7-1-1975

Florida Industrial Relations Commission: More Than an Administrative Agency

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CASES NOTED

FLORIDA INDUSTRIAL RELATIONS COMMISSION: MORE THAN AN ADMINISTRATIVE AGENCY

A Florida employer sought review of a workmen's compensation order of the Florida Industrial Relations Commission (IRC)[1] by filing a petition for writ of certiorari.[2] The employer anticipated that the record accompanying the petition[3] would be reviewed to determine whether there were any errors in either procedural or substantive law and whether the compensation order was supported by competent and substantial evidence. After considering the petition for writ of certiorari, the Supreme Court of Florida (with Justice Ervin dissenting) *held,* certiorari denied: The record on review indicated no departure from the essential requirements of law. Although the supreme court, prior to this decision, had reviewed workmen's compensation cases as if an appeal were being taken, it ruled that the Florida constitution did not require that the court do so. Rather, it was held constitutionally permissible for the Supreme Court of Florida to review compensation orders using the standard traditionally applied in cases of review by common law certiorari[4]—"departure from the essential requirements

1. If an employee with a job-related injury is unable to agree with his employer as to a satisfactory amount of compensation under the provisions of the Florida Workmen's Compensation Law (Florida Statutes chapter 440), he can request that the disputed claim be adjudicated by the Division of Labor of the Florida Department of Commerce. A hearing on the claim is conducted by a judge of industrial claims, after which a compensation order is entered, setting forth findings of fact and the mandate. FLA. STAT. § 440.25(3)(c) (1973).

The compensation order is reviewable by the Industrial Relations Commission upon the request of any interested party.

> [T]he commission shall consider the matter upon the record as certified by the judge of industrial claims and shall thereafter affirm, reverse or modify said compensation order, or remand the claim for further proceedings before a judge of industrial claims who shall proceed as the commission may direct.

FLA. STAT. § 440.24(4)(d) (1973).

2. Pursuant to FLA. STAT. § 440.27 (1973) and FLA. APP. R. 4.1.

3. Rule 4.1 of the Florida Appellate Rules indicates that the record on review must contain the record of proceedings before the industrial claims judge, any motions or other papers filed in connection with the full commission review, and the original order to be reviewed.

4. At its inception, the common law writ of certiorari was an original writ issuing out of the Chancery or the King's Bench which directed that the record of a cause pending before an inferior tribunal be returned so that the higher court could review the proceedings. 10 AM. JUR. 2d *Certiorari* § 1 (1964). Florida and other American jurisdictions modified the common law writ so that it is now used to review the actions of both courts and administrative bodies exercising quasi-judicial powers. The writ issues at the discretion of the higher court and is used only to review and quash the proceedings of inferior tribunals when they proceed in a cause without jurisdiction, or when their procedure is essentially irregular and not according to the essential requirements of law, and no appeal or direct method of reviewing the proceeding exists. Jacksonville T. & K.W. Ry. v. Boy, 34 Fla. 389, 16 So. 290 (1894). Thus it is often stated that the writ of certiorari may not be used as a substitute for an appeal. *E.g.*, Basnet v. City of Jacksonville, 18 Fla. 523 (1882). The *Boy* case, however, contained as dictum the following statement:

A distinction is made by some courts between cases where the writ goes to inferior

of law." *Scholastic Systems, Inc. v. LeLoup,* 307 So. 2d 166 (Fla. 1974).

The decision in *Scholastic Systems* represents the most recent chapter in the continuing story of changes in the judicial reviewing process for workmen's compensation cases. Prior to 1953, one could appeal compensation orders of the Florida Industrial Commission (the predecessor of the IRC) as a matter of right to the circuit court, and from the circuit court to the supreme court.[5] A statutory change in 1953[6] replaced the two appeals of right with review in the supreme court by certiorari. The constitutionality of the statute was challenged forthwith in *Wilson v. McCoy Manufacturing Co.,*[7] but the change from a mandatory to a discretionary type of reviewing process was upheld. In doing so, however, the supreme court decided that a reviewing procedure more extensive than that normally provided in cases of common law certiorari was required because of the nature of the proceedings before the Industrial Commission.

