said that the finding of the Court of Industrial Relations (that the indefinite suspension was unwarranted) was not supported by the evidence as shown by the whole record of the case. Or it could have justified its action by the simple device of labeling the question one of law. Of course, there is no question that the indefinite suspension is warranted. The point is that the Court should have avoided laying down a possible basis for the application, or intrusion, of the "erroneous conclusion" rule.

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[40] G. R. No. L-4904, prom. Jan. 30, 1953.

The substantial evidence test is generally applied by courts in reviewing administrative decision, where no other standard is specifically prescribed by statute. It represents a balance between the demands of administrative agencies for respect for their determinations and expertise (so far as consistent with the effective administration of justice) and the court's traditional prerogative to review.[41] In many state statutes defining the functions of the reviewing court in the field of administrative law, the test has been embodied either expressly or by implication.

3. *Abuse of discretion.*

A question of law is presented where there is abuse of discretion which, though wide, is not unlimited. It is of course settled that where the law vests in the administrative tribunal the power to exercise judgment in reference to certain specified matters, such power is discretionary; it is its judgment that is called for and not that of the Court.[42] It is for this reason that administrative determinations

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[41] Benjamin, *loc. cit., supra* note 29 at p. 3.

"No form of judicial review, however broad in scope, could ascertain with certainty whether a quasi-judicial determination has been arrived at * * * as it should have been * * * on the administrative tribunal's own considered judgment as to the preponderance of the evidence. Adherence by the administrative tribunal to that standard of responsible adjudication must necessarily be left to the good faith of the tribunal. The substantial evidence rule, providing as it does for a review of the rationality of a quasi-judicial determination on all the evidence that was before the administrative tribunal, is broad enough and is capable of sufficient flexibility in its application to enable the reviewing court to correct whatever ascertainable abuses may arise in administrative adjudication. Judicial review broader in scope than the substantial evidence rule would on the other hand, permit the reviewing court to substitute its own judgment on the evidence for that of the administrative tribunal and thus supersede a quasi-judicial determination even where that determination did represent the considered judgment of the administrative tribunal on the evidence.

"My view that it is not desirable that the reviewing court be permitted to substitute its judgment for a rational judgment of the administrative tribunal is not based solely on the assumption that an administrative tribunal is especially qualified to arrive at correct determinations of fact in the field in which it operates. Often that is so, but this recognizes that the ideal is not always realized in practice. Nor is my view based solely on the argument (which I believe to be sound) that satisfactory administrative adjudication is more likely to result where a reasonable degree of responsibility is imposed on the administrative judge than where supervision is carried too far. At least as important as either of these considerations is a consideration applicable to those fields where adjudication is only one part of a longer administrative process. Unless an administrative agency operating in such a field is permitted to act on the basis of its own adjudication, when that adjudication is rationally supportable the whole process of adjudication will be unduly impeded. The problem of the proper scope of judicial review like the problem of quasi-judicial procedure must be solved by reconciling the interests of effective administration. The substantial evidence rule in my judgment affords a sufficient safeguard to individual interest without unduly impeding administration."

[42] *Lee Wing Seng v. Collector of Customs* (1915), 30 Phil. 363; *Blanco v. Board of Medical Examiners* (1924), 46 Phil. 192.

involving the exercise of discretion are generally outside the reviewing authority of the court. The presumption is that they are based on reasonable grounds.[43] Where there is no specific rule or standard, however, to guide the exercise of administrative discretion, an occasion for the court exercising its reviewing authority presents itself where there is a grave abuse of discretion.

