



**FINAL REPORT AND RECOMMENDATIONS
CONCERNING THE ADMINISTRATIVE
PROCEDURE ACT**

Final Report 1989

NEW JERSEY LAW REVISION COMMISSION
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This project was suggested by the opinion in *DiMaria v. Board of Trustees of the Public Employees Retirement System*, 225 N.J. Super. 341 (App. Div. 1988). In his opinion in that case Judge Skillman pointed out a gap in the provisions of the Administrative Procedure Act, 52:14B-1 to -15, which govern the issuance of decisions in contested cases decided by administrative agencies. Contested cases are those in which an administrative law judge takes evidence and hears arguments, and makes a recommendation to the agency as to how the case should be resolved. The gap results from the interplay between subsections (c) and (d) of section 10 of the Act, 52:14B-10.

Subsection (c) of section 10 requires an agency to announce whether it will "adopt, reject or modify" the recommendation of an administrative law judge within 45 days of receiving the judge's recommendation. 52:14B-10(c). *Id.* If the agency fails to act upon the recommendation within the 45-day period the administrative law judge's recommendation is automatically adopted as that of the agency. *Id.* If the agency does act within the 45 days, subsection (d) of section 10 requires an agency to support its action to adopting, rejecting or modifying the recommendation of the administrative law judge with a final decision including findings of fact and conclusions of law. 52:14B-10(d). Subsection (d), however, does not specify whether the final decision must be adopted concurrently with the agency action or whether it may be adopted at some later time.

Since the adoption of the Administrative Procedure Act, some agencies have interpreted subsections (c) and (d) of section 10 as permitting them to use a bifurcated decision-making process in contested cases. Those agencies may announce the determination to "adopt, reject or modify" the recommendation of an administrative law judge within the 45 days required by subsection (c), but may issue the findings and conclusions required by subsection (d) at a later date. In most of these cases the agencies issue findings of fact and conclusions of law relatively soon after they announce their actions. However, since no time limit is expressed in subsection (d), there have been cases in which inordinate delays have occurred in the issuance of final decisions upon which the parties may rely and from which the parties may appeal.

The court in *DiMaria* held that the statute allowed this bifurcated decision process and suggested that legislation was needed to provide a time limit for the adoption of a final decision including findings of fact and conclusions of law:

We add a cautionary comment. It is vitally important that an agency issue findings of fact and conclusion of law in compliance with N.J.S.A. 52:14B-10(d), and that it do so expeditiously. An administrative agency's explanation of the reasons for its decision is required not only for appellate review but also to assure the parties that their factual allegations and legal arguments have been fully considered. See *Riverside General Hospital v. N.J. Hospital Rate Setting Com'n*, 98 N.J. 458, 468 (1985); *Application of Howard Savings Institution of Newark*, 32 N.J. 29, 52 (1960). Therefore, this opinion should not be understood to condone delay in an agency's issuance of findings of fact and conclusions of law. In fact, we suggest that the Legislature consider amending the

Administrative Procedure Act to place an outside limit on the time within which an agency head must issue findings and conclusions. [225 N.J. Super. at 349]

After carefully considering a number of possible statutory amendments providing various systems of time limits and consequences for failure to act within them, the Commission has concluded that the agency action and final decision setting out the reasons for the action should be filed concurrently. The Commission rejects any system of time limits which separates the agency action from its legal basis. Such a bifurcated system encourages agencies to render decisions that are divorced from the detailed factual and legal reasoning that is supposed to underlie their actions.

The formal final decision with its findings of fact and conclusions of law fulfils a number of critical roles in the administrative process. The final decision provides a basis for an appellate court to assess whether an agency action is sufficiently grounded in relevant facts and is not based on improper considerations. *Riverside General Hospital v. N.J. Hospital Rate Setting Com'n*, 98 N.J. 458, 468 (1985); *Application of Howard Savings Institution of Newark*, 32 N.J. 29, 52 (1960). It also serves to keep the agency within its jurisdiction and to inform the parties of the reasons for the action and assure them that their arguments have been considered. *State Department of Health v. Tegnazian*, 194 N.J. Super. 435 (App. Div. 1984); *Application of Howard Savings Institution of Newark, supra*. These purposes can only be served by concurrent filing of the final decision. When the findings of fact and conclusions of law are not made until after the agency action is announced, there is at least a possible perception that the findings are made to justify the action rather than the action taken as required by the findings. If the statute is to assure that an agency will act as the facts and law require and that the public will trust that that is so, it must provide that an agency give its reasons at the time it acts.