> Being the order of a Commission exercising quasi judicial powers, the Court will not only determine whether or not the proceedings accord with the essential requirements of law, but if found to meet this test will then determine whether or not there is adequate, sufficient or substantial legal evidence to sustain the findings of the Commission.[8]

In 1957 the reviewing authority for workmen's compensation cases shifted from the supreme court to the district courts of appeal as a result of the revision of article V of the Florida constitution. Although the reviewing procedure in the district courts was statutorily labeled as certiorari, the "appellate-type review"[9] adopted in *Wilson*

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courts of record, and cases where it goes to officers or boards exercising only *quasi* judicial powers . . . . In the first class of cases it is held the record only can be examined to ascertain whether such courts have acted within the scope of their jurisdictional powers, while in the second the record will be examined not only to see whether such officers or boards have kept within their jurisdictional powers, but whether or not they have acted strictly according to law, and errors and irregularities committed by them will be corrected.

34 Fla. at 393-94, 16 So. at 291. The dictum enunciated in the *Boy* decision was later adopted by the Supreme Court of Florida in Florida Motor Lines, Inc. v. Railroad Comm'rs, 100 Fla. 538, 129 So. 876 (1930), and has remained as the law in Florida since then. It should be noted, however, that, their statements notwithstanding, the Florida courts often treat a certiorari review as if it were an appeal. Rogers & Baxter, *Certiorari in Florida,* 4 U. FLA. L. REV. 477, 493-502 (1951).

5. This system of review was thoroughly discussed and held constitutional in South Atl. S.S. Co. v. Tutson, 139 Fla. 405, 190 So. 675 (1939).

6. Fla. Laws 1953, ch. 28241, *amending* FLA. STAT. § 440.27(1) (1951).

7. 69 So. 2d 659 (Fla. 1954); 8 U. FLA. L. REV. 139 (1955).

8. FLA. SUP. CT. R. 28(e). Rule 28 was modified by the supreme court in response to the 1953 statutory change, and the modified rule promulgated as part of the *Wilson* decision.

9. Prior to *Wilson,* questions of jurisdiction and procedure could be reviewed under traditional certiorari grounds and questions of substantive law could be reviewed under the holding in the *Florida Motor Lines* case. *See* note 4 *supra.* Thus, when the *Wilson* case added a review of the compensation order to see whether it was supported by substantial evidence, the equivalent of an appeal (an "appellate-type review") for workmen's compensation cases was attained. That

was retained.[10] The reviewing authority was returned to the supreme court in 1959,[11] apparently because of a case overload than existent in the district courts.[12]

In 1965 the justices of the supreme court unanimously adopted a resolution asking the legislature for relief from the reviewing authority for compensation orders[13] because a disproportionate amount of the court's time since 1959 had been spent in reviewing such orders.[14] The legislature finally responded by providing for a Court of Review of Administrative Action in the 1970 proposed amendment to article V of the Florida constitution.[15] The proposed amendment was defeated by the voters, however, in the November 1970 general election, and the crisis remained unabated.[16] A revised article V was subsequently

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which distinguished this appellate-type review from an actual appeal was the element of discretion. A reviewing court cannot be required to issue a common law writ of certiorari; the common law writ always issues at the discretion of the higher court. *See* note 4 *supra*. While it is certain that the Florida courts do exercise discretion, the criteria used in exercising such discretion is not certain. *See* Rogers & Baxter, *supra* note 4, at 496-97. With respect to workmen's compensation cases during the period between the *Wilson* and *Scholastic Systems* decisions, it appears that the supreme court rarely, if at all, refused to review a compensation order, and any discretion which it may have exercised was simply in terms of whether to affirm or reverse the IRC. *See* 307 So. 2d at 168, 173.

