

Knell

Administrative Law

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SPRING 2005 ADMINISTRATIVE LAW EXAM

In 1995 the State Legislature enacted legislation creating The Computer Repair Agency (CRA) to “license and regulate computer repair shops in the public interest.” The preamble of the enabling act expressed concern with examples of shoddy repairs and with instances of disreputable technicians taking advantage of the public. The statute did not contain any provision for judicial review.

Two years later, the CRA engaged in a rulemaking procedure in which the agency allowed industry and consumer groups to participate by written and oral presentations, but denied them the right to cross-examine adverse witnesses. Following the hearings, The CRA promulgated a regulation requiring that every computer repair shop employing more than five technicians have a supervisor with at least an A.A. (Associate of Arts) degree in computer science.

The present controversy arose when, based upon complaints from members of the public, the five member commission of the CRA approved an investigation of Diligent Dan’s Computer Shop (Dan). Shortly thereafter, Dan refused an agency demand to inspect his shop and his repair records. Nevertheless, the CRA commissioners decided that the public complaints were sufficient to lodge a complaint and to proceed with enforcement action.

An adjudicatory hearing was then conducted before an agency Administrative Law Judge (ALJ). Although the ALJ granted full hearing rights to Dan, he refused to allow Dan’s insurance company and an industry trade association to participate other than by submitting written arguments. The agency case was presented by one of the investigators who had attempted to enter and inspect Dan’s premises and records. Following the hearing, the ALJ made the following determinations:

- A.) He held Dan in contempt and imposed a civil fine of \$5000 for his refusal to submit to the inspection of his premises and records;
- B.) He concluded that Dan had performed the computer repair work in a workmanlike fashion. This conclusion was based upon the ALJ’s finding that the testimony of Dan’s technicians to be more persuasive than the contrary testimony of disgruntled customers;
- C.) He held that Dan had illegally discriminated against women in his hiring practices and ordered him to cease and desist. Dan and his employees vehemently denied the allegation, but the ALJ was persuaded by the testimony of two agency investigators who related statement made to them by four women, each claiming that Dan had told them that he does not hire women;

D.) Finally, the ALJ said that he was concerned about the quality of the supervision, explaining that he was convinced that an A.A. degree was not sufficient and said that a Bachelor's degree should be required for the supervisor. He did not take any adverse action against Dan on this point, however.

Following the hearing, Dan appealed determinations "A" and "C" to the CRA commissioners, and the prosecuting division of the agency appealed determinations "B" and "D". The commissioners did not allow additional evidence or testimony, but rather restricted the parties to written arguments and briefs. They then studied staff reports, consulted with the personnel who investigated the charges, and lightly perused the transcripts. They then came to the following conclusions.

The CRA commissioners affirmed the ALJ's conclusions regarding items "A" and "C". With respect to item "B", however, the commissioners reversed the ALJ and held that Dan had not performed his repairs in a workmanlike manner. In reaching that conclusion, the commissioners explained that they were more persuaded by the credibility and substance of Dan's customers than they were by that of Dan and his technicians. As a result, the CRA imposed a \$10,000 fine on Dan.

Regarding item "D", the CRA commissioners concluded that they were persuaded by the ALJ's analysis and reasoning and concluded that henceforth a B.A. degree in computer science will be required for the supervisors at shops employing more than five technicians.

Dan, his insurance company, and the trade association now seek judicial review, and the matter has come to the court of Judge Learned Goodheart. The judge asks you, his trusted law clerk, to write an essay analyzing, discussing, and coming to reasoned conclusions regarding all material issues raised by the facts. The judge has asked you to analyze the issues according to federal law because this State has adopted the federal Administrative Procedure Act and follows federal law in all respects. Write the essay.