The case of *Manila Trading Supply Co. v. Manila Trading Laborers Association*,[44] illustrates this point. The Court held:

> "When the law does not, directly or inferentially define the kind of misfeasance or malfeasance for which an employee or laborer may be dismissed or discharged, but the law leaves it to the court to determine whether or not an act or omission on the part of the employee may be considered as a just cause for his dismissal in view of the facts and circumstances of each case, the question for the Court of Industrial Relations to determine is one of fact. It is a question of fact because there is no law or rule which serves as guide to the Court in deciding it, and the Court of Industrial Relations may decide it in a way or another without violating any law, but it may gravely abuse its discretion if its decision is arbitrary or whimsical, that is, contrary to reason, logic or equity. The court's decision in such case is final and can be appealed to this Supreme Court by certiorari, because only questions of law may be raised in the appeal or petition for certiorari according to Sec. 2, Rule 44. And if the Court decides the question of fact with grave abuse of discretion, a special civil action of certiorari filed with the Supreme Court would be the proper remedy.
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> "But where the law provides or defines what acts or omission, misfeasance or malfeasance, constitute a just cause for which an employee or agent may be discharged by his employer or principal, and those acts or omissions are found by the court to have been established or proven, the question whether or not the former has been legally and properly dismissed by the latter is a question of law, and the decision of the Court of Industrial Relations on that question is appealable to this Supreme Court by certiorari."

In an earlier *Manila Trading Supply Company*[45] case a clear abuse of discretion manifested itself. There the Court of Industrial Relations, having found the laborer guilty of the breach imputed to him, decided that his suspension from June 30 to July 28, 1939 was a sufficient punishment and required his reinstatement. The order of reinstatement was annulled.

A more emphatic way of putting the matter is this outburst from Justice Moreland:

> "If the Board, stating the facts upon which it proposes to rest its decision, draws a conclusion from those facts legally impossible from any point of view, the drawing of such a conclusion is an arbitrary act, an

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[43] *In re Patterson* (1902), 1 Phil. 93.
[44] G. R. No. L-2179, prom. April 12, 1949.
[45] 69 Phil. 485 (1940).

abuse of discretion, and wholly without authority. Under such circumstances this court has jurisdiction to review." [46]

a. *Comparative Qualification*

On the question of discretion, what should be underscored, however, is the wide latitude of power conferred on administrative agencies. The very creation of an administrative body to decide a particular type of cases manifests a legislative intention to grant a wide field of discretion regarding matters within its province.[47] This result follows from the fact that the legislature has chosen to employ the administrative process.[48] Matters are left to administrative determination in order to secure the advantage of expertness and specialization. In addition, many questions dealt with by administrative agencies are essentially non-judicial in nature, requiring an administrator to determine matters of policy within a legislative framework.

Matters requiring technical knowledge are within administrative competence. Examples of these are problems touching matters of geography, geology, physics and engineering, and different questions of economy and transportation policy.[49] Thus, questions involving the determination of the number of units that should be authorized in addition to those actually operated are left by Congress to the administrative tribunals.[50]

The matter of payment of wages during the time of illegal suspension or unlawful dismissal is left to the sound discretion of the Court of Industrial Relations.[51] It is likewise within the competence of the Public Service Commission to determine what considerations will justify the issuance of the certificate of public convenience. This conclusion finds support in *Zamboanga Transportation Co., Inc., v. Fargas* [52] where the Commission after examining the proof presented

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[46] *Edwards v. McCoy* (1912), 22 Phil. 598 at 601, at 602.

[47] DAVIS, *op. cit., supra* note 1, at 905.

[48] Stern, *loc. cit., supra* note 13, at 100.

"The administrative body has no authority except that granted by statute; if the legislature does not empower it to decide a question (City of Yonkers v. U.S., 320 U.S. 685, 689) the problem which we are concerned never arises. But the creation of a special agency coupled with an express or implied grant of authority to decide a matter manifests a legislative intention that the question be decided by that agency. It is precisely because the judgment of the agency on that point is desired that the administrative process is employed."

[49] *Board of Trade v. U. S.* (1942), 314 U. S. 534, 538; 62 S. Ct. 366; 86 L. ed. 432.

