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ADMINISTRATIVE LAW IN NEW YORK CIVIL SERVICE LITIGATION

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THE acts of administrative agencies increasingly impinge upon the affairs of the average citizen. The assessment of a fine, the settlement of a strike, the issuance of a license to pursue a livelihood often depend today upon the decisions made by an extra-judicial board or commission. Such decisions, when brought for review before the courts, frequently require the consideration of principles of administrative law. Yet courts and legal scholars alike have been slow to recognize this recent off-shoot of public law.[1] However, the crises of the 1930's in government and business led to the unprecedented growth of new and powerful administrative agencies, such as the National Labor Relations Board and the Securities and Exchange Commission. The sudden tremendous role of these agencies demanded that their supervision by the courts be uniform and restrained. This judicial supervision was largely shaped by the new attention accorded administrative law in the decisions of the courts.[2]

In less spectacular fashion, administrative agencies have long been functioning in the domains of public personnel management. The lusty growth of civil service agencies in the reform decades around the turn of the century long preceded the earliest effective recognition of administrative law by the courts. Therefore, in civil service cases some judges consulted the restraints of administrative law only in fragmentary fashion and without consistent effort to tie their decisions into the whole pattern of this developing branch of public law. Evidences of this atti-

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1. In an article, Professor (now Supreme Court Justice) Felix Frankfurter pointed out, "Traditional disregard of the existence of administrative law by bench and bar would have been sufficient restraint against its fruitful development. Unfortunately not only was it neglected, but, being deemed hostile to the Common Law, its very existence was denied" and, in a further passage, "To this day administrative law has no rubric in the ordinary digests, and flickering cross-references to the subject first begin to appear in 220 United States Reports. Not until 280 United States Reports does the term appear to have established itself in the index. . . . Digests and indices may not have caught up with fact, but the Supreme Court is certainly aware that a great stream of public law is flowing not entirely through the courts." Frankfurter, *Foreword to a Discussion of Current Developments in Administrative Law* (1938) 47 YALE L. J. 515.

2. A clear picture of the quasi-judicial functions of contemporary administrative agencies is given in CHAMBERLAIN, DOWLING, HAYES, THE JUDICIAL FUNCTION IN FEDERAL ADMINISTRATIVE AGENCIES (New York, The Commonwealth Fund, 1942). For an earlier statement of the importance of administrative law, see Frankfurter, *The Task of Administrative Law* (1927) 75 U. OF PA. L. REV. 614.

tude are still found in civil service decisions today. But the last twenty years have witnessed an unprecedented expansion in civil service systems throughout the nation.[3] This expansion, temporarily retarded by the war, promises a mighty resumption in this period of reconversion and makes urgent a clear recognition of the place of administrative law in civil service, and of the importance of upholding administrative discretion wherever properly exercised.

This article will attempt to show the essential similarity of the principles of administrative law in the field of civil service with those in other fields in which better known administrative agencies function. A glimpse at decisions dealing with the various functions of the New York Civil Service Commissions may bring into clearer focus the pervading influence of administrative law in public personnel operations.[4] To render clearer the technical processes involved in civil service operation, we shall trace the usual course of an examination for a position in the competitive class. This study will take us from the initial placing of a position into the competitive class, through the setting of experience, age, and other requirements, past the preparing and administering of the various oral, written, and other tests, up to the establishing and use of the resulting eligible lists. Perhaps we shall then more clearly realize

3. The following pre-war estimates are taken from Civil Service Agencies in the United States, Pamphlet No. 16, Civil Service Assembly of the United States and Canada (1940). The upper row of figures indicates the total number of employees in the federal and all state, county, and municipal civil service systems (exclusive of public education employees, such as teachers, etc.). The lower row indicates the total number of public education employees for the same years.

1929	1933	1936	January, 1940
2,146,000	2,153,000	2,542,000	3,246,000 to 3,421,000
1,102,000	1,182,000	1,200,000	1,208,000

During World War II, the federal civil service expanded tremendously, presenting an exception to the static condition of state and local civil service systems. In the article *Civil Service in War Time* (1941) 58 GOOD GOVERNMENT 45, appears the statement, "On top of the great increase in the federal payrolls between 1932 and 1939—an increase of about 60%—the rise in federal employment since the outbreak of the present World War has been over 425,000, an increase of about 50%, as against an increase of no more than 8% in the three years immediately preceding our entry into the first World War."

THE MONTHLY REPORT OF EMPLOYMENT (1945) (Executive Branch of the Federal Government), issued by the United States Civil Service Commission, gives a total of 2,908,912 employees as of June 30, 1944 in the federal service alone.

4. This article will discuss primarily cases dealing with the powers exercised by the New York City Civil Service Commission, including classification, examining, etc. In New York City, the powers of appointment, assignment, and dismissal are vested in department heads and not in the Civil Service Commission and hence will be treated only indirectly herein. *See* FIELD, CIVIL SERVICE LAW (1939) for a general discussion of the various powers of other civil service commissions.

that the cautions on judicial restraint urged by Justice Brandeis in a rate fixing case, apply with equal force to civil service litigation:

"The supremacy of law demands that there shall be opportunity to have some court decide whether an erroneous rule of law was applied; and whether the proceeding in which facts were adjudicated was conducted regularly. To that extent, the person asserting a right, whatever its source, should be entitled to the independent judgment of a court on the ultimate question of constitutionality. *But supremacy of law does not demand that the correctness of every finding of fact to which the rule of law is to be applied shall be subject to review by a court. If it did, the power of courts to set aside findings of fact by an administrative tribunal would be broader than their power to set aside a jury's verdict.*"[5]

The Jurisdictional Classification Process

The various civil service commissions in New York state exercise jurisdiction over positions in the classified service. These positions are grouped into four classes: (1) the exempt class, reserved for policy-making or confidential positions, (2) the competitive class, containing all positions for which competition is adjudged practicable, (3) the non-competitive class and (4) the labor class. The latter two classes include principally positions of lower grade for which competitive examination is deemed impracticable.

