7-29-1986

Anderson v. Colorado State Dep't of Personnel

Supreme Court
State of Colorado

Docket No. 86-SA-61

Appellants'
Opening Brief

DOUGLAS ANDERSON, PATRICIA CLISHAM, HARVEY COCHRAN, THOMAS F. DIXON, JAMES DOTSON, EDWIN L. FELTER, JR., WILLIAM FRITZEL, H. CONWAY GANDY, MICHAEL R. HOMYAK, THOMAS E. KORSON, PAUL KUBITSCHEK, PAUL LEIBOWITZ, HARRIETT MOSKOVIT, THOMAS R. MOELLER, MICHAEL MULLINS, JUDITH F. SHULMAN, DAVID A. SORENSON, ARTHUR G. STALIWE, DON P.STIMMEL, JOHN STUELPNAGEL, AND ROBERT E. TEMMER,

Plaintiffs-Appellants,

v.

COLORADO STATE DEPARTMENT OF PERSONNEL, AND GAIL S. SCHOETTLER, EXECUTIVE DIRECTOR; AND THE COLORADO STATE PERSONNEL BOARD;

Defendants-Appellees.

APPEAL FROM THE
DISTRICT COURT, CITY AND
OF DENVER,
NO. 83-CV-6795

HONORABLE SANDRA I. ROTHENBERG
JUDGE

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INDEX

	Pages
Statement of the Facts	1-6
Statement of the Case	7
Arguments	
I. C.R.S. 24-50-104(5)(c)(II) IS UNCONSTITUTIONAL TO THE EXTENT IT PURPORTS TO LIMIT EMPLOYEES FROM PRESENTING EVIDENCE, WRITTEN AND ORAL, BEFORE THE STATE PERSONNEL BOARD.	8-12
II. THE ACTIONS OF THE STATE PERSONNEL BOARD IN SUPPRESSING PLAINTIFFS' EVIDENCE RESULTED IN A DENIAL OF DUE PROCESS.	12-16
III. THE DECISION OF THE STATE PERSONNEL BOARD WAS CONTRARY TO THE ONLY EVIDENCE IN THE RECORD. ACCORDINGLY, THE DECISION IS ARBITRARY AS A MATTER OF LAW.	16-18
Conclusions	17,18

CASES

American Nat'l Bank v. Quad Construction, Inc., 31 Colo. App. 373, 504 P.2d 1113 (1971)	16
Bell v. Burson, 402 U.S. 535, 91 S.Ct. 1586, 29 L.Ed.2d 90 (1971)	11
Board of County Commissioners v. Simmons, 177 Colo. 347, 494 P.2d 85 (1972)	18
Bowen v. American Hospital Association, _____ U.S. _____, 106 S.Ct. 2101, _____ L.Ed.2d _____, (June 1986)	17
Bowman Transportation, Inc. v. Arkansas-Best Freight System, 419 U.S. 281, 95 S.Ct. 438, 42 L.Ed.2d 447 (1974)	17
Finkelstein v. Board of Registration in Optometry, Mass., 349 N.E.2d 346 (1976)	14,15
Goldberg v. Kelly, 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970)	9,10,11
Hart v. McLucas, C.A. 9, 535 F.2d 516 (1976)	15