[50] *Manila Yellow Taxicab v. Public Service Commission*, G. R. No. L-287, 3114 and 3205, prom. Oct. 31, 1951; see also *Manila Taxicab and Garage Co. v. Public Service Commission, supra* note 34, in which the Court held that "there is no fixed formula for determining with mathematical precision the number of additional taxicabs needed so that in the determination of that point, a great deal must necessarily be left to the judgment and experience of the Commission."

[51] *Phil. Education Employees Association v. Philippine Education Co.*, G. R. No. L-44233, prom. March 31, 1951.

[52] G. R. No. L-4604, prom. March 28, 1952.

issued a certificate of public convenience. In dismissing the petition alleging abuse of discretion, the Supreme Court, held

> "Todo el tenor y alcance de la legislacion moderna es investir al Comisionado de Utilidad Publica con facultadas para reglamentar y controlar la esplotacion de las utilidades publicas, bajo normas razonables y reglamentos que sirvan el interes del publico. Eso fue el proposito de la enmienda. Aqui, como en todas partes, la Comision esta envestida de facultades administrativas amplias y discrecionales y, por legal general, los tribunales no se interpondran en el ejercicio de dicha discrecion cuando le misma sea razonable * * * (Inchausti Steamship Co. contra Comision de Utilidad Publica 44 Jur. Fil. 883)."

In the interpretation of their own regulations, administrative agencies are given a certain latitude of discretion. In *Coloso v. Board of Accountancy*,[53] the issue was raised whether the Board, in refusing the petitioner's request for reexamination, abused its discretion in interpreting paragraph VII of its rules and regulations. The Court held that

> "By express terms the application of the last clause of this rule is left to the sound discretion of the Board. There is no showing that this discretion has been abused. If for no other reason than that the privilege invoked is, at most, discretionary, the Board cannot be compelled by mandamus, to grant petitioner's demand. It is a well-recognized principle that purely administrative and discretionary functions may not be interfered with by the courts."

The fashioning of a remedy is often deemed to be especially within administrative competence. In *Phelps Dodge Corp. v. National Labor Relations Board*,[54] the Labor Board had ordered employment of men who had obtained substantially equivalent employment although the statutory definition of "employee" included the words "and this had not obtained any other regular and substantially equivalent employment." In upholding the order, the Court heavily relied on the idea that the question was one of remedy, saying that

> "because the relation of remedy to policy is peculiarly a matter for administrative competence courts must not enter the allocable area of the Board's discretion and must guard against the danger of sliding unconsciously from the narrow confines of law into the spacious domain of policy."

It would seem then that once the question of constitutional or statutory power is left, the difficulty of determining whether the issue raised is one of fact or of law becomes obvious. An attempt will now be made to examine what courts consider questions of fact.

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[53] G. R. No. L-5750, prom. April 20, 1953. See also *Lamb v. Phipps* (1912), 22 Phil. 456; *Gonzalez v. Board of Pharmacy* (1911), 20 Phil. 367; *Blanco v. Board of Medical Examiners* (1924), 46 Phil. 190.

[54] 313 U.S. 177 (1921); 61 S. Ct. 845; 85 L. ed. 1271.

B. QUESTIONS OF FACT

A recent dictum, to the effect that the issue is one of law where the findings of an administrative body are not authorized by the facts of the case [55] demonstrates the difficulty of setting a precise boundary on the law-fact distinction. The above is to be contrasted with the following:

1. In *Atok Big Wedge Mining Co. v. Atok Big Wedge Mutual Association,*[56] the Court of Industrial Relations had ruled that the dismissed laborer was entitled to reinstatement "not because he was acquitted by the Justice of the Peace but because there is no evidence whatsoever of the alleged breach of trust or of any sufficient reason to distrust him." The Supreme Court, in sustaining the order, held that "the finding of the court that the alleged breach of trust is not supported by any evidence was one of fact."