10. *See, e.g.*, Stubbs v. C. F. Wheeler Builder, Inc., 106 So. 2d 104 (Fla. 3d Dist. 1958); St. Joe Ice Co. v. Frazier, 103 So. 2d 228 (Fla. 1st Dist. 1958).

11. Fla. Laws 1959, ch. 59-142, *amending* FLA. STAT. § 44.27 (1957).

12. The Judicial Council of Florida reports that workmen's compensation cases "were temporarily placed in the Supreme Court in 1959, as a relief to the then newly-created District Courts of Appeal." JUDICIAL COUNCIL OF FLORIDA, TWELFTH ANNUAL REPORT 7 (1967).

13. *See* JUDICIAL COUNCIL OF FLORIDA, ELEVENTH ANNUAL REPORT 4 (1966); Levinson, *Court of Administrative Appeals: Alternatives Available to Legislature, Following Defeat of 1970 Proposed Amendment of Judiciary Article of Florida Constitution*, 23 U. FLA. L. REV. 261, 262 (1971).

14. The following statistics are a summary of those found in the appropriate annual reports of the Judicial Council of Florida:

CASE DISPOSITIONS IN THE SUPREME COURT OF FLORIDA (BY SOURCE)

		Cert. to IRC	Cert. to DCA's	Appeals	Other Writs	Total Cases	Percentage Workmen's Comp. Cases
Calendar Year	1962	174	274	97	366	911	19
	1963	148	283	95	344	870	17
	1964	171	316	127	187	801	21
	1965	198	376	148	278	1,000	20
	1966	263	453	130	251	1,097	24
	1967	229	568	130	235	1,162	20
	1968	239	556	131	251	1,117	21
	1969	269	564	134	243	1,210	22
	1970	193	578	136	330	1,237	16
Fiscal Year	1970-71	241	614	164	378	1,397	17
	1971-72	103	611	164	295	1,173	9
	1972-73	224	719	193	333	1,469	15
	1973-74	228	779	192	423	1,622	14

15. S. J. Res. 36, 1969 Sess., Fla. Legislature. For a history of the efforts of the Florida Judicial Council during the period 1966-69 and of the response of the Florida Legislature during that period, see JUDICIAL COUNCIL OF FLORIDA, FOURTEENTH ANNUAL REPORT 2-3 (1971).

16. *See generally* Levinson, *supra* note 13.

approved in the March 1972 special election, but it did not include a provision for a special court to review administrative actions.[17] Thus, the procedure for judicial review of workmen's compensation orders remained unchanged. Except for some statutory changes in 1972 and 1974,[18] the situation which prompted the supreme court's plea in 1965 was the same which presented itself to the court in *Scholastic Systems,* a decision which the court characterized as a reconsideration of the "manner in which it could best utilize its judicial resources within the framework of its extensive constitutional jurisdiction . . . ."[19]

The jurisdictional basis for the supreme court's review of workmen's compensation cases is found in the constitutional clause which provides that the court "may issue writs of certiorari to commissions established by general law having statewide jurisdiction"[20] and the statutory clause which provides that the IRC's compensation orders "shall be subject to review only by petition for writ of certiorari to the supreme court."[21] These clauses were read by the *Scholastic Systems* court as providing for certiorari review in a discretionary, rather than a mandatory, manner. The court thus reasoned that it would be permissible to eliminate the appellate-type review which had been provided for workmen's compensation cases since the *Wilson* decision and replace it with a reviewing procedure which was in accordance with the discretionary common law writ of certiorari. The court was willing, however, to make this substitution only if an appellate-type review was not "otherwise compelled by other constitutional provisions."[22]

In the court's opinion, there were only two constitutional provisions which could possibly compel an appellate-type review. The first provision guarantees access to the courts.[23] The *Scholastic Systems* court stated in a summary manner that this requirement would be met for workmen's compensation litigants by the certiorari review in the supreme court, even though the review was limited to a consideration of the "essential requirements" of law.[24] The second provision guaran-