Lassner v. Civil Service Commission.
177 Colo. 257, 493 P.2d 1087 (1972) 18

Snyder v. Lakewood,
189 Colo. 421, 542 P.2d 371 (1975) 12

White v. Bloomberg,
D.C. Md., 345 F. Supp 133 (1972) 15

STATUTES

24-4-105(7) 16

24-50-101, C.R.S. 1

24-50-104, C.R.S. 1,2,5,7,
8,9,11,15,17

RULES

Rule 43(c), C.R.C.P. 16

DOUGLAS ANDERSON, PATRICIA CLISHAM, HARVEY COCHRAN, THOMAS F. DIXON, JAMES DOTSON, EDWIN L. FELTER, JR., WILLIAM FRITZEL, H. CONWAY GANDY, MICHAEL R. HOMYAK, THOMAS E. KORSON, PAUL KUBITSCHEK, PAUL LEIBOWITZ, HARRIETT MOSKOVIT, THOMAS R. MOELLER, MICHAEL MULLINS, JUDITH F. SHULMAN, DAVID A. SORENSON, ARTHUR G. STALIWE, DON P.STIMMEL, JOHN STUELPNAGEL, AND ROBERT E. TEMMER, Plaintiffs-Appellants, v. COLORADO STATE DEPARTMENT OF PERSONNEL, AND GAIL S. SCHOETTLER, EXECUTIVE DIRECTOR; AND THE COLORADO STATE PERSONNEL BOARD; Defendants-Appellees.	APPEAL FROM THE DISTRICT COURT, CITY AND OF DENVER, NO. 83-CV-6795 HONORABLE SANDRA I. ROTHENBERG JUDGE

STATEMENT OF THE FACTS

Pursuant to both state constitution (Article XII) and statute (C.R.S. 24-50-101, et seq.) the Department of Personnel and the State Personnel Board are to implement and supervise the state personnel system. In pertinent part, C.R.S. 24-50-104(2) provides:

> (a) It is the policy of the state to encourage career service for officers and employees in the state personnel system. It is likewise the policy of the state, in recruiting and retaining competent personnel, to compensate such officers or employees with salaries, fringe benefits, including retirement benefits, working conditions, and hours of work comparable to those found by the state personnel director to prevail for comparable kings of employment in typical placers of public and private employment with which the state competes in recruiting personnel. . . .

In order to determine the comparable rates for the other jobs in public and/or private employment, the department is to conduct annual salary surveys. C.R.S. 24-5-104(5). Pertinently, C.R.S. 24-50-104(5)(c) requires:

> The state personnel director shall use valid statistical techniques and, after collecting all appropriate data, shall review the data and shall determine whether it is valid.

Emphasis supplied. And, the State Personnel Board is charged with review of the department's conduct and results of the annual survey. C.R.S. 24-50-104(5)(c)(II).

As a result of successful litigation in 1980 (See Judge Santo's order of March 5, 1980, Complaint Attachment No. 2, Vol. II) all hearings examiners were spun off from a broader group known as the "Legal Series," and a separate salary survey was to be conducted for the hearings examiners. See Complaint, paragraph 8; Answer, paragraph 1; ff. 3,13.

At that time, in 1980, the Department of Personnel proposed that a national survey of comparable government positions be used to set the salaries of Colorado's hearings examiners. The hearings examiners agreed, subject to the provisions that the capsule job description used to obtain the pay rates contain the information that the examiners work in the public utility and workmen's compensation areas of law, and that the federal government be included as a rate. The Department of Personnel agreed to include the information regarding public utilities and

workmen's compensation in the job capsule, but only agreed to the use of the federal government as a rate for one year, i.e., 1981. Complaint, paragraph 9; Answer, paragraph 1; ff. 3,13. However, other classes such as the old Legal Series continued to enjoy the use of federal government salary data in their pay surveys. Complaint, paragraph 23; Answer, paragraph 11; ff. 4,13.

Things continued along until the 1983 salary survey. As a result of the department's 1983 salary survey, it recommended on March 1, 1983, that the hearings examiners be reduced in pay three grades, a loss of 7 1/2%. Record, Volume II, Section 8, p. 640.

Taken aback, the hearings examiners began their own inquiry into the matter, to check and see whether the department's survey could possibly be correct.

To begin, the hearings examiners obtained a copy of the department's computer results for the survey. (Record, Vol. II, Section 10, page 975; Complain Attachment 3, page 4 of Vol. II). The list only contained numbers for 34 states, with no job particulars for each state; none of the data therein had been checked by the department before release on March 1, 1983. (Complaint, paragraph 16; Answer, paragraph 16, ff. 614. Further, it is conceded in the record and pleadings that rates for a part-time job were used (Mississippi), and that positions only requiring a high school diploma or its equivalent (New Mexico) or

employment in public health or related field (Connecticut) were used. Record, Vol. III, Section 11, page 1337, 1338; Answer, paragraph 21; ff. 15.