The New York State Constitution commands competitive examination for, and consequently competitive classification of, positions wherever practicable.[6] In the absence of legislative mandate, the decision as

5. St. Joseph Stock Yards Co. v. United States, 298 U. S. 38, 84 (1938). (Italics added). Dean James M. Landis has proposed the expertness of administrators as justification for close restraint of judicial review. "The power of judicial review under our traditions of government lies with the courts because of a deep belief that the heritage they hold makes them experts in the synthesis of design. Such difficulties as have arisen have come because courts cast aside that role to assume to themselves expertness in matters of industrial health, utility engineering, railroad management, even bread baking. The rise of the administrative process represented the hope that policies to shape such fields could most adequately be developed by men bred to the facts. That hope is still dominant, but its possession bears no threat to our ideal of the 'supremacy of law.'" LANDIS, THE ADMINISTRATIVE PROCESS (1938) 154. A similar position is taken by James Hart in an article, *Judicial Review of Administrative Action* (1941) 9 GEO. WASH. L. REV. 490. *See* also Frankfurter, *The Task of Administrative Law* (1927) 75 U. OF PA. L. REV. 614.

6. Art. 5, § 6 of the New York State Constitution provides: "Appointments and promotions in the civil service of the state, and of all the civil divisions thereof, including cities and villages, shall be made according to merit and fitness to be ascertained, so far as practicable, by examinations, which, so far as practicable, shall be competitive. . . ." The constitutions or statutes of several other states require competitive classification wherever practicable. See FIELD, *op. cit. supra,* note 4, c. IV. Under this constitutional provisions and related statutes, the New York Courts are sometimes confronted with the preliminary

to practicability of examination is made by the civil service commission having jurisdiction. Obviously this right of decision is a powerful instrument in the maintenance of the merit system and should be protected against improper invasion by the legislature or even the courts. Here administrative law sometimes furnishes a ready bulwark by demanding that discretions exercised by the personnel agency be sustained unless clearly arbitrary or unreasonable.

An early New York case on the classifying power, *People* ex rel. *Schau v. McWilliams,*[7] warns of the perplexities courts occasionally create for themselves because of eagerness to create broad precedents of review. In several previous decisions,[8] the New York courts had declared classification a quasi-judicial function, the exercise of which was fully reviewable by *certiorari* as a question of law. But in the *Schau* case, testing the competitive classification of the position of Battalion Chief in the Buffalo Fire Department, the Court of Appeals upset precedent and warned:

"If it should appear that there was a plain violation by the commission of its duty to classify as competitive an office which was clearly and manifestly so, there should be a remedy in the courts. But there is necessarily a large debatable field as to cases within which there will be great differences of opinion even among the most intelligent and fair-minded men, and as to this field it seems to me that it is not reasonable that the judgment of an appellate

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question of determining whether services rendered for a governmental authority are contractual in character and therefore not subject to civil service requirements. Thus in Turel v. Delaney, 285 N. Y. 16, 32 N. E. (2d) 774 (1941), the Court of Appeals ordered the New York City Board of Transportation to discontinue the employment of physicians on a contractual basis and to replace them with eligibles from an appropriate civil service list. However, in Civil Service Technical Guild v. LaGuardia, 181 Misc. 492, 44 N. Y. S. (2d) 860 (Sup. Ct. 1943), *aff'd,* 267 App. Div. 860, 47 N. Y. S. (2d) 114 (1st Dep't 1944), *aff'd without opinion,* 292 N. Y. 586, 55 N. E. (2d) 49 (1944) and Matter of Hardecker v. New York City Board of Education, 180 Misc. 1008, 44 N. Y. S. (2d) 855 (Sup. Ct. 1943), *aff'd,* 266 App. Div. 980, 44 N. Y. S. (2d) 959 (2d Dep't 1943), *aff'd without opinion,* 292 N. Y. 584, 55 N. E. (2d) 49 (1944), the courts approved the employment of private engineering firms for the planning of post-war projects. And in Beck v. Board of Education of City of New York, 268 App. Div. 644, 52 N. Y. S. (2d) 712 (2d Dep't 1945), *rev'g,* 182 Misc. 886, 50 N. Y. S. (2d) 19 (Sup. Ct. 1944) the courts permitted public school custodians, themselves civil service appointees, to hire custodial assistants without referring to civil service lists.

7. 185 N. Y. 92, 77 N. E. 785 (1906). For a discussion of this case, see Tharaud, *Administrative Laws, Discretion of Civil Service Commission Mandamus: Certiorari* (1931) 17 CORN. L. Q. 103. Also *see* Matter of Simons v. McGuire, 204 N. Y. 253, 97 N. E. 526 (1912).

8. Chittenden v. Wurster, 152 N. Y. 345, 46 N. E. 857 (1897); People *ex rel.* Sweet v. Lyman, 157 N. Y. 368, 52 N. E. 132 (1898); People *ex rel.* Sims v. Collier, 175 N. Y. 196, 67 N. E. 309 (1903).

court should be substituted for that of the commissioners. Yet, if the action of the civil service commission is to be reviewed by certiorari, there seems to be no escape from the conclusion that ultimately the classification of every officer or employee in the service of the state, or its political subdivisions, must be determined by this court. . ."[9]

The decision then declared classification an administrative, not a quasi-judicial, function and reviewable, by *mandamus*, only in instances of abuse of discretion.[10] Since enactment of Article 78 of the New York Civil Practice Act,[11] reducing procedural distinctions among the several special remedies (*mandamus, certiorari* and prohibition), courts must be more alert to the substantive merits of civil service litigation. The *Schau* decision, although resting on somewhat subtle procedural distinctions, did encourage judicial restraint and helped thereby to ease the growing pains of the youthful public personnel agencies in New York state.[12]

Especially where buttressed by some allegedly relevant statute, claims of confidential duties are often urged to gain exemption for a position.[13]

9. People *ex rel.* Schau v. McWilliams, 185 N. Y. 92, 98, 77 N. E. 785, 786 (1906). For a recent case illustrating the self-imposed restraint of the courts in the absence of arbitrarily exercised classification power, *see* Matter of Miller v. Bromley, 184 Misc. 676, 54 N. Y. S. (2d) 209 (Sup. Ct. 1945).

10. *Mandamus* is ordinarily available only to compel a public officer to perform a ministerial duty involving no exercise of discretion or to correct a clear abuse of discretion. *See* Miguel v. McCarl, 291 U. S. 442 (1934); Brewster v. Sherman, 195 Mass. 222, 80 N. E. 821 (1907); Heeran v. Scully, 254 N. Y. 344, 173 N. E. 7 (1930).

11. N. Y. Civ. Prac. Act, Art. 78 §§1283-1306. *See* Gellhorn, Administrative Law, Cases and Comments (1940) Appendix III, *Statutory Revision of Certiorari and Mandamus Procedure in New York* for the text of this statute and the explanatory comments of the New York Judicial Council which framed the report on the law as proposed, entitled *Proposed Simplification of the Remedies of Certiorari, Mandamus and Prohibition,* printed as Leg. Doc. No. 48 (d) (1937). Proceedings against the New York City Civil Service Commission under Art. 78 are usually instituted in Special Term of the Supreme Court, First Department. Appeals may then be taken to the Appellate Division, First Department, and finally to the Court of Appeals.