17. There appears to be no published explanation of this omission. For example, in an article by one of the leading proponents of the article V revision, there is no mention of the subject. *See* D'Alemberte, *Judicial Reform–Now or Never,* 46 FLA. B. J. 68 (1972). A possible explanation, however, might be the drastic and unexplained drop in the workmen's compensation caseload in the supreme court during fiscal year 1971-72. *See* note 14 *supra* and JUDICIAL COUNCIL OF FLORIDA, EIGHTEENTH ANNUAL REPORT 2-3 (1973).

18. *See* note 32 *infra.*

19. 307 So. 2d at 168.

20. FLA. CONST. art. V, § 3(b)(3).

21. FLA. STAT. § 440.27(1) (1973).

22. 307 So. 2d at 169.

23. FLA. CONST. art. I, § 21: "The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay."

24. Although the court did not elaborate on this point in *Scholastic Systems,* it has discussed section 21 in two recent decisions—Kluger v. White, 281 So. 2d 1 (Fla. 1973), and Lasky v. State Farm Ins. Co., 296 So. 2d 9 (Fla. 1974). These decisions dealt with Florida's no-fault automobile insurance statute, finding one of its sections constitutional and another unconstitutional under the

tees due process of law.[25] Florida courts previously held that due process, with respect to the adjudicatory functions of an administrative agency, requires that a hearing be held and that the right of review by a judicial tribunal exist.[26] The *Scholastic Systems* court stated, again summarily, that the hearing before the judge of industrial claims complied with the due process requirements.[27]

The question, however, which the *Scholastic Systems* court found difficult to answer (and which was the point of disagreement between the majority and dissenting opinions) was whether the review by the IRC constituted a due process judicial review—an issue for which Justice Ervin coined the phrase "appellate due process." Unfortunately, both the majority and dissenting opinions seem analytically weak regarding this crucial point, perhaps because this particular issue appears to be one of first impression in the United States.

The dissenting opinion approached this issue simply by denying

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"access to courts" clause. In *Kluger v. White* the supreme court held that claimants could be denied access to the courts to redress certain injuries if a reasonable alternative were provided to them. As an example of past instances where a reasonable alternative had been provided, the decision cited the workmen's compensation law.

Thus, it is arguable that the decision in *Scholastic Systems* could have been based on the single proposition that once having been provided with a reasonable alternative to access to the courts, a claimant should not be provided with "re-access" to the courts unless the alternative remedy results in a departure from the essential requirements of law.

25. FLA. CONST. art. I, § 9: "No person shall be deprived of life, liberty or property without due process of law . . . ."

26. Permenter v. Younan, 159 Fla. 226, 31 So. 2d 387 (1947); Canney v. Board of Pub. Instruction, 222 So. 2d 803 (Fla. 1st Dist. 1969).

Whether the same result is demanded by the fourteenth amendment of the United States Constitution has never been clearly decided by the Supreme Court of the United States. Although it has recognized on several occasions that if a full and fair trial on the merits is provided in a court, fourteenth amendment due process does not require a state to provide appellate review, *e.g.*, Griffin v. Illinois, 351 U. S. 12 (1956), the Court has studiously managed to avoid the issue of whether there is a due process right to judicial review of state administrative action. *See* Justice Douglas's dissenting opinion in Ortwein v. Schwab, 410 U. S. 656, 661 (1973).

The Supreme Court, however, was recently given another chance to decide the question. A petition for certiorari, claiming denial of fourteenth amendment due process rights, was filed in the Supreme Court of the United States by a Florida employer whose petition for certiorari to review a workmen's compensation order was denied by the Supreme Court of Florida under the rule enunciated in *Scholastic Systems*. Scotty's Home Builders v. Cunningham, 307 So. 2d 182 (Fla. 1974), *petition for cert. filed*, 43 U.S.L.W. 3652 (U.S. June 10, 1975) (No. 74-1355). *See also* Slepin, *Workmen's Compensation News*, 49 FLA. B. J. 327, 329 (1975). Unfortunately, the Supreme Court declined to grant certiorari. 44 U.S.L.W. 3201 (U.S. Oct. 6, 1975).