Before going further, it must be remembered that the Colorado job being surveyed for requires graduation from law school, a current license to practice law, and a minimum of five years of legal experience after licensing. Complaint, Attachment No. 1; see also Answer, paragraph 1, ff. 13.

Wondering how the department could be using such strange and inappropriate jobs in its survey, the hearings examiners discovered something very interesting about how the department conducted its survey (i.e. its survey methodology): the department sent out a copy of the Colorado Hearings Examiner I-C job description (along with other job descriptions for other classes) to various central personnel departments in other states . . . and left it up to unknown parties in the other states to figure out what jobs in their states the unknown parties thought were comparable to the Colorado position. No one from the Colorado Department of Personnel make the key decisions; it was all left up to unknown persons in the various states. As stated by the department in its response to the board when addressing this issue:

> . . . The department completes surveys for other jurisdictions throughout the year trying to provide the best and most complete data available. We must assume that our counterparts in the other states respond in a like professional manner.

> The data used in the analysis was reexamined for the errors indicated in the hearing examiners written appeal.
>
> Mississippi was contacted by phone and questions about the full part time status of their job match for our survey class. It was verified this is a part-time position. The rate was removed from the data array.

Emphasis supplied, Record, Vol. III, Section 11, page 1338; see also Complaint Attachment No. 4. Interestingly, there is no specific mention in the department's survey procedures manual that it would leave critical decision making to unknown parties in other states. See Record, Vol. I, Section 4, pages 26-33.

Pursuant to C.R.S. 24-50-104(5)(c)(II) a party affected by the department's survey has 15 working days (about three weeks) to appeal the survey results to the board. On March 22, 1983, the hearings examiners filed their appeal. Record, Vol. II, Section 10, pages 971-975; Complaint Attachment No. 4. In their appeal the hearings examiners alleged numerous errors by the department in the conduct of the survey, as well as informing all parties that they were conducting their own survey, and would have the results analyzed and tabulated by April 22, 1983.

On April 13, 1983, the hearings examiners filed their large initial data submission, examined and tabulated by Dr. William J. Loehr, associate professor of economics at the University of Denver. Complaint Attachment No. 5. The data submission contained not only Dr. Loehr's conclusions, but also voluminous documentary evidence for each and every

job relied on. The hearings examiners went head-to-head, state-by-state, job-by-job against the department's survey. Additional data was filed on April 22,1983. Complaint Attachment No. 8.

On April 25, 1983, the Executive Director of the Department of Personnel wrote a memo to the State Personnel Board, complaining about, ". . . additional appeal information . . ." filed after March 22, 1983. Complaint Attachment No. 9. On the same day the board announced it was going to issue a "policy statement" in the near future.

On April 27, 1983, the board issued a written "policy statement" (Complaint Attachment No. 10), wherein the board stated that, "No additional testimony or exhibits will be accepted by the Board . . .," and made the "policy statement" retroactive to March 22, 1983. In effect, the board wiped out the hearings examiners' evidence. Complaint, paragraph No. 50; Answer, paragraph No. 23; ff.. 7,20.

The hearings examiners promptly objected on April 27, 1983, and made an offer of proof. Complaint Attachment No. 11. Further, on June 2, 1983, the hearings examiners filed their last bit of data, also in the form of an offer of proof.

On June 30, 1983, the board issued its final order, holding inter alia that the department had not erred in the conduct of the survey, and dismissing the hearings examiners' appeal. Record, Vol. III, Section 22, Complaint Attachment 13.

STATEMENT OF THE CASE

On March 1, 1983, the Department of Personnel announced its 1983 salary survey results. Pursuant to 24-50-104(5(c)(II), C.R.S., Appellants appealed to the State Personnel Board on March 22, 1983.