12. Some idea of the ramifying activities of the New York City Civil Service Commission may be gleaned from its 56th, 57th, 58th Annual Reports covering the period January 1, 1939 to June 30, 1943, which describe the placing of over 99.6% of the city's employees under the merit system, including competitive classification of 12,000 former labor employees in the Dep't of Sanitation and of 27,000 former labor employees of the private transit lines now municipally owned; the intensive use of such scientific testing devices as the practical test, the technical oral, the objective or short answer written test; the expanded use of effective recruiting devices such as the radio and an official magazine, The Bulletin, also the post-entry training of thousands of city employees by the Commissioner's Bureau of Training, later the Division of War Training (now discontinued).

13. Though neither the Constitution nor Civil Service Law of New York specifies the confidential duties of a position as a reason for exemption, several decisions have established this principle. *See* Scahill v. Drzewucki, 269 N. Y. 343, 199 N. E. 506 (1936); Chittenden v. Wurster, 152 N. Y. 345, 46 N. E. 857 (1897).

But judges and personnel administrators alike should be alert to protect a genuinely competitive position against ill-founded pleas for exempt status. In a recent case,[14] clerks and deputy clerks in the various districts of the New York City Municipal Court sought to annul the transfer of their positions from the exempt to the competitive class. Reliance was placed by them upon Section 13 of the State Civil Service Law which permits the exemption of "One clerk, and one deputy clerk if authorized by law, of each court . . ."[15] and upon the contention that each district of the Municipal Court is historically an independent court. The Court of Appeals reversed unanimous lower court sanction for these arguments and held the claims of exemption untenable, ruling that pertinent statutes prove the Municipal Court a unit. The Court of Appeals further indicated that competitive classification by a civil service commission must prevail even against exemption—if unreasonable—by the legislature.

"There must be something, as indicated in the *Chittenden* case,[16] in the nature of the duties which makes the service either one of confidence or else of such importance that personal selection instead of competitive examination is for the best interests of the public and the fulfillment of the particular duties. In other words, the Legislature cannot act arbitrarily and exempt places from competitive examination at will."[17]

This *dictum* demonstrates a commendable intent to hold the judgments of civil service agencies unassailable, except for good cause, by other branches of government.

In a later case, the Magistrates Court of New York City was also held to be a single court and its district clerks were likewise denied the exemp-

14. Matter of Freidman v. Finegan, 243 App. Div. 689, 277 N. Y. Supp. 947 (1st Dep't 1935), *rev'd*, 268 N. Y. 93, 196 N. E. 755 (1935).

15. N. Y. Civ. Service Law § 13, subd. 3.

16. Chittenden v. Wurster, 152 N. Y. 345, 46 N. E. 857 (1897).

17. Matter of Freidman v. Finegan, 268 N. Y. 93, 98, 196 N. E. 755, 756 (1935), *rev'g*, 243 App. Div. 689, 277 N. Y. Supp. 947 (1st Dep't 1935). The Court of Appeals pointed out that no evidence had been produced by petitioners to show the confidential character of the position. In an earlier case, Matter of O'Keefe v. Clark, 238 App. Div. 175, 264 N. Y. Supp. 299 (3d Dep't 1933), the Appellate Division had ruled that Assistant Clerks of Districts of the same Municipal Court were not confidential employees merely because of services rendered to poor litigants who appeared in person and stated that the confidential relationship must exist between the employee and the appointing officer. In People *ex rel.* Sweet v. Lyman, 157 N. Y. 368, 387, 52 N. E. 132, 139 (1898), the court declared: "Surely the civil service commission cannot change the actual status of a position by declaring one which is actually confidential not to be so, nor is it vested with power to repeal a valid statute or to practically annul it by declaring a position to be competitive when the law has provided otherwise, and the position is plainly of a strictly confidential character."

tions of Section 13.[18] Here the Appellate Division commented:

"It does not appear that the act of the municipal civil service commission in classifying the position of clerk was arbitrary. On the contrary, the decision was arrived at after very full hearings and study of briefs."[19]

The presentation of adequately documented arguments as in this case might do much to increase the prestige of civil service agencies in the courts and to win ampler recognition of administrative immunities. In his significant study of the administrative process, Landis has cautioned:

"The test of the judicial process generally is not the fair disposition of the controversy. It is the fair disposition of the controversy upon the record as made by the parties."[20]

Duties Classification

To insure equitable treatment of employees, closely related positions in the competitive class are, in many jurisdictions, arranged in grades according to salary and responsibility.[21] This process of grading is termed duties classification as distinguished from the jurisdictional classification already discussed. A recent decision highlights the equal significance of administrative law in the guidance of judicial review of this function.[22] To remedy inequities of salary and assignment caused by the

18. Matter of Volgenau v. Finegan, 163 Misc. 554, 296 N. Y. Supp. 101 (Sup. Ct. 1937), *aff'd*, 250 App. Div. 757, 295 N. Y. Supp. 758 (1st Dep't 1937). *See* Matter of Malloy v. Kern, N. Y. L. J., Oct. 11, 1940, p. 1046, col. 3 (the so-called "Condemnation Court," held part of the Supreme Court and petitioner denied exempt status as a clerk in such tribunal).

19. Matter of Volgenau v. Finegan, 163 Misc. 554, 564, 296 N. Y. Supp. 101, 111 (Sup. Ct. 1937). The absorption of the temporary relief agencies in New York City into the Department of Welfare involved interesting problems in classification. In Aversa v. Finegan, 275 N. Y. 512, 11 N. E. (2d) 320 (1937), the Court of Appeals denied any power in the Legislature to place the position of social investigator, for which competitive examination was adjudged practicable, outside the civil service system. An earlier decision, Matter of Social Investigator Eligibles Association v. Taylor, 268 N. Y. 233, 197 N. E. 262 (1935), approving retention of Welfare Department employees who had no civil service status, was distinguished on the ground that such employees were actually relief recipients, rendering services in exchange, and not holders of any offices in civil service in the sense intended by the constitution or the Civil Service Law. *See* also *More Civil Service—The Power of the New York Legislature and Civil Service Commissions to Reclassify Positions into the Competitive Class and Cover-in Incumbents Without Competitive Examination* (1940) 17 N. Y. U. L. Q. REV. 437.