27. The procedure to be followed during the hearing before the judge of industrial claims is specified in FLA. STAT. §§ 440.25, .29 (1973) and the WORKMEN'S COMPENSATION RULES OF PROCEDURE. An inspection of these sections and rules will indicate that the workmen's compensation hearing complies with due process standards as explained in Deel Motors, Inc. v. Department of Commerce, 252 So. 2d 389, 394 (Fla. 1st Dist. 1971):

> [The concept of a due process hearing] contemplates that the party to be affected by the outcome of the proceeding will be given reasonable notice of the hearing and an opportunity to appear in person or by an attorney and to be heard on the issues presented for determination. It is contemplated that the order to be entered will be based on competent and substantial evidence adduced by the parties consisting of sworn testimony of witnesses and properly authenticated documents bearing the required indicia of credibility. The parties must be accorded the right to confront and cross-examine the witnesses against them, and be reasonably heard on the contentions urged by them with respect to the action to be taken by the agency.

the possibility that due process might permit the exercise of "judicial" functions by bodies other than the "courts" specified in the Florida constitution.[28]

The majority opinion, in discussing the issue, first cited the recent promulgation of a comprehensive set of Workmen's Compensation Rules of Procedure as an indication that the litigation before the judges of industrial claims and the IRC had become "*more judicial* than *quasi-judicial.*"[29] It then pointed to the existence of the federal article I courts[30] as supporting the proposition that all "courts" need not be named in the judiciary article of a constitution. Next it quoted definitions of several terms[31] which the majority thought to be indicative of qualities which a body exercising judicial functions should possess in order to meet constitutional requirements. Finally, it cited two recent statutory amendments[32] which the court viewed as manifesting a clear legislative intent to elevate the status of the IRC to that of a judicial body. Having considered these factors, the majority concluded by stating that "whatever its title, the Industrial Relations Commission fulfills the requirements of a judicial body of review."[33] Unfortunately, the persuasiveness of the majority's reasoning is lessened because the

28. FLA. CONST. art. V, § 1:

> The judicial power shall be vested in a supreme court, district courts of appeal, circuit courts and county courts. No other courts may be established by the state . . . . Commissions established by law, or administrative officers or bodies may be granted quasi-judicial power in matters connected with the functions of their offices.

29. *In re* Florida Workmen's Compensation Rules of Procedure, 285 So. 2d 601 (Fla. 1973) (emphasis in original).

30. An explanation of the difference between article I courts and article III courts is found in *Ex parte* Bakelite Corp., 279 U.S. 438, 449 (1929):

> Those established under the specific power given in section 2 of Article III are called constitutional courts. They share in the exercise of the judicial power defined in that section, can be invested with no other jurisdiction, and have judges who hold office during good behavior, with no power in Congress to provide otherwise. On the other hand, those created by Congress in the exertion of other powers are called legislative courts. Their functions always are directed to the execution of one or more of such powers and are prescribed by Congress independently of section 2 of Article III . . . .

31. The supreme court provided definitions for the terms "court," "judicial function," and "judicial power." One of the definitions of the word "court" which it cited was:

> "An agency of the sovereign created by it directly or indirectly under its authority, consisting of one or more officers, established and maintained for the purpose of hearing and determining issues of law and fact regarding legal rights and alleged violations thereof, and of applying sanctions of the law, authorized to exercise its powers in due course of law at times and places previously determined by lawful authority . . . ."