On June 30, 1983, the board issued its decision affirming the department. Accordingly, on July 29, 1983, Appellants filed their complaint for judicial review in the Denver District Court.

After briefs and oral argument, the district court mailed a one-page order on January 3, 1986, affirming both the board and department, as well as holding certain provisions of 24-50-104(5)(c)(II) constitutional. It is from that order this appeal arises.

LIST OF ARGUMENTS

I. C.R.S. 24-50-104(5)(c)(II) IS UNCONSTITUTIONAL TO THE EXTENT IT PURPORTS TO LIMIT EMPLOYEES FROM PRESENTING EVIDENCE, WRITTEN AND ORAL, BEFORE THE STATE PERSONNEL BOARD.

II. THE ACTIONS OF THE STATE PERSONNEL BOARD IN SUPPRESSING PLAINTIFFS' EVIDENCE RESULTED IN A DENIAL OF DUE PROCESS.

III. THE DECISION OF THE STATE PERSONNEL BOARD WAS CONTRARY TO THE ONLY EVIDENCE IN THE RECORD. ACCORDINGLY, THE DECISION IS ARBITRARY AS A MATTER OF LAW.

ARGUMENT

I. C.R.S. 24-50-104(5)(c)(II) IS UNCONSTITUTIONAL TO THE EXTENT IT PURPORTS TO LIMIT EMPLOYEES FROM PRESENTING EVIDENCE, WRITTEN AND ORAL, BEFORE THE STATE PERSONNEL BOARD.

The Appellants would like to address this issue first, since the constitutional defects permeate the entire case.

To begin, pursuant to C.R.S. 24-50-104(2), the hearings examiners have a statutory right to be paid, ". . . salaries . . . comparable to those found by the personnel director to prevail for comparable kinds of employment in typical places of public and private employment . . ." Further, the hearings examiners have a statutory right pursuant to C.R.S. 24-50-104(5) to a statistically valid survey which has collected appropriate data. Again, these are statutory rights.

And, pursuant to C.R.S. 24-50-104(5)(c)(II) the State personnel Board is charged with review of the Department of Personnel's actions, but, "If the board decides to review the state personnel director's action, it shall do so in summary fashion, without referring it to a

hearing officer, and on the basis of written material which may be supplemented by oral argument, at the discretion of the board. . . ." In other words, the affected employees may send in written material, but there is no provision for vive voce testimony (as opposed to argument), nor is there face-to-face confrontation.

The bellweather case in this area is the United States Supreme Court's decision in Goldberg v. Kelly, 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970) wherein the court stated at length:

> [1-4] Appellant does not contend that procedural due process is not applicable to the termination of welfare benefits. Such benefits are a matter of statutory entitlement for persons qualified to receive them.[8] Their termination involves state action that adjudicates important rights. The constitutional challenge cannot be answered by an argument that public assistance benefits are "a 'privilege' and not a 'right.'" Shapiro v. Thompson, 394 U.S. 618, 627 N. 6, 89 S.Ct. 1322, 1327 (1969). Relevant constitutional restraints apply as much to the withdrawal of public assistance benefits as to disqualification for unemployment compensation, Sherbert v. Verner, 374 U.S. 398, 83 S.Ct. 1790, 10 L.Ed.2d 965 (1963); or to denial of a tax exemption, Speiser v. Randall, 357 U.S. 513, 78 S.Ct. 1332, 2 L.Ed.2d 1460 (1958); or to discharge from public employment, Slochower v. Board of Higher Education, 350 U.S. 551, 76 S.Ct. 637, 100 L.Ed. 692 (1956)[9]. The extent to which procedural due process must be afforded the recipient is influenced by the extent to which he may be "condemned to suffer grievous loss," Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 168, 71 S.Ct. 624, 647, 95 L.Ed. 817 (1951), (Frankfurter, J., concur- ring), and depends upon whether the recipient's interest in avoiding that loss outweighs the govern- mental interest in summary adjudication. Accordingly, as we said in Cafeteria & Restaurant Workers Union, etc. v. McElroy, 367 U.S. 886, 895, 81 S.Ct. 1743, 1748-1749, 6 L.Ed.2d 1230 (1961), "consideration of what procedures due process may require under any given set of circumstances must

> begin with a determi- nation of the precise nature of the government function involved as well as of the private interest that has been affected by governmental action." See also Hannah v. Larche, 363 U.S. 420, 440, 442, 80 S.Ct. 1502, 1513, 1514, 4 L.Ed.2d 1307 (1960).

