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Federal Employee is Entitled to Trial De Novo on Employment Discrimination Claim and Not Merely Judicial Review of Agency Record. Hackley v. Roudebush, 520 F.2d 108 (D.C. Cir. 1975).

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CASE NOTES

ADMINISTRATIVE LAW—Equal Employment Opportunity Act of 1972—Federal Employee is Entitled to Trial De Novo on Employment Discrimination Claim and Not Merely Judicial Review of Agency Record. *Hackley v. Roudebush*, 520 F.2d 108 (D.C. Cir. 1975).

Ralph Hackley, a black, was employed as an investigator within the Veteran Administration's Investigation and Security Service Division.[1] He had served for one year at the GS-12 level when he was denied promotion.[2] Hackley complained that this denial was based solely upon his race.[3] The charge was investigated and he was afforded a hearing before a complaints examiner,[4] who ruled that

1. Hackley v. Roudebush, 520 F.2d 108, 113 (D.C. Cir. 1975).
2. *Id.*
3. *Id.* at 111.
4. *Id.* at 113-14. The initial step in the complaint process on the agency level is a conference with an Equal Employment Opportunity Counselor. The counselor's job is to inquire into the facts surrounding the employee's allegation of discrimination and attempt to reconcile the matter informally. If the controversy cannot be resolved on this level, the counselor will accept a formal complaint from the aggrieved employee, at which time he forwards the complaint and a report of his counseling of the employee to the agency's Equal Employment Opportunity Officer and furnishes the employee with a copy of the report. The counselor must, if practicable, hold his final interview with the employee within three weeks of the time the employee first directed the matter to the counselor. If this time limit is not met and the complaint has not been settled to the satisfaction of the complainant the counselor must inform him of his right to file a formal complaint within fifteen days of the final interview.

A formal complaint submitted to the agency must be in writing and signed by the complainant. A complaint need be accepted for filing only where the facts upon which the complaint is based were called to the attention of the Equal Employment Opportunity Counselor within thirty days of their occurrence and the complaint must be submitted within fifteen days of the employee's final interview with the counselor. The agency has broad discretion to waive compliance with these time limits. Upon agency rejection of a complaint for any reason the employee must be notified.

The agency's Director of Equal Employment Opportunity is charged with the responsibility of initiating an investigation of the complaint promptly. Upon completion of the investigation the employee is given an opportunity to examine and discuss the investigative file. At this time a further opportunity to reject or withdraw the complaint is afforded. Upon failure to arrive at an agreeable adjustment the complainant is notified of its proposed disposition and his right to a decision with or without a hearing.

Where the complainant does not request a hearing within fifteen days of receipt of notice of proposed disposition the Equal Employment Opportunity Officer may adopt the proposed disposition. The complainant must be so notified. Where a hearing is held, it is run by the complaints examiner, who transmits his findings, analysis, and recommendations to the head of the agency upon completion.

there had been no discrimination.[5] This finding was adopted by the Veteran's Administration.[6] Upon appeal, the Board of Appeals and Review of the Civil Service Commission affirmed.[7]

Having thus exhausted his administrative remedies, plaintiff commenced a civil action in the District Court for the District of Columbia pursuant to section 717(c) of the Equal Employment Opportunity Act of 1972 (EEOA).[8] He sought injunctive relief, retroactive promotion, and back pay, plus a declaratory judgment to the effect that he was to be free from discrimination.[9] The district court, in *Hackley v. Johnson (Hackley I)*,[10] granted the government's motion for summary judgment, holding that it only had jurisdiction to consider whether Hackley had been afforded administrative due process before the Civil Service Commission[11] and that he had, in fact, received due process during the administrative hearing.[12]

In *Hackley v. Roudebush (Hackley II)*,[13] the Court of Appeals for the District of Columbia Circuit reversed, remanding Hackley's claim of discrimination for trial, concluding, *inter alia*, that section 717(c)'s grant of a private right of action requires the district court to conduct a trial de novo in civil actions filed under the section.[14]