20. LANDIS, THE ADMINISTRATIVE PROCESS (1938) at 38. *See* also Stason, *"Substantial Evidence" in Administrative Law* (1941) 89 U. OF PA. L. REV. 1026-1051.

21. *See* FIELD, CIVIL SERVICE LAW (1939) 51 for a discussion of this classification function.

22. Matter of Beggs v. Kern, 172 Misc. 556, 15 N. Y. S. (2d) 342 (Sup. Ct. 1939); *aff'd*

mushrooming of the city's social agencies during the depression, the New York City Civil Service Commission, in a series of resolutions, established a graded social service in various city departments. All but the lowest of the grades in this service were specifically reserved for supervisory or other specialized positions. The last in this series of resolutions contained the provision:

"All persons of the title of Social Investigator, who are affected by this resolution, shall continue in such title with salaries, present duties and status unaffected and unimpaired by this reclassification. Promotion lists presently in existence will continue to be certified for appropriate positions in the new classification."[23]

By this clause the Commission sought to protect the rights of social investigators whose salaries exceeded the ceiling established for non-supervisory employees. Nevertheless, citing the Commission rule that salary determines grade,[24] the social investigators affected requested transfer to the higher supervisory grades of the newly established social service classification. The lower courts granted this request. The Court of Appeals reversed and after directing the Commission to create some appropriate title within the graded service for the petitioners explained:

". . . but the courts may not require the Commission to confer upon the incumbents of the ungraded positions rights and benefits to which they would not otherwise be entitled and which in the opinion of the Commission would work injury to the administration of the city's affairs."[25]

Eligibility Requirements

Let us assume a position has been placed in the competitive class and an examination has been ordered. Who will be allowed to compete?

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without opinion, 258 App. Div. 1049, 18 N. Y. S. (2d) 740 (1st Dep't 1940), *modified,* 284 N. Y. 504, 32 N. E. (2d) 529 (1940). Matter of Brennan v. Kern, 284 N. Y. 810, 29 N. E. (2d) 926 (1940).

23. Resolutions adopted September 21, 1938, subd. (a), as quoted in Matter of Beggs v. Kern, 284 N. Y. 504, 509, 32 N. E. (2d) 529, 531 (1940).

24. Rule V, § 4a of the Rules of the New York City Civil Service Commission states, "The compensation of a position shall determine the grade of such position." In Matter of Burri v. City of New York, 266 App. Div. 841, 42 N. Y. S. (2d) 942 (1st Dep't 1943), *aff'd without opinion,* 291 N. Y. 776, 53 N. E. (2d) 242 (1944), the courts ruled that a reduction in the maximum salaries of various grades of Public Health Nurse effected a classification change requiring approval of the Mayor and the State Civil Service Commission. And in Matter of Talbot v. Board of Education of City of New York, 171 Misc. 974, 14 N. Y. S. (2d) 362 (Sup. Ct. 1939), an inter-departmental transfer to a position with a higher maximum salary was disapproved. The court so ruled though the entering salary was less than the maximum of the position from which transfer was sought.

25. Matter of Beggs v. Kern, 284 N. Y. 504, 514, 32 N. E. (2d) 529, 534 (1940).

The Commission sets the requirements in the first instance, but sometimes the courts—and they may not agree among themselves—decide who will eventually be allowed to take the examination. Occasionally judges thereby create more embarrassments than they resolve. Here too administrative law may exercise its saving powers by commanding greater judicial tolerance for the judgments exercised by personnel agencies.

A recent case[26] involved the right of the New York State Civil Service Commission to impose requirements of specialized experience for attorney applicants in an examination for Unemployment Insurance Referee and to set a weight of 60 for "training, experience and general qualifications." The lower courts ruled the experience requirement arbitrary and the subject of training, experience and general qualifications not competitive, because no reviewable standards of rating had been announced. The Appellate Division directed admission of attorneys with five years of experience in general practice, and the elimination of the provision of a weight of 60 for training, experience and general qualifications. On further appeal, the Court of Appeals ruled the experience requirement for attorneys not arbitrary on its face and ordered trial of its reasonableness. The soundness of such an order appears questionable. Administrative agencies are not ordinarily required to prove the reasonableness of their actions. A dissenting opinion in the Court of Appeals is helpful here.

"The Commission need not show the reasonableness of its determination. It it is only where the administrative board errs as a matter of law by arbitrary, capricious or unreasonable action that the courts may intervene."[27]

A dissenting opinion in the Appellate Division had previously called attention to weaknesses inherent in judicial defining of eligibility limits.

"Overlooking for a moment the assumption of legislative and executive functions by the judiciary, why is the favored class limited to lawyers? Why should it not include law clerks and scriveners of experience, insurance agents who have had to do with workmen's compensation and comparable types of insurance, labor union officials and employers with experience along the same line?"[28]

26. Matter of Cowen v. Reavy, 171 Misc. 266, 12 N. Y. S. (2d) 830 (Sup. Ct. 1939); *determination confirmed,* 258 App. Div. 994, 17 N. Y. S. (2d) 519 (3d Dep't 1940); *modified,* 283 N. Y. 232, 28 N. E. (2d) 390 (1940). For a discussion of this case, *see* Note (1940) 18 N. Y. U. L. Q. REV. 114.

27. *Id.* at 240, 28 N. E. (2d) at 394. In Matter of Battista v. Vladeck, 182 Misc. 49, 43 N. Y. S. (2d) 291 (Sup. Ct. 1943) a saving clause in the advertisement for the examination, reading ". . . or a satisfactory equivalent" was held to reserve to the Commission discretion as to the types of education or experience to be considered acceptable.