307 So. 2d at 169-70, *citing* BLACK'S LAW DICTIONARY 425 (rev. 4th ed. 1968). The definition of "judicial function" which was provided was " '[a] function exercised by the employment of judicial powers.' " *Id.* at 170, *citing* BALLENTINE'S LAW DICTIONARY 685 (3d ed. 1969). "Judicial power" was defined as " '[t]hat part of the sovereign power which belongs to the courts or, at least, does not belong to the legislative or executive department.' " *Id.* at 170, *citing* BALLENTINE'S LAW DICTIONARY 686 (3d ed. 1969).

32. Both amendments were to Florida Statutes section 20.17(7). The first amendment was pursuant to Fla. Laws 1972, ch. 72-241, which made membership on the IRC a full-time job and required that members of the IRC possess the qualifications of circuit court judges. The second amendment resulted from Fla. Laws 1974, ch. 74-363, which required that IRC members have the qualifications of judges of the district courts of appeal. For a discussion by the supreme court of the 1972 amendment, before the 1974 amendment was passed, see Pierce v. Piper Aircraft Corp., 279 So. 2d 281, 283-84 (Fla. 1973).

33. 307 So. 2d at 171.

analogy between the IRC and federal article I courts is not entirely accurate,[34] and because the definitions which were mentioned are either more applicable to trial tribunals than appellate tribunals or so generalized as to be equally applicable to all judicial or quasi-judicial bodies.

Nonetheless, when the recent statutory changes which were cited by the majority opinion are considered along with some factors which it did not present, but which are mentioned by legal scholars in discussing related issues, it appears that the majority view in *Scholastic Systems* is the better view.[35] While there is certainly no single answer to the question of what constitutes "appellate due process," it is believed that a consideration of the following factors will lend additional support to the holding in *Scholastic Systems:* (1) the qualifications of the members of the reviewing tribunal,[36] (2) the qualifications of the members of the trial tribunal,[37] (3) whether the trial tribunal is able to make decisions with a minimum of actual or implied influence from the reviewing tribunal,[38] (4) whether the reviewing tribunal is able to make decisions with a minimum of actual or implied influence from other departments of the same agency or from other administrative groups,[39] (5) whether the reviewing tribunal bases its decisions solely on the record,[40] (6) whether the reviewing tribunal is unable to substitute its judgment for that of the trial tribunal,[41] and (7) whether

34. While article V of the Florida constitution provides that "[n]o other courts may be established by the state," *see* note 28 *supra,* neither article I nor article III of the United States Constitution contain a similar restriction. Thus, it was decided very early in the history of the nation that Congress has the authority to create legislative courts. *See* American Ins. Co. v. Canter, 26 U.S. (1 Pet.) 511 (1828).

35. For a differing opinion, see Levinson, *The Florida Administrative Procedure Act: 1974 Revision* and *1975 Amendments,* 29 U. MIAMI L. REV. 617, 679 (1975), wherein the relationship between the IRC and the recently revised Florida Administrative Procedure Act is discussed. The *Scholastic Systems* court mentioned the relationship only briefly, commenting that the section of the Florida APA which establishes the right to judicial review of administrative action "does not modify" the section of the workmen's compensation law which provides for judicial review of compensation orders "in any material aspect." 307 So. 2d at 169 n.3. It thus appears that it was an unstated premise of the *Scholastic Systems* decision that the judicial review provisions of the Florida APA do not apply to the IRC. As indicated in his article, Professor Levinson strongly disagrees with this premise.

36. *See* note 32 *supra.* No other administrative officers in the Florida government are required to possess such high qualifications.

37. The judges of industrial claims must be lawyers with at least three-years experience. The position is full time. FLA. STAT. § 440.45 (1973). However, the 1974 version of the Florida APA requires similar qualifications of all administrative hearing officers. *See* FLA. STAT. § 120.65 (Supp. 1974).

38. The Governmental Reorganization Act of 1969, Fla. Laws 1969, ch. 69-106, removed the judges of industrial claims from the administrative control of the IRC. However, under the revised Florida APA, all administrative hearing examiners are independent of the agencies for which they conduct hearings. *See* FLA. STAT. § 120.65 (Supp. 1974).