These considerations lead the Commission to recommend an amendment to the Administrative Procedure Act to provide that an agency may adopt, reject or modify the recommendation of an administrative law judge only by filing a final decision. The inherent implication of this course is that if the final decision is not filed within the time period provided, the agency has not acted within time and the administrative law judge's recommendation is deemed adopted. This remedy is a serious one, and the Commission does not suggest it lightly. As the courts have noted, failure to make findings of fact is not a mere technical flaw; it is the findings which give an agency action its presumed validity. *State Department of Health v. Tegnazian, supra*. A less stringent rule is appropriate in cases involving technical flaws, and no change is recommended as to such cases. *King v. N.J. Racing Commission*, 103 N.J. 412, 420-423 (1986); *Town of Belleville v. Coppla*, 187 N.J. Super. 147,152 (App. Div. 1982). Nor does the Commission recommend that this remedy apply where an agency makes inadequate findings. Where an agency has made findings, but their form is inappropriate or additional facts are needed, it has been the practice for a court to remand the matter to the agency. See, e.g. *St. Vincent's Hospital v. Finley*, 154 N.J. Super. 24 (App. Div. 1977); *State Department of Health v. Tegnazian, supra*.

The caseload of some agencies is large, but the amendment recommended would not increase the work necessary to decide a case. There are situations where an agency cannot meet a time limit, but the Administrative Procedure Act

provides a method for extension of time limits. 52:14B-10; subsection (c), (last sentence). It may be that the proposed amendment will increase slightly the number of cases where an agency must seek an extension, but extensions have been given freely in the past, and there is nothing in the proposed amendment which would change that practice.

For the reasons stated, the Commission recommends the following amendment to subsection (c) of 52:14B-10:

52:14B-10. Evidence; judicial notice; recommended report and decision; final decision; effective date

In contested cases:

(a) The parties shall not be bound by rules of evidence whether statutory, common law, or adopted formally by the Rules of Court. All relevant evidence is admissible, except as otherwise provided herein. The administrative law judge may in his discretion exclude any evidence if he finds that its probative value is substantially outweighed by the risk that its admission will either (i) necessitate undue consumption of time or (ii) create substantial danger of undue prejudice or confusion. The administrative law judge shall give effect to the rules of privilege recognized by law. Any party in a contested case may present his case or defense by oral and documentary evidence, submit rebuttal evidence and conduct such cross-examination as may be required, in the discretion of the administrative law judge, for a full and true disclosure of the facts.

(b) Notice may be taken of judicially noticeable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the specialized knowledge of the agency or administrative law judge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The experience, technical competence, and specialized knowledge of the agency or administrative law judge may be utilized in the evaluation of the evidence, provided this is disclosed of record.

(c) All hearings of a State agency required to be conducted as a contested case under this act or any other law shall be conducted by an administrative law judge assigned by the Director and Chief Administrative Law Judge¹ of the Office of Administrative Law, except as provided by this amendatory and supplementary act. A recommended report and decision which contains recommended findings of fact and conclusions of law and which shall be based upon sufficient, competent, and credible evidence shall be filed, not later than 45 days after the

¹ An amendment to the statute, effective in 1993, added the phrase “and Chief Administrative Law Judge.” It is included here for purposes of completeness and does not change the substance of the Commission’s recommendations.

hearing is concluded, with the agency in such form that it may be adopted as the decision in the case and delivered or mailed, to the parties of record with an indication of the date of receipt by the agency head; and an opportunity shall be afforded each party of record to file exceptions, objections, and replies thereto, and to present argument to the head of the agency or a majority thereof, either orally or in writing, as the agency may direct. The head of the agency, upon a review of the record submitted by the administrative law judge, shall ~~adopt, reject or modify~~ issue a final decision adopting, rejecting or modifying the recommended report and decision no later than 45 days after receipt of such recommendations. In reviewing the decision of an administrative law judge, the agency head may reject or modify findings of fact, conclusions of law or interpretations of agency policy in the decision, but shall state clearly the reasons for doing so. The agency head may not reject or modify any findings of fact as to issues of credibility of lay witness testimony unless it is first determined from a review of the record that the findings are arbitrary, capricious or unreasonable or are not supported by sufficient competent and credible evidence in the record. In rejecting or modifying any findings of fact, the agency head shall state with particularity the reasons for rejecting the findings and shall make new or modified findings supported by sufficient, competent, and credible evidence in the record.² Unless the head of the agency ~~modifies or rejects~~ issues a final decision, including findings of fact and conclusions of law, adopting, rejecting or modifying the report within such period, the decision of the administrative law judge shall be deemed adopted as the final decision of the head of the agency. The recommended report and decision shall be a part of the record in the case. For good cause shown, upon certification by the director and the agency head, the time limits established herein may be subject to extension.

(d) A final decision or order adverse to a party in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated and shall be based only upon the evidence of record at the hearing, as such evidence may be established by rules of evidence and procedure promulgated by the director.

Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. The final decision may incorporate by reference any or all of the recommendations of the administrative law judge. Parties shall be notified either personally or by mail of any decision or order. Upon request a copy of the decision or order shall be delivered or mailed forthwith by registered or certified mail to each party and to his attorney of record.

(e) Except where otherwise provided by law, the administrative adjudication of the agency shall be effective on the date of delivery or on the date

² An amendment to the statute, effective July 1, 2001 added the three sentences between the Commission's recommended amendments. They are included here for purposes of completeness and do not change the substance of the Commission's recommendations.

of mailing, of the final decision to the parties of record, whichever shall occur first, or shall be effective on any date after the date of delivery or mailing, as the agency may provide by general rule or by order in the case. The date of delivery or mailing shall be stamped on the face of the decision.