28. Matter of Cowen v. Reavy, 258 App. Div. 994, 996, 17 N. Y. S. (2d) 519, 522 (3d

Surprisingly enough, the courts today sometimes appear less cordial to the recognition of administrative prerogative in certain aspects of civil service administration than were judges of an earlier decade. Partly, at least, this is due to the weak anchorage of administrative law in civil service jurisprudence. Thus age requirements occasionally face rough weather in the courts. In an early case, *People* ex rel. *Moriarity v. Creelman*,[29] the Court of Appeals, reversing a lower court decision, approved a minimum age requirement of twenty-five in an examination for inspector in the New York City Fire Department. The court explained:

"In the absence of some express limitation the action of the commission in fixing such tests must stand, unless it is so clearly irrelevant and unreasonable as to be palpably indefensible and improper. If any fair, reasonable argument may be made to sustain the action the courts should not interfere, even though they may differ from the commission as to its advisability."[30]

But more recently, the Supreme Court, although citing the *Moriarity* case, disapproved a maximum age of twenty-five in an examination for clerk of entering grade in New York City service.[31] This age limit had been set after study of comparable requirements in the career services of England and other European countries and upon the recommendation of various personnel authorities. Evidence was adduced by the Commission to show that the position, though comparatively simple in its duties, was a stepping stone to higher offices entailing wide administrative responsibilities and calling for lengthy experience.[32]

Dep't 1940). Disapproval of the weight of 60 for experience, training and personal qualifications appears hasty. Matter of Fink v. Finegan, 270 N. Y. 356, 1 N. E. (2d) 462 (1936), relied upon here, holds that a test, when administered, must contain reviewable standards of rating. The further ruling of the *Cowen* case that the requirements improperly discriminated against attorneys not graduates of law schools likewise seems unwarranted. The courts, it is true, regulate admission to the bar but civil service commissions should be free to decide where experience may be substituted for education in civil service examinations.

29. 206 N. Y. 570, 100 N. E. 446 (1912), *rev'g*, 152 App. Div. 147, 136 N. Y. Supp. 811 (1st Dep't 1912).

30. *Id.* at 576, 100 N. E. 446, 448.

31. Matter of Ryan v. Finegan, 166 Misc. 548, 2 N. Y. S. (2d) 10 (Sup. Ct. 1937), *aff'd*, 253 App. Div. 713, 1 N. Y. S. (2d) 643 (1st Dep't 1937). In Matter of Laverty v. Finegan, 249 App. Div. 411, 292 N. Y. Supp. 412 (1st Dep't 1937), *aff'd*, 275 N. Y. 555, 11 N. E. (2d) 752 (1937), age limits of 21 to 45 in an examination for chief life guard were approved.

32. A recent statute, N. Y. Civil Service Law (1938) § 25a forbids exclusion of ". . . any person who is physically and mentally qualified from competing, participating or registering for a civil service competitive or promotional examination or from qualifying for a position in the classified civil service by reason of his or her age." Exceptions are permitted in the case of ". . . positions such as policeman, fireman, prison guard, or other positions which require extraordinary physical effort, except when age limits for such positions are already prescribed by law."

Test Content

In recent years, decisions have also scrutinized the content and rating of oral and written tests, although the New York courts, in early cases, had declined to examine into the merits of civil service examinations. Thus, in upholding the legality of a mental and physical test for Police Inspector, the Appellate Division (in 1901) had explained:

"The examination is by statute required to be competitive, and the whole basis upon which a competitive examination rests would be swept away if a person who had failed upon such an examination were allowed to prove in court or before a jury that his rating should have been different from that awarded to him."[33]

In other early cases, the court spoke similarly.[34]

Fink v. Finnegan[35] marks the first real drifting of the New York courts from the restraints of these early decisions. Ira Fink, a candidate for city medical officer in the New York City Service, passed the written test but was failed at the oral interview, although answering technical questions in medicine correctly. The oral examiners reported, as reason for failure, that Fink lacked "executive ability and force", was "altogether too mild" and would not make an acceptable Police Surgeon and Medical Officer. The Court of Appeals ruled the appraisal of personality traits not a legal competitive test because of the absence of objective and reviewable rating standards.[36] The decision then declared that

33. Matter of Allaire v. Knox, 62 App. Div. 29, 34, 70 N. Y. Supp. 845, 848 (1st Dep't 1901), *aff'd*, 168 N. Y. 642, 61 N. E. 1127 (1901). In other jurisdictions, decisions reflect the adherence to narrow limits of review enunciated in the earlier New York decisions. *See* Maxwell v. Civil Service Commission, 169 Cal. 336, 146 Pac. 871 (1915); Pratt v. Rosenthal, 181 Cal. 158, 183 Pac. 542 (1919); Mitchell v. McKevitt, 128 Cal. 458, 17 P. (2d) 789 (1932); Jones v. State, 39 Ohio App. 264, 177 N. E. 507 (1930).

34. People *ex rel.* Braisted v. McCooey, 100 App. Div. 240, 91 N. Y. Supp. 436 (1st Dep't 1905) (rating of written test held not reviewable in absence of charges of bad faith or illegal action). In People *ex rel.* Buckley v. Roosevelt, 19 App. Div. 431, 432, 46 N. Y. Supp. 517, 518 (1st Dep't 1897) (motion for certiorari to review service rating by police board denied), the Appellate Division stated: "Certain power is given to such examiners to test the qualifications of the applicants for public office, and the method of such examination, with the result arrived at, in the exercise of the judgment of the examiners, upon the examination had before them, must necessarily rest within their discretion, and is not a judicial determination of the question presented to them." *See* also Matter of Darling v. Maguire, 70 Misc. 597, 129 N. Y. Supp. 385 (Sup. Ct. 1911); People *ex rel.* Caridi v. Creelman, 150 App. Div. 746, 135 N. Y. Supp. 718 (1st Dep't 1912).

35. 270 N. Y. 356, 1 N. E. (2d) 462 (1936). The Court of Appeals held that if the test were intended to be qualifying and not competitive, prior announcement that it would be included in the examination should have been made.

36. The Commission contended the test was properly competitive and attempted to show legality by evidence that the examiners possessed a mental image of the ideal candi-

oral tests are most properly employed to determine intelligence or speech qualities. However, civil service commissioners are constantly compelled to employ oral tests to evaluate personal traits, such as judgment or tact, especially for administrative or high professional positions. In a later case, *Matter of Sloat v. Board of Examiners*,[37] the Court of Appeals was asked to determine the legality of an oral test for a teaching position. Although the test admittedly evaluated both personality and speech qualifications, the Court predicated its decision upon approval of the criteria of speech alone. As for the perplexing problem of personality evaluation, the decision simply stated:

"It would be impossible to formulate a standard by which such qualities may be defined or measured with entire objectivity. The law does not require the impossible or forbid the reasonable."

The Court merely suggested ". . . estimates of qualities which, it is reasonably clear, affect the merit and fitness . . . and . . . tests calculated reasonably to show those qualities."[38] Where civil service agencies make earnest attempts to comply with the law as still thus hazily sketched out, judicial review should be tolerant. Part of the answer lies in a conscious systematizing and perfecting of test procedures by personnel agencies to obtain objectivity and fairness for all candidates.