In so ruling, the court fell into line with several other jurisdictions which had held that the vindication of a federal employee's rights under EEOA required more than mere review of the administrative record.[15]

Appeal from an agency disposition of a discrimination complaint lies to the Board of Appeals and Review of the Civil Service Commission. Such appeal must be taken within fifteen days of receipt of notice of the agency's decision. On appeal to the Civil Service Commission there is no hearing as of right and the Commission may remand a complaint for rehearing or further investigation. The Board of Appeals and Review is required to render a written decision embodying reasons and forward the decision to the complainant, his representative, if any, and the agency. Upon a proper showing, the Commission has discretionary power to reopen any decision. 5 C.F.R. §§ 713.214-218 (1974).

5. 520 F.2d at 113.

6. *Id.* at 114.

7. *Id.* at 115.

8. Equal Employment Opportunity Act of 1972, 42 U.S.C. §2000e-16 (Supp. III, 1973).

9. 520 F.2d at 112 n.2.

10. 360 F. Supp. 1247 (D.D.C. 1973), *rev'd sub nom.*, Hackley v. Roudebush, 520 F.2d 108 (D.C. Cir. 1975).

11. *Id.* at 1252.

12. *Id.* at 1254.

13. 520 F.2d 108 (D.C. Cir. 1975).

14. *Id.* at 112.

15. *See* text accompanying notes 103-12 *infra*.

Writing for the court, Judge Wright argued that the construction and legislative history of EEOA, which amended Title VII of the Civil Rights Act of 1964,[16] mandated that federal employees be granted the same right to a trial on the merits as had private sector employees.[17] The Civil Rights Act of 1964 prohibited discriminatory employment practices based upon race, color, religion, sex, or national origin.[18] Until the 1972 enactment of EEOA, however, its protections did not extend to the federal employee.[19]

While the private sector employee had always enjoyed the right to a trial de novo following investigation by the Equal Employment Opportunity Commission (EEOC) and issuance of the requisite right-to-sue notice,[20] the federal employee's suit was often tripped up by the twin hurdles of sovereign immunity and failure to exhaust administrative remedies.[21]

It was Judge Wright's opinion that the EEOA reflects Congress' intent to eliminate these obstacles,[22] and that this intent could not be effectuated without the trial de novo remedy.[23]

Section 717(d) of Title VII provides that the enforcement procedures available to the private sector shall govern an action brought by the federal employee.[24] On its face, the district court observed,[25] it appears that the trial de novo would be extended to federal employees under this section. The defendants, however, had relied upon the district court's interpretation[26] of section 717(d) as only requiring private sector protections "where applicable." Their argument followed that where an administrative record was extant, those protections were not applicable. The court of appeals rejected

16. Equal Employment Opportunity Act of 1972, Pub. L. No. 92-261, § 717, 86 Stat. 103 (codified at 42 U.S.C. § 2000e-16 (Supp. III, 1973)).

17. 520 F.2d at 118-35.

18. 42 U.S.C. § 2000e-2(a) (1970), *as amended*, (Supp. III, 1973).

19. *Id.* § 2000e(b) (1970), *as amended*, (Supp. III, 1973).

20. Prior to 1972, if EEOC failed to achieve voluntary compliance, the agency would notify the complainant, who then had thirty days to bring suit in federal district court. 42 U.S.C. § 2000e-5(e) (1970), *as amended*, (Supp. III, 1973). Since 1972, of course, the EEOC has power to bring suit on its own. 42 U.S.C. § 2000e-5(f) (Supp. III, 1973), *amending* 42 U.S.C. § 2000e-5 (1970).

21. 520 F.2d at 116.

22. *Id.*

23. *Id.* at 117.

24. 42 U.S.C. § 2000e-16(d) (Supp. III, 1973).