397 U.S. 261-263; 90 S.Ct. 1017-1018. The court then went on to note regarding written submissions only:

> [16-19] The opportunity to be heard must be tailored to the capacities and circumstances of those who are to be heard.[16] . . . Moreover, written submissions do not afford the flexibility of oral presentations; they do not permit the recipient to mold his argument to the issues the decision maker appears to regard as important. Particularly where credibility and veracity are at issue, as they must be in many termination proceedings, written submissions are a wholly unsatisfactory basis for decision.

397 U.S. 268, 269; 90 S.Ct. 1021. Finally, regarding the right to vive voce hearings, with an opportunity to confront witnesses, the court forcefully stated:

> [20-22] In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses. E. g., ICC v. Louisville & N.R. Co., 227 U.S. 88, 93-94, 33 S.Ct. 185, 187-188, 57 L.Ed. 431 (1913); Willner v. Committee on Character & Fitness, 373 U.S. 96, 103-104, 83 S.Ct. 1175, 1180-1181, 10 L.Ed.2d 224 (1963). What we said in Greene v. McElroy, 360 U.S. 474, 496-497, 79 S.Ct. 1400, 1413, 3 L.Ed.2d 1377 (1959), is particularly pertinent here:
>
> > Certain principles have remained relatively immutable in our jurisprudence. One of these is that where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue. While

> this is important in the case of documentary evidence, it is even more important where the evidence consists of the testimony of individuals whose memory might be faulty or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice, or jealousy. We have formalized those protections in the requirements of confrontation and cross-examination. They have acient roots. The find expression in the Sixth Amendment * * *. This Court has been zealous to protect these rights from erosion. It has spoken out not only in criminal cases, * * * but also in all types of cases where administrative * * * actions were under scrutiny."

397 U.S. 269-270; 90 S.Ct. 1021.

Plaintiffs apologize for the lengthy quotations, offering them as an expedient to having to pull the opinion from the library.

Further, hearings required by the Due Process Clause must be meaningful, and include all elements essential to a proper determination. Bell v. Burson, 402 U.S. 535, 91 S.Ct. 1586, 29 L.Ed.2d 90 (1971). Failure to provide for such a hearing in the statutory scheme renders that scheme constitutionally defective. Bell v. Burson, supra.

Finally, at some point before the agency's action becomes final, the affected party must be afforded an opportunity for a hearing. Goldberg v. Kelly, supra. Obviously, the above is not available under the scheme in C.R.S. 24-50-104(5)(c)(II). Accordingly, the statute is constitutionally infirm.

This is especially important when we remember that the process involved here is a quasi-judicial one, not quasi-legislative. Snyder v. Lakewood, 189 Colo. 421, 542 P.2d 371 (1975).

II. THE ACTIONS OF THE STATE PERSONNEL BOARD IN SUPPRESSING PLAINTIFFS' EVIDENCE RESULTED IN A DENIAL OF DUE PROCESS.

As indicated in the statement of facts, the hearings examiners were reviewing the department's survey results, as well as getting their own data, after the announcement of March 1, 1983. In their appeal submitted on March 22, 1983, the hearings examiners announced such. No complaint was heard.

On April 13, 1983, the hearings examiners filed their largest single submission. Complaint Attachment No. 5. The examiners hired a doctoral level economist that also taught statistics, and had him analyze the department's data, the data obtained by the examiners, as well as data he himself collected. The court is urged to read Dr. Loehr's affidavit in Attachment No. 5; it is a professionally damning indictment of the department's conduct of the survey, as well as a clear indiction of what happens when decision making is left to others who have no responsibility to the State of Colorado.