Two recent cases reveal other aspects of the problem of judicial definition of the prerogatives of civil service commissions in the administration of examinations. Experiments have shown that essay tests yield varying ratings even though graded by competent examiners.[39] Yet, in a recent examination for promotion in the Buffalo police force, the Supreme Court rejected the grade given the candidate and directed that a higher rating computed by itself be substituted.[40] The lack of an

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date, that such concept was reinforced by the appearance of several highly rated candidates and that, in any event, no test can be entirely objective. For a description of some procedures now employed to reduce the subjective element in oral testing, *see* Sheed, *Fair Play in Oral Testing* (1940) 2 THE MERIT MAN 18. The author mentions such procedures as preparation and conduct of tests by skilled examiners, careful planning and use of predetermined main questions, prior determination of qualities needed for position, testing only for qualities announced in advertisement.

37. 274 N. Y. 367, 9 N. E. (2d) 12 (1937), *aff'g*, 249 App. Div. 724, 292 N. Y. Supp. 994 (1st Dep't 1936).

38. *Id.* at 373, 9 N. E. (2d) at 15.

39. WOOD, MEASUREMENT IN HIGHER EDUCATION (1923) 143, in which a survey is mentioned which shows that various teachers had rated an examination paper in American History with grades varying from 43 percent to 90 and that other teachers had rated an examination paper in plane geometry with grades varying from 28 to 92.

40. Matter of Quinn v. Streeter, 174 Misc. 1073, 22 N. Y. S. (2d) 546 (Sup. Ct. 1940); 175 Misc. 932, 24 N. Y. S. (2d) 932, 24 N. Y. S. (2d) 916 (Sup. Ct. 1941). *Cf.* Thompson

objective rating key and the review of the candidate's appeal by the rating examiner were held fatal defects under the *dictum* of the *Fink* case. But actual rerating appears more properly the function of the commission, not of the court.[41]

Another decision emphasizes the need for judicial awareness of the sociological forces that may motivate the construction of examinations.[42] In an examination for patrolman, the New York City Commission granted small added credit for relevant educational courses and for training in organized athletics, amateur or professional. Statements by former Mayor LaGuardia, Governor Dewey (then District Attorney) and excerpts from the Report of the National Committee on Law Observance and Enforcement were offered to show the value of technical training and physical fitness in coping with modern crime. The lower courts held these extra credits invalid. The Court of Appeals, however, overruled and declared these credits were not an arbitrary bonus, especially since they were computed before disclosure of candidates' identities and given to those successful in the various tests comprising the examination. The Court of Appeals commented:

"An enlightened public interest demands that professional men be educated in the duties of their professions. In the Police Department educational training and training in organized athletics are required not only because of the availability of modern inventions and free education to persons without character who plan and engage in organized crime and, therefore, compel equally well-trained patrolmen to cope with them, but because under the system of promotion in the New York Police Department all officers must be taken from the ranks."[43]

Revision of Announced Standards

An established tenet of administrative law confirms the indispensable right of administrative agencies to alter announced judgments or stand-

v. Kern, N. Y. L. J., May 6, 1941, p. 2021, col. 4; Saltzman v. Kern, N. Y. L. J., March 4, 1941, p. 978, col. 3; Matter of Konieczny v. Streeter, 182 Misc. 376, 43 N. Y. S. (2d) 820 (Sup. Ct. 1943), *appeal dismissed,* — App. Div. —, 51 N. Y. S. (2d) 752 (4th Dep't 1944). In these latter cases the courts approved the manner of rating examinations.

41. In Matter of Bruno v. Kern, 174 Misc. 958, 22 N. Y. S. (2d) 272 (Sup. Ct. 1940), the Supreme Court rejected the Commission's official key answer to a question of multiple-choice type. And in Matter of Miller v. Kern, N. Y. L. J., January 4, 1941, p. 49, col. 7 the court disapproved a written test for stenographer and steno-typist consisting of fifty multiple-choice type questions, of which twenty pertained to steno-type. The decision held the test discriminated against stenographers although candidates were required to answer any twenty-five of the questions.

42. Matter of Thomas v. Kern, N. Y. L. J., Jan. 13, 1939, p. 189, col. 5, *aff'd without opinion,* 256 App. Div. 909, 10 N. Y. S. (2d) 409 (1st Dep't 1939), *rev'd,* 280 N. Y. 236, 20 N. E. (2d) 738 (1939).

43. *Id.* at 243, 20 N. E. (2d) at 740.

ards where unforseeable circumstances so require. The application of this principle in civil service test review has sometimes appeared a vexing problem for the courts. In *Matter of Immediato v. Kern*,[44] printed instructions in an essay test for promotion to foreman in the New York City Department of Sanitation had directed candidates to answer only one of three essay questions. However, many of the candidates answered all three. The Commission rated the answers of such candidates with an over-all penalty for failure to follow instructions. Other candidates were rated on the one question answered as directed. In reply to a suit attacking these curative procedures, the Commission contended that rating with a penalty did not violate its rule requiring a standard of 100% in all tests, that the change in rating standards did not create an illegal special test, that the penalty was ample and uniformly imposed, and that knowledge, as distinguished from ability to follow instructions, was primarily measured in the examination. The Appellate Division approved these contentions and reversed the ruling of Special Term. In *Matter of Brady v. Finegan*,[45] a candidate for the New York City police force had been notified of failure in the written test because of a rating of 40% in the subject of memory. At the date of the written test, the rules of the Commission required only 20% in each announced subject of an examination. Before release of the results of the written test, this rule was changed to require 50% in each subject. The use of the new rule to effect the failure of the petitioner was held by the Court of Appeals not improperly retroactive, especially since the identity of candidates remained undisclosed when the rule was revised. However, in a later case,[46] promotion lists for the New York City Fire Depart-

44. Matter of Immediato v. Kern, N. Y. L. J., Feb. 14, 1938, p. 749, col. 4, *rev'd*, 254 App. Div. 672, 4 N. Y. S. (2d) 994 (1st Dep't 1938). But in Rizzuto v. Kern, N. Y. L. J., April 17, 1940, p. 1740, col. 4, the court disapproved the Commission's procedure in remedying the confusion created by conflicting instructions as to the number of questions to be answered in a written test for Junior Assessor.

45. 269 N. Y. 571, 199 N. E. 676 (1935).