25. 520 F.2d at 119-20.

26. 360 F. Supp. at 1252 n.9.

this construction, ruling that the "as applicable" language was merely included for clarification purposes.[27] Section 717(d) applies sections 706(f) through (k)[28] to actions brought by federal employees. These sections, in addition to outlining a private individual's right to sue, also deal with civil actions brought by the EEOC and the Attorney General.[29] These sections, the court of appeals pointed out,[30] will only apply to the federal employee's suit "where applicable," and it is the court's opinion that the language in question was meant to encompass exactly that situation.[31] It went on to observe that if Congress had intended to limit the district court's function to a review of the administrative record, it would have said so in so many words, rather than relying upon the somewhat ambiguous "where applicable" language of section 717(d).[32] Were *Hackley I's* view to be followed, the court would have the power to choose which private sector protections would be available to a particular federal employee.[33] The court of appeals thus firmly rejects such an interpretation.

Having disposed of this question of construction, *Hackley II* proceeded to examine the legislative history of EEOA,[34] finding that, despite occasional obscurities, it clearly reflected a congressional intent to grant the federal employee a trial de novo.[35] In extending

27. 520 F.2d at 119-20.

28. 42 U.S.C. §§ 2000e-5(f) to (k) (Supp. III, 1973).

29. The EEOC has thirty days following the filing of the initial charge or the end of the state deferral period in which to bring a civil suit. If the defendant in such a suit is a "government, governmental agency, or political subdivision," the EEOC must refer it to the U.S. Attorney General. In both instances, suit may only be brought if efforts at conciliation have failed. *Id.* § 2000e-5(f)(1). Prior to the enactment of the Equal Employment Opportunity Act of 1972, the EEOC had no such enforcement power. Judge Wright noted that, before 1972, "the EEOC acted essentially as a conciliatory agency in seeking voluntary and informal methods of dispute resolution." 520 F.2d at 122 n.57.

30. 520 F.2d at 119-20.

31. *Id.*

32. *Id.* at 120.

33. *Id.* The district court saw § 717(d) as providing the courts with a wide degree of discretion. According to the court its task is "to examine the administrative record with utmost care. If it determines that an absence of discrimination is affirmatively established by the clear weight of the evidence in the record, no new trial is required. If this exacting standard is not met, the Court shall, in its discretion, as appropriate, remand, take testimony to supplement the administrative record, or grant the plaintiff relief on the administrative record." 360 F. Supp. at 1252.

34. 520 F.2d at 122-35.

35. *Id.* at 122.

protection to federal employees, the court of appeals noted,[36] Congress was providing for a full airing of the merits of a particular case, rather than mere review of the administrative record. The court buttressed this conclusion by stating that the provisions of the bill that governed the private sector employee's trial de novo, rather than the provisions governing the suits reviewing cease and desist orders, were to control the federal employee's suit.[37]

The EEOA had its origins in the "Hawkins Bill,"[38] which was designed to provide the EEOC with the power to issue cease and desist orders against discriminatory employment practices in the private sector. Under the bill, such an order would be open to limited review in the federal court of appeals,[39] where the standard of review would be "substantial evidence on the record considered as a whole."[40] Significantly, the right of the private sector employee to file a civil suit, which the courts had ruled to be a trial de novo, was retained.[41]

After much debate on the floor of the House, the "Erlenborn Bill"[42] was adopted, which withheld cease and desist authority from the EEOC,[43] and instead gave EEOC power to file a civil suit in the district court. At the same time, however, the new bill excepted federal employees from the protection of Title VII.[44]

Similar legislation had also been proposed in the Senate,[45] and again the attempt was made to give the EEOC cease and desist authority.[46] More importantly, the bill protected the federal em-

36. *Id.* at 124.

37. *Id.* at 123.