In addition to the affidavit, the examiners had included all underlying documentation, state by state, job by job, dollar by dollar. If there were any disagreements or questions with Dr. Loehr's conclusions, the party could go directly to the data and make her/his own evaluation. It is all there. And, it indicates as 12-1/2% increase.

In contrast, the department submitted no underlying documentation constituting the factual predicate of its survey. The department didn't even submit its survey results. We did. Simply put, the department submitted no evidence in this record. Again, please review the department's specific response to the hearings examiners' appeal as found in record, Vol. III, Section 11, pages 1337-1338; Complaint Attachment No. 4. Any facts there? While we concede that the department made certain admissions against interest, we cannot find any factual predicate for its determination that the examiners' pay should be reduced 7-1/2%. Additional information was filed by the examiners on April 22, 1983. See Complaint Attachment No. 8.

Upset by all this damaging evidence, the executive director of the department submitted a memo on April 25, 1983, protesting the submission of "additional appeal information." In its eagerness to placate the executive director, the board two days later, on April 27,1983, announced in a "policy statement" that no additional evidence was to be submitted, and then made the policy retroactive to March 22, 1983. The legal predicate for this unique position was board Rule 3-2-6, which provides:

> A petition under this rule shall contain specific facts which demonstrate that the petitioner is directly affected by the action of the Director in conducting the pay or fringe benefit survey. The petition shall also contain specific facts which demonstrate the way in which the Director's actions have been arbitrary, capricious, unreasonable, or contrary to rule or law. Failure to comply with the requirements of this rule may result in dismissal of the petition. The Board review of petitions properly

> filed shall be based on submission of written materials by the parties which may be supplemented by oral argument at the discretion of the Board.

Emphasis supplied.

To begin, it is patently absurd to insist that affected employees must not only appeal survey results in three weeks, but must also gather, sift, edit, and tender all evidence in support of their appeal in the same time period. The department with its employees working full-time on the matter, and with prior knowledge of where it will solicit information, doesn't do it that fast. And, this was a radical departure from prior practice which had allowed evidence to be adduced subsequent to the filing of an appeal.

More importantly, the language of the rule relied on clearly implies that there are petitions (which must be timely filed) and written material and oral argument (which come later). This is no clear requirement informing affected employees that they must do both in three weeks. Just where the board got its interpretation of its rule is not clear; what is clear is that the board felt it necessary to issue a "policy statement" explaining the rule. Obviously, there is an ambiguity.

When faced with a similar situation involving alleged violations of optometric rules, which violations were based upon "aggressive interpretation" of those rules, the Massachusetts Supreme Court in Finkelstein v. Board of Registration in Optometry, Mass., 349 N.E. 2d 346 (1976) said:

> (1,2) First, there is serious doubt whether the plaintiff has transgressed any board rule as presently written. Ordinarily an agency's interpretation of its own rule is entitled to great weight . . . However, this principle is one of deference, not abdication, and courts will not hesitate to overrule agency interpretations of rules when those interpretations are arbitrary, unreasonable or inconsistent with the plain terms of the rule itself. See Detroit Edison Co. v. United States Environmental Protection Agency, 496 R.2d 244, 248-249 (6th Cir. 1974); Pike v. Civil Aeronautics Bd., 303 F.2d 353, 357 (8th Cir. 1962); Equal Employment Opportunity Comm'n v. Westvaco Corp., 372 F. Supp 985, 993-994 (D.Md. 1974). Cf. Brennan v. Occupational Safety & Health Review Comm'n 491 F.2d 1340, 1344-1345) 2d Cir. 1974). The board has been granted rule making authority under G. L. c. 112, Sec. 67, but once having exercised this power it cannot thereafter arbitrarily construe and apply its rules which as promulgated have dimensions and content not subject to infinite manipulation and expansion. To hold otherwise would be to permit the board, when seeking to amend or add to its rules, to substitute aggressive interpretation for the rule making procedure provided by the Legislature in G.L. c 30A.