46. Matter of Wittekind v. Kern, 170 Misc. 939, 11 N. Y. S. (2d) 569 (Sup. Ct. 1938), *aff'd*, 256 App. Div. 918, 10 N. Y. S. (2d) 862 (1st Dep't 1939), *aff'd*, 281 N. Y. 701, 23 N. E. (2d) 537 (1939). In Matter of Poss v. Kern, 263 App. Div. 320, 32 N. Y. S. (2d) 979 (1st Dep't 1942), *modifying*, N. Y. L. J., June 3, 1941, p. 2489, col. 1, the Appellate Division invalidated lowering of the pass mark in a written test for Stationary Engineer below the 75% standard required by Commission rule for technical examinations. The court cited the *Wittekind* case as authority for the declaration that the Commission is bound by its own rules. The decision in Matter of Brady v. Finegan, 269 N. Y. 571, 199 N. E. 676 (1935), was distinguished on the ground that there the rule had been changed by the Commission prior to alternation of the pass mark. In Matter of Margulies v. Kern, N. Y. L. J., Dec. 15, 1939, p. 2157, col. 5, the court permitted the Commission to withdraw a pass mark erroneously given in the belief that the petitioner was eligible for the examination.

ment had been rendered inadequate because of the introduction of the three platoon system. The Municipal Civil Service Commission thereupon amended its rule requiring an 80% general average in examinations for the Fire Department and added to the existing lists the names of candidates who had received 70% or better in the written tests and 80% or better in record and seniority. The Commission argued such action was not improperly retroactive, that candidates were not singled out for favor, and that its action did not revive an expired list. Nevertheless, the courts held that the Commission's action was illegal. In another case,[47] about 475 persons employed in the Department of Welfare as temporary attendant messengers and watchman attendants had been excluded by the Commission from examinations for permanent appointment to their positions because of apparent statutory prohibitions. A statute enacted after these examinations were held, revealed the eligibility of these employees under the original law. The lower courts nevertheless held that the Commission's own rule forbade a special examination where not requested within fifteen days after discovery of error.[48] The Court of Appeals finally declared this rule not binding where the curative action was taken at the initiative of the Commission and referred to the established right of an administrative agency to correct its misinterpretations of statutes.

Experience Standards

The evaluation of the experience and training possessed by candidates is important for many positions of responsibility. This evaluation entails standards and tests different from those employed to measure other qualifications and merits some discussion here. Efficient appraisal requires rating standards that discriminate accurately but fairly. The discretions necessarily exercised by personnel agencies in constructing and applying such standards must occasionally submit to judicial scrutiny. Where

47. Matter of Staples v. Kern, 282 N. Y. 205, 26 N. E. (2d) 20 (1940), *rev'g*, 257 App. Div. 925, 12 N. Y. S. (2d) 1005 (1st Dep't 1939).

48. Rule V, § IV, Para. 11 of the Rules of the New York City Civil Service Commission provides, ". . . no claim for a special test shall be allowed unless it be filed in writing with the Commission within fifteen days after the date of the error . . . and within sixty days after the date of said test." It is interesting to note that in a later companion case to the *Staples* case, Matter of Rindone v. Marsh, 183 Misc. 10, 49 N. Y. S. (2d) 450 (Sup. Ct. 1944), the court ruled that the employees who had been denied admission to the original examination but had passed the special test were entitled to supplant eligibles, with lower ratings, previously appointed from the list as originally established. The court so held despite a Commission rule, Rule V, § V, Par. 5, that ". . . such correction, in any case, shall be without prejudice to the status of any person previously appointed as a result of such examination."

these experience standards are obviously inequitable, the courts should hold them improper. But administrative law would lead to the conclusion that the devising of new standards to meet judicial criticism be left to the commission within the limits defined by the court.

In an open competitive examination for Social Investigator in the New York City Department of Welfare, employees in the predecessor agency, the Temporary Emergency Relief Bureau, were given proportionately higher experience credit on the theory presumably, that experience gained on the job was the most valuable. The propriety of these standards was attacked by a candidate employed in a private social agency. The Supreme Court, upholding the petitioner, directed use of a rating scale which credited various types of social work experience both public and private, equally. This order was approved by the Appellate Division,[49] although it commented:

"It is possible that experience as an investigator for a social agency, Federal, State or Municipal, may be broader and of greater practical value than that gained in a private social agency and might justify a difference in the basic rating."[50]

The Appellate Division here apparently envisioned the justice of granting higher basic credit for public social work experience even though refusing to restrict such preferential treatment to employees of a single agency. Nevertheless, the broad ruling of Special Term was not disturbed.

A written outline of a candidate's experience may afford an insufficient index to its precise quality and degree of relevance. To obtain greater accuracy, experience-oral interviews are frequently employed. A recent decision confirms the right of a civil service commission to suspend judgment as to a candidate's fitness for employment until evidence thereto has been adduced at the experience-oral test. The announcement of an examination for promotion to an engineering position in the New York City service stated:

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49. Sheridan v. Kern, 255 App. Div. 57, 5 N. Y. S. (2d) 336 (1st Dep't 1930).

50. *Id.* at 60, 5 N. Y. S. (2d) at 339. In a later case, Matter of Fogarty v. Kern, 259 App. Div. 524, 19 N. Y. S. (2d) 824 (1st Dep't 1940), rating standards granting higher credit for experience in public than in private social agencies in an examination for Assistant Supervisor in the same Department of Welfare, were approved after appeal. The Appellate Division there explained, in 524 N. Y. S. (2d) at 827: "The commission shows by affidavit that, for a variety of reasons, experience with public agencies is more closely related to the work of supervisors, grade 2, in the department of welfare and will be more valuable than experience with private agencies. Since the action of the commission is justified by these rational considerations concerning the relative value of such previous experience the courts ought not to interfere."

"Experience will be rated after an oral interview to determine the extent that such experience has qualified the candidate for this position."

The petitioner had been admitted conditionally and his experience paper stamped "Admitted to examination pending further inquiry and determination of your experience qualification." After passing the written test, he was failed at the experience-oral interview when questioning disclosed his experience unsuitable for the duties of the position. Although the right to suspend final decision until an adequate basis for judgment is available constitutes a necessary prerogative of administrative agencies, the Supreme Court ruled that admission to the examination entitled the petitioner to a satisfactory rating in experience.[51] This ruling was reversed by the Appellate Division with the comment:

"Clearly, mere admission to the examination would not entitle a court to direct that a passing mark be given to the petitioner. To do this would remove entirely the discretion vested in the Civil Service examiners to determine whether the candidate was qualified."[52]

Eligible Lists

The review of civil service procedures does not terminate with the conclusion of the examination itself. The courts have further considered the manner in which eligible lists resulting from an examination are established and used.[53]

The contrasting results in two recent cases involving the setting up of eligible lists stress the value of an adequate record and justification

51. Matter of Kanen v. Kern, N. Y. L. J., June 29, 1940, p. 2933, col. 4, *rev'd*, 260 App. Div. 500, 23 N. Y. S. (2d) 98 (1st Dep't 1940).