38. H.R. 1746, 92d Cong., 1st Sess. (1971), *reprinted in* SENATE COMM. ON LABOR AND PUBLIC WELFARE, 92D CONG., 2D SESS., LEGISLATIVE HISTORY OF THE EQUAL EMPLOYMENT OPPORTUNITY ACT OF 1972, 32-60 (Comm. Print 1972) [hereinafter cited as LEGISLATIVE HISTORY].

39. 520 F.2d at 123.

40. *Id.* The preponderance of the evidence standard and the substantial evidence test are not coextensive and could not be used interchangeably. The former can only be used in circumstances where there is a trier of fact. The substantial evidence test, however, can only have application in circumstances where a court is reviewing the actions of another factfinder, and restricting itself to the reviewing function. K. DAVIS, ADMINISTRATIVE LAW 525 (3d ed. 1972).

41. 520 F.2d at 123.

42. H.R. 9247, 92d Cong., 1st Sess. (1971), LEGISLATIVE HISTORY 141-47.

43. 520 F.2d at 126.

44. *Id.*

45. S. 2515, 92d Cong., 1st Sess. (1971), LEGISLATIVE HISTORY 157-87.

46. 520 F.2d at 126.

ployee, who would, according to its terms, receive the benefit of the provisions governing the private sector.[47] The court of appeals attached great weight to the House and Senate Reports[48] accompanying the respective bills out of committee. Each had stressed the congressional resolve that the private sector trial provisions, rather than the "substantial evidence" provisions governing the appeal of cease and desist orders, should apply to the federal employee's suit.[49] Eventually, the move to give the EEOC cease and desist authority went down to defeat, when the Senate adopted an amendment proposed by Senator Dominick denying such authority.[50] Dominick argued that the bill limited the private sector employee to the " 'substantial evidence' Court of Appeals review of final EEOC orders" while entitling the federal employee to a trial de novo.[51] The purpose of the amendment therefore was to put both types of employees on equal footing.[52] The adoption of the Dominick amendment reinforced the court of appeal's conviction that the federal employee is entitled to trial on the merits.[53]

Senator Dominick was also largely responsible for reserving a role for the Civil Service Commission (CSC) in Title VII complaints.[54] Prior to the 1972 Act, investigation and hearings were conducted by the CSC upon receipt of a complaint of discrimination.[55] The reports of both houses express congressional dissatisfaction with the manner in which CSC had handled its job.[56] This dissatisfaction led to the sentiment that Title VII protections ought to be extended to the federal employee.[57] Dominick's revisions of the original bill provided that CSC would still have a certain amount of authority over complaints of discrimination,[58] coexisting with the federal employee's new right to sue in the federal court.

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47. *Id.*

48. H.R. REP. No. 238, 92d Cong., 1st Sess. 1 (1971) [hereinafter cited as HOUSE REPORT]; S. REP. No. 415, 92d Cong., 1st Sess. 16-17 (1971) [hereinafter cited as SENATE REPORT].

49. HOUSE REPORT 22; SENATE REPORT 12-13.

50. 520 F.2d at 131.

51. *Id.* at 129-30.

52. *Id.*

53. *Id.*

54. *Id.*

55. *See* 5 C.F.R. § 713 (1972).

56. 520 F.2d at 136. Problems with CSC procedure were exposed by the fact that the CSC's Board of Appeals and Review seldom reversed an agency determination. *Id.*

57. *Id.* at 124.

58. *Id.* at 129-30.

Judge Wright focused his attention upon *Hackley I's* analysis of the legislative history of the 1972[59] amendments and found it wanting.[60] The lower court had relied heavily upon the comments of Senator Williams, who had frequently referred to the federal employee's right as being merely a "review of the administrative proceeding . . . ."[61] *Hackley II* attached minimum weight to these remarks, which it considered to be inconsistent with the general trend of debate, and noted that the district court had completely omitted discussion of Senator Dominick's revealing comments.[62] The court noted that Senator Williams himself had, in fact, acknowledged that Senator Dominick could speak with more authority than he on the federal employee provisions.[63]

The court also questioned *Hackley I's* argument that Congress' tightening of Civil Service Commission review procedures reflected its belief that that agency should retain primary responsibility for

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59. *Id.* at 134-48.