349 N.E. at 348. Where the administrative construction is clearly contrary to the plain and sensible meaning of the regulation, courts need not defer to it. Hart v. McLucas, C.A.9, 535 F.2d 516 (1976). Similarly, in an employee discharge case, the United States District Court for Maryland held that while a court will not disturb an administrative interpretation of a regulation unless clearly erroneous, the situation is different when that interpretation is not in accord with the meaning and purpose of the regulation. White v. Bloomberg, D.C. Md., 345 F. Supp. 133 (1972).

Simply put, the board's decision to suppress the examiner's evidence has no support in statute or rule. It effectively negates even the limited appeal afforded in C.R.S. 24-50-104(5)(c)(II).

The examiners would note that the suppression of their evidence was at the request of the department. Pursuant to C.R.S. 24-4-105(7), to the extent practicable the rules of evidence and requirements of proof in administrative hearings shall conform to the practice in district courts. With that in mind, the examiners made all of their data subject to offers of proof under Rule 43(c), Colorado Rules of Civil Procedure. The board and the department were put on notice that the documentary evidence was crucial, and the exclusion of it prejudicial. American Nat'l Bank v. Quad Construction, Inc., 31 Colo. App. 373, 504 P.2d 1113 (1972). Under an offer of proof, that evidence -- the only factual evidence in the record -- must be admitted. And acted upon. The failure to do so would result in the examiners being completely deprived of their opportunity to appeal.

III. THE DECISION OF THE STATE PERSONNEL BOARD WAS CONTRARY TO THE ONLY EVIDENCE IN THE RECORD. ACCORDINGLY, THE DECISION IS ARBITRARY AS A MATTER OF LAW.

Without belaboring what has been said before, the record in this matter is devoid of any factual submissions by the department. The only detailed, factual documentary evidence in the record is the suppressed evidence of the examiners.

Not feeling constrained by such legal minutae, the board upheld the department's position. In its order, Record, Vol. III, Section 22, page 1585; Complaint Attachment No. 13, page 14, the board simply

repeated the positions of the parties, labeling them as "findings of fact," then immediately lept to summary conclusions. There is no clearly discernable party in the board's decision for the Court to follow. The board has an obligation to explain the rationale and facts underlying its decision. There must be a rational connection between the facts found and the choice made. Bowen v. American Hospital Association, _____ U.S. _____, 106 S.Ct. 2101, _____ L.Ed.2d _____ (June 1986); Bowman Transportation, Inc. v. Arkansas - Best Freight System, 419 U.S. 281, 95 S.Ct. 438, 42L.Ed.2d 447 (1974).

Obviously, with no hard evidence from the department in the record, the above is a little difficult to achieve.

CONCLUSION

Appellants respectfully submit that 24-50-104(5)(c)(II), C.R.S., is unconstitutional to the extent it limits appeals to written material only, without an opportunity for actual confrontation and live testimony.

Regarding the board's affirmance of the department, done without any department evidence and despite its admissions of error in the conduct of its survey, we respectfully request an order compelling the use of Appellant's evidence, evidence of equal or greater dignity than that the department might have used, but didn't.

In order for a court to set aside a decision of an administrative body on the grounds that it is arbitrary or capricious, the court must find the decision unsupported by any competent evidence. Board of County Commissioners v. Simmons, 177 Colo. 347, 494 P.2d 85 (1972). Such is the case here. As a matter of law the Court must reverse the board's order and grant the relief requested in the complaint. Lassner v. Civil Service Commission, 177 Colo. 257, 493 P.2d 1087 (1972).

Respectfully submitted,

Arthur G. Staliwe

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Dated this 29th day of July 1986.

CERTIFICATE OF DELIVERY

I certify that I have hand-delivered this 29th day of July 1986 Appellants' Opening Brief upon the following counsel at the listed address:

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