2. In *Central Azucarera v. Court of Industrial Relations,*[57] Justice Laurel held that a question of fact is involved in reviewing an order that the "former salary or wage of the capataces and skilled laborers be restored."

3. In *Elks Club v. Rovira,*[58] Justice Feria said that the question of the character of a corporation as an industrial organization was one of fact, presumably because its "purpose and activities" could be determined only by the evidence."

4. In *Kaisahan v. Gotamco Sawmill,*[59] the "existence of an impossibility of prompt decision or settlement," which confers upon the Court of Industrial relations the power to order strikers back to work, was held to be a matter of fact.

5. In *Leyte Land Transportation Company, Inc., v. Leyte Farmer's and Laborer's Union* [60] where the propriety of the action of the Court of Industrial Relations in taking into account the "high cost of living" as a factor for determining the reasonableness of any salary or wage increase was questioned, the Court held that "whether or not the ruling of the Court of Industrial Relations will allow the petitioner a fair return on its investments or results in its bankruptcy is a factual inquiry which we are not authorized to make."

Is the test one that where the "question is a practical one depending on facts with which the Court of Industrial Relations is best familiar" the Supreme Court will ordinarily not review the finding? Thus, where the Court of Industrial Relations found that there is a "pending strike and besides, that the employment of temporary (Chinese) laborers was opposed by the striking employees and was the subject of a protracted hearing" its order was sustained.[61]

What may be gathered from above is that the courts may "limit themselves to holding that they will only interfere with questions of

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[55] *Halili v. Public Service Commission and Cam Transit Inc., supra* note 28.
[56] G. R. No. L-5594, prom. May 15, 1953.
[57] 69 Phil. 289 (1940).
[58] 45 O. G. 3839 (1949).
[59] 45 O. G. Supp. No. 9, 147 (1949).
[60] 45 O. G. 4862 (1950).
[61] *Dee C. Chuan v. Court* (1950), 47 O. G. 3520.

law and not with findings of fact supported by evidence." [62] Decisions thus indicate what is reviewable and what is not reviewable, but fail to explain clearly the basis for so acting. Rarely, if ever, do justices discuss what are questions of law and questions of fact, why they are so-called and why courts review only questions of law and never "findings of facts supported by evidence."

That is the line of inquiry to which the remaining portion of this brief survey is devoted.

CONCLUSION

The extent of judicial inquiry in any case depends not only upon legal formulas and theories but also upon judicial attitude at the moment.[63] A large degree of discretion is vested in the courts. And this discretion permits the courts to determine their own attitude towards administrative agencies whether it be judicious self-restraint or officious interference and substitution of judgment. The result is apt in on small measure to turn upon whether the reviewing court is blessed with more intellectual pride than humility and also where the question presented for review appeals particularly to the sympathy and interest of the court.[64] Sometimes the courts may have doubts about certain issues and would find it necessary to substitute judgment.

The scope of judicial inquiry is not rigidly held to a fixed standard but varies according to the needs and nature of particular cases. The exercise of judicial power glides from one extreme to the other—sometimes drawing close to a judicial usurpation of the fact-finding task and sometimes approaching a seemingly indiscriminate acceptance of ill-supported findings. The doctrine of judicial review cannot establish a wooden mold where all the governing rules can be fitted.

—ERLINDA O. VILLATUYA

LIMITATIONS UPON THE EXPENSES OF CANDIDATES DURING ELECTIONS

> "That he who pays the piper calls the tune is often said to be the entire story of party finance in a democracy. But in politics different pipers compete for power and pay; people with divergent tastes in tunes often pay the same piper. The repertoire of the pipers is limited, and there are arias beyond purchase; but no performer likes an empty house, and the piper may choose to be governed by the tastes of his impecunious

[62] *Halili v. Balane*; G. R. No. L-3364, prom. April 11, 1951.
[63] DAVIS, *op, cit., supra* note 1, at 905.
[64] Brown, *loc. cit., supra* note 15, at 899.