60. *Id.* at 135.

61. 360 F. Supp. at 1252 (D.D.C. 1973).

62. 520 F.2d at 147.

63. *Id.* Senator Cranston also addressed himself to the trial de novo issue, but an apparent error in transcription has lessened the precedential value of his remarks. His comments, as originally reported, read as follows:

> For the first time, [it will] permit Federal employees to sue the Federal Government in discrimination cases—under the theory of Federal sovereign immunity, courts have not generally allowed such suits—and to bring suit either prior to or after CSC review of the agency EEO decision in the case. As with other cases brought under Title VII of the Civil Rights Act of 1964, Federal district court review would be based on the agency and/or CSC record and would not be a trial *de novo*.

118 CONG. REC. 2287 (daily ed. Feb. 22, 1972), LEGISLATIVE HISTORY 174. Senator Cranston later claimed that he had been misquoted, and accordingly corrected the reprint of his remarks so as to call for a trial de novo:

> As with other cases brought under title VII of the Civil Rights Act of 1964, Federal district court review would not be based on the agency and/or CSC record and would be a trial de novo.

118 Cong. Rec. 4929 (1972). This corrected version of the statement appears in the final bound volume of the Record in its appropriate place in the final Senate debate on February 22, 1972.

In any event, Judge Wright argued that even if the court were to hold Senator Cranston to his remarks as originally reported, they would carry little weight as they would then include a misstatement of the law. The court pointed to the words, "[a]s with other cases brought under Title VII of the Civil Rights Act of 1964," which prefaced Cranston's conclusion that no trial de novo was accorded federal employees. Of course, this would be incorrect if allowed to stand, for the private sector employee had a right to trial de novo at the time. 520 F.2d at 147-48. *See also* Alexander v. Gardner-Denver Co., 415 U.S. 36 (1974); McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). *See generally* 24 Cath. U. L. Rev. 126 (1974); 24 Drake L. Rev. 236 (1974).

Title VII complaints.[64] Both the House[65] and Senate Reports[66] had made note of the problems accompanying such an arrangement. The lower court had attached great weight to these changes.[67] Judge Wright attached very little,[68] saying "no substantial reform"[69] had been effected. The same defects that had been exposed in the Reports still exist,[70] and for that reason the CSC cannot be given the extent of power afforded it by the district court.

The court of appeals found no compelling policy reasons for limiting the federal employee's rights in federal court.[71] A trial de novo need not result in mere duplication of the administrative record.[72] In court, the employee has the right to compel testimony,[73] in addition to the other discovery weapons he has at his disposal.[74] Such cases, opined the court, would supplement the administrative record, rather than duplicate it.[75] As to the standard "flood gates" argument, *i.e.*, that allowing a trial de novo in every case would inundate the court, it noted that the courts would be forced to examine the administrative record anyway,[76] so that additional live testimony would not be too time consuming. Certainly, the court observed, the concern of Congress was more with the elimination of discriminatory employment practices than with the conservation of judicial resources.

The district court had argued that the CSC had acquired unique expertise in the process of reviewing claims, and that, wherever possible, the courts should defer to that expertise.[77] In answer, the court of appeals pointed to section 717(c), which gives the employee the right to actually bypass the Commission and go straight to court after a final agency determination.[78] Thus, the agency's complaint

64. 520 F.2d at 139-42.
65. HOUSE REPORT 23, LEGISLATIVE HISTORY 83.
66. SENATE REPORT 16, LEGISLATIVE HISTORY 425.
67. 360 F. Supp. at 1251-52.
68. 520 F.2d at 137-38.
69. *Id.*
70. *Id.*
71. *Id.* at 147-56.
72. *Id.* at 150-52.
73. *Id.* at 151.
74. *Id.*
75. *Id.* at 150.
76. *Id.* at 153-54.
77. 360 F. Supp. at 1252.
78. 520 F.2d at 137-38.