39. The members of the IRC are appointed by the governor, with the advice and consent of the Florida Senate. FLA. STAT. § 20.17 (7) (1973). Although the IRC is created within the Florida Department of Commerce, there is no statutory control of the IRC by the department.

40. The review by the IRC is based on the record only. FLA. STAT. § 440.25 (4) (d) (1973). This is certainly one of the distinguishing characteristics of the relationship between a trial court and an appellate court.

41. If the findings of the industrial claims judge are supported by substantial evidence, the

the reviewing tribunal is adjudicating rights under statutory law rather than under regulations promulgated by itself.[42]

When one considers the degree to which these factors are present in the workmen's compensation structure as compared with the degree to which they are present in other adjudicatory administrative systems, it appears reasonable to adopt the view that the IRC is closer to a "judicial tribunal" than it is to an "administrative reviewing authority." If the IRC is a "judicial tribunal," its review of workmen's compensation orders should satisfy the requirements of "appellate due process." Yet, even if review by the IRC does satisfy the legal niceties of "appellate due process," the decision in *Scholastic Systems* may result in an undesirable decline in the quality of adjudication of workmen's compensation cases. This appears to be the message of Justice Ervin's dissent—forget the technicalities of due process; workmen's compensation claimants deserve more than the minimal standards of due process; they deserve more than a mere common law certiorari review by the supreme court; it will be an injustice if they are not afforded an appellate-type review by a constitutional court. If the fears of Justice Ervin turn out to be justified, the supreme court[43] or the legislature[44] can certainly respond and modify the present system to provide more extensive judicial review of workmen's compensation orders.[45]

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IRC may not reverse, even if it would have come to a different conclusion based on the same evidence. United States Casualty Co. v. Maryland Casualty Co., 55 So. 2d 741 (Fla. 1951). Florida is one of the few states in the nation which does not allow judgment substitution by the initial reviewing authority of workmen's compensation orders. *See* 3 A. LARSON, THE LAW OF WORKMEN'S COMPENSATION § 80.12 (1973). Under the federal Administrative Procedure Act, an administrative reviewing body is permitted to substitute its judgment for that of the fact finder. 5 U.S.C. § 557(b) (1970). Professor Davis considers this to be one of the major distinctions between federal administrative hearings examiners and federal district court judges. *See* K. DAVIS, ADMINISTRATIVE LAW TEXT § 10.07 (3d ed. 1972). Under the revised Florida APA, however, judgment substitution is not allowed. *See* FLA. STAT. § 120.57(1)(j) (Supp. 1974).

42. One of the initial fears which many had of administrative agencies was the lack of separation of powers, *i.e.*, "no man shall be a judge in his own cause." However, unlike most other administrative agencies, the IRC is neither a prosecutor nor a legislator. Its functions are strictly adjudicative with respect to workmen's compensation cases. Furthermore, it adjudicates rights under statutory law, not under regulations which it has promulgated itself. This should be compared to the typical administrative agency which adjudicates rights under regulations which it has promulgated pursuant to a legislatively mandated program, and which may, at times, stray from the policy which the legislature intended to promote. Thus, there is arguably a lesser need for judicial review of the substantive aspects of the IRC's proceedings.

43. Justice Ervin, in his dissent, suggested that the supreme court should exercise its general supervisory powers over the courts and direct that an appellate-type review be given the IRC's compensation orders by the district courts of appeal.

44. *See generally* Levinson, *supra* note 13.

45. Although the *Scholastic Systems* court indicated that its review of compensation orders would henceforth be governed by the standard of "departure from the essential requirements of law," the phrase was never defined by the court. Presumably, pursuant to its prior decisions, *see* note 4 *supra*, the court intended "the essential requirements of law" to include questions of jurisdiction, procedure, and substantive law. Then, however, in the court's subsequent decision