52. *Id.* at 502, 23 N. Y. S. (2d) at 100.

53. For some interesting cases on this subject, *see* Matter of Benline v. Marsh, N. Y. L. J., June 19, 1942, p. 2597, col. 7 (creation of special eligible list containing names of eligibles on original list who possessed additional skill or training not tested in examination approved); Matter of Kroyer v. Conway, 268 App. Div. 361, 51 N. Y. S. (2d) 707 (3d Dep't 1944) (refusal of State Civil Service Commission to certify eligible on reinstatement list for senior attorney in Transit Commission to position of senior attorney in Department of Taxation and Finance approved); Matter of Waters v. Buck, — Misc. —, 36 N. Y. S. (2d) 834 (Sup. Ct. 1942), *rev'd*, 265 App. Div. 344, 36 N. Y. S. (2d) 377 (1st Dep't 1942), *aff'd without opinion*, 290 N. Y. 840, 50 N. E. (2d) 239 (1943) (promotion to another department from a city-wide promotion list held to terminate previous seniority); Hirsch v. Marsh, 178 Misc. 556, 34 N. Y. S. (2d) 570 (Sup. Ct. 1942) (use of a register, established merely for convenience of Mayor in selecting City Marshals, to fill competitive positions of Deputy Sheriff held improper); Poss v. Kern, 263 App. Div. 320, 32 N. Y. S. (2d) 979 (1942), modifying N. Y. L. J., June 3, 1941, p. 2489, col. 1 (establishment of separate lists for Stationary Engineer (Steam) and Stationary Engineer (Electric) held improper where advertisement of examination had announced that all candidates would be required to qualify in both steam and electric specialties).

of discretions exercised by personnel agencies if such discretions are to be sustained in the courts. In *People* ex rel. *Sweeney v. Rice*[54] the creation of separate eligible lists for steno-typists and for manual stenographers from the results of a single examination conducted by the New York State Civil Service Commission was held improper because no adequate explanation was shown of the need for this procedure. However, in a somewhat similar case involving the New York City Commission, the Supreme Court approved the Commission's contentions, reinforced by adequate evidence, that the readier transcription and more permanent nature of steno-typed notes rendered steno-typists more suitable for certain positions.[55]

The New York Civil Service Law permits use of appropriate lists where there is no eligible list bearing the title of the position.[56] Under this law the courts in one case ruled that the need for a post-entry training course in the duties of Laundry Bath Attendant precluded use of an Attendant (Female) list.[57] But in a later case,[58] the appointment of eligibles from an Automobile Engineman list as street-car operators was

54. 279 N. Y. 70, 17 N. E. (2d) 772 (1938).

55. Matter of Goldstein v. Kern, N. Y. L. J., October 28, 1939, p. 1362, col. 2. For other cases on this subject, *see* note 53 *supra.*

56. Section 14, New York Civil Service Law, which reads in part ". . . Appointment shall be made from the eligible list most nearly appropriate for the group in which the position to be filled is classified, and a new list shall be created for a stated position or group of positions only when there is no appropriate list existing from which appointment may be made."

57. Matter of Krapp v. Kern, 255 App. Div. 305, 7 N. Y. S. (2d) 499 (1st Dep't 1938), *aff'd,* 281 N. Y. 617, 22 N. E. (2d) 176 (1939).

58. Matter of Lennon v. Delaney, 263 App. Div. 568, 33 N. Y. S. (2d) 401 (1st Dep't 1942). *See* also Matter of James v. Kern, N. Y. L. J., May 2, 1940, p. 1998, col. 5 (eligible list for attendant-messenger held properly certified as appropriate list to fill position of porter in New York City Transit System although a short training course usually given appointees before permanent assignment). *See* also Matter of Henry Hudson Parkway Authority v. Kern, 167 Misc. 699, 4 N. Y. S. (2d) 713 (Sup. Ct. 1938), *aff'd,* 255 App. Div. 770, 7 N. Y. S. (2d) 572 (1st Dep't 1938); Matter of Friend v. Valentine, N. Y. L. J., Nov. 2, 1940, p. 1386, col. 3, *rev'd,* 261 App. Div. 163, 24 N. Y. S. (2d) 620 (1st Dep't 1941), *aff'd,* 285 N. Y. 764, 34 N. E. (2d) 912 (1941); Matter of Ackerman v. Kern, 281 N. Y. 87, 22 N. E. (2d) 247 (1939). The question sometimes arises as to whether appointment to an appropriate position justified removal of the appointee from the eligible list. In Matter of Luria v. Marsh, 178 Misc. 595, 34 N. Y. S. (2d) 798 (Sup. Ct. 1942), removal of the names of eligibles who had been appointed to appropriate positions equivalent in salary and responsibility to that for which the list had been established was upheld especially since the eligibles affected had consented to the removal. The court indicated that appointment to an appropriate position of lower grade would not justify removal of the names of the appointees from the list. *See* also Matter of Aliotta v. Finegan, N. Y. L. J., July 13, 1937, p. 118, col. 2, *aff'd without opinion,* 253 App. Div. 810, 300 N. Y. Supp. 1332 (1st Dep't 1937).

approved although a twenty-hour training course was given before permanent assignments. It appears difficult to reconcile these decisions.

Conclusion

This glimpse at several aspects of public personnel practice may have yielded a picture of the uncertainties and perplexities that still surround the application of principles of administrative law in civil service litigation. The ever-growing importance of a well-trained body of public employees and the emergence of more complex personnel procedures make the reviewing function of the courts a more significant as well as a more difficult one. Personnel agencies can assist the orderly growth of administrative law in their field by formulating policies only after consulting tenets already established in the decisions of the courts, by educating their staffs in correlating their functions, as exercised, with controlling statutes and decisions, and, finally, by submitting to the courts clear-cut convincing evidence of the grounds for administrative decisions. Courts may make a contribution by observing judicial restraint.

Reconversion and post-war readjustment promise difficulties for public personnel agencies. Administrative law, once firmly established and resolutely heeded by administrators no less than by the courts, can help in the winning of more efficient government personnel systems to serve the nation.

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