examiner is often the final arbiter on the administrative level, and here the federal judges are clearly more sensitive to the issues in discrimination suits.[79] Further, if the court should desire to avail itself of CSC experience, it may do so through the vehicle of an amicus curiae brief.[80] Thus the court concluded that no policy considerations implicit in Title VII militated against provision of a trial de novo.[81]

These issues were not ones of first impression to federal courts. The issue of trial de novo for federal employees has been alive since the enaction of EEOA. Generally, there have been two distinct lines of cases interpreting section 717(c). Prior to the instant case, the leading case[82] denying trial de novo had been *Hackley I*.

Two circuits have aligned themselves with *Hackley I*. In *Chandler v. Johnson*,[83] the Court of Appeals for the Ninth Circuit held that an employee of the Veteran's Administration who alleged discrimination under Title VII was not entitled to a trial on the merits.[84] The court approved the trial court's reliance on *Hackley I's* ruling,[85] and agreed with it's analysis of section 717's legislative history.[86]

The Tenth Circuit spoke in *Salone v. United States*.[87] Here the court of appeals held that a federal employee was not entitled to a de novo hearing in an action brought under section 717.[88] The *Salone* court also relied on the district court's decision in *Hackley I* and suggested that there was a valid distinction between the rights enjoyed by federal and private employees.[89] The court further held that actions brought under section 717(c) would be governed by the Administrative Procedure Act.[90]

The District of Columbia Circuit might well represent a microcosm of the havoc *Hackley II* is likely to wreak. In *Pointer v.*

79. *Id.*
80. *Id.*
81. *Id.* at 155-56.
82. *Id.* at 134-35.
83. 515 F.2d 251 (9th Cir.), *cert. granted*, 96 S. Ct. 34 (1975).
84. *Id.* at 255.
85. *Id.*
86. *Id.*
87. 511 F.2d 902 (10th Cir. 1975).
88. *Id.* at 904.
89. *Id.* at 903.
90. *Id.*

Sampson,[91] the District Court for the District of Columbia held that while a trial de novo might be appropriate for employees in the private sector, the statutory scheme of the EEOA did not make available the same remedies to federal employees.[92] The *Pointer* court cites the broad powers given the CSC as evidence of congressional intent to restrict the judicial function in section 717 cases.[93] The court concluded that trial de novo after agency and CSC proceedings would be a duplicative effort not consistent with the aims of EEOA.[94] *Pointer* relied heavily upon *Hackley I*, calling it the "seminal case" in the area.[95]

Of course, *Hackley II* obviates the holding of *Pointer* within the District of Columbia Circuit, and it can readily be seen that any future foreign court that rules against federal employees on the trial de novo issue will have to base its decision on more solid ground than *Hackley I*. If there is a trend perceivable throughout the jurisdictions, moreover, it would seem to be in favor of trial de novo.

In *Sperling v. United States*,[96] plaintiff had been employed by the U.S. Army Electric Command (ECOM) as a civilian writer. He also served as Executive Vice President of a local lodge of the American Federation of Government Employees, in which capacity he served as grievance representative in Equal Employment Opportunity proceedings at ECOM. In this position he represented a black employee in several discrimination proceedings. Shortly thereafter, Sperling was denied promotion. He alleged that this denial was a reprisal for his successful representation of his fellow employee.[97]

The district court granted the government's motion for summary judgment,[98] but was reversed by the Court of Appeals for the Third Circuit.[99] The court concluded, *inter alia*, that section 717(c)'s grant of a private right of action requires the district court to conduct a trial de novo in civil actions filed under the section.[100] The major factors cited by the court for its decision were the absence of statu-

91. 62 F.R.D. 689 (D.D.C. 1974).
92. *Id.* at 696.
93. *Id.* at 694.
94. *Id.*
95. *Id.* at 695.
96. 515 F.2d 465 (3d Cir. 1975).
97. *Id.* at 467.
98. 7 Empl. Prac. Dec. 7255 (D. N.J. 1974).
99. 515 F.2d 465, 485.
100. *Id.* at 484.

tory restriction of the scope of review, analogy to the rights of private sector employees under EEOA, and legislative history indicating appropriate intent to extend the right of federal employees.[101] The court openly questioned *Hackley I's* construction of the "as applicable" language in section 717(d),[102] and opined that it's reliance upon the remarks of Senator Williams was misplaced.

In *Caro v. Schultz*,[103] the Court of Appeals for the Seventh Circuit expressly approved *Sperling*,[104] noting that section 717's legislative history was at best inconsistent, and that the resultant doubts as to congressional intent should be resolved in favor of trial de novo.[105]

Similar developments have occurred in the district courts, and the previous state of confusion[106] that existed at that level is beginning to be dispelled. *Henderson v. Defense Contract Administration Service Region*[107] is a primary example. Here the District Court for the Southern District of New York held that EEOA mandated a trial de novo for federal employees.[108] The court recognized that one of the primary reasons for the enactment of EEOA was congressional dissatisfaction with CSC procedures.[109] This being so, the statute would be construed so as to give effect to its manifest purpose, and the federal employee would receive a trial on the merits.[110] Several other district courts have reached a similar result.[111]

The foregoing cases illustrate a growing tendency of the courts to hold that a federal employee is guaranteed a trial de novo under

101. *Id.* at 469-72, 474, 481.

102. *Id.* at 476.

103. BNA LAB. REL. REP., F.E.P. CAS. (11, at 327) (7th Cir. 1975).

104. *Id.* at 329.

105. *Id.* at 330.

106. The split is fairly even. The following have construed § 717(c) as requiring a trial de novo: Hunt v. Schlesinger, 389 F. Supp. 725 (W.D. Tenn. 1974); Griffin v. Postal Serv., 385 F. Supp. 274 (M.D. Fla. 1973); Jackson v. Civil Serv. Comm'n, 379 F. Supp. 589 (S.D. Tex. 1973). Compare these cases with the following decisions, all of which held that § 717(c) merely provided for review of the agency record: Guilday v. Department of Justice, 385 F. Supp. 1096 (D. Del. 1974); Haire v. Calloway, 385 F. Supp. 309 (E.D. Mo. 1974); Ficklin v. Sabatini, 383 F. Supp. 1147 (E.D. Pa. 1974); Cates v. Johnson, 377 F. Supp. 1145 (W.D. Pa. 1974), *vacated*, 515 F.2d 506 (3d Cir. 1975); Baca v. Butz, 376 F. Supp. 1005 (D. N.M. 1974); Thompson v. Department of Justice, 372 F. Supp. 762 (N.D. Cal. 1974); Handy v. Gayler, 364 F. Supp. 676 (D. Md. 1973).

107. 370 F. Supp. 180 (S.D.N.Y. 1973).

108. *Id.* at 184.

109. *Id.* at 182.

110. *Id.*

111. *See, e.g.*, Hunt v. Schlesinger, 389 F. Supp. 725 (W.D. Tenn. 1974).

Title VII. While the opinion in *Hackley I* held sway for some time, it now appears that the decision will lose its influence. Circuits yet to rule on this issue can look to the court of appeals decision, which methodically disarms the arguments against trial de novo. For the moment, however, all eyes will be on *Chandler v. Johnson*, which was recently granted certiorari[112] by the United States Supreme Court. Whatever that final decision might be, the Court will have to consider and effectively deal with the issues raised in *Hackley v. Roudebush*.

James C. McMahon, Jr.

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112. 96 S. Ct. 34 (1975).