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 JOANNE D. PULLIAM and *
 MAREN E. ROSE, *
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 Appellants, *
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 v. *
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 VERNE KNOLL, Deputy Director, *
 State Bureau of Personnel, *
 *
 Respondent. *
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 Case No. 75-51 *
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OFFICIAL

INTERIM
OPINION AND ORDER
II

Before: JULIAN, Chairperson, SERPE, WILSON and DEWITT, Board Members.

The parties disagree as to the allocation of the burden of proof on the question of test validity, each seeking to place the burden on the opposing side. In this case, the traditional roles of the parties are reversed as the Appellants/employees argue that an employment register that was voided by the Respondent/employer was the result of a valid selection process and should have been retained. The state argues that the selection process was invalid and that it had no choice but to cancel the register.

In Kuter and North v. Wettengel, 73-152, 159, 7/3/75, we held that the burden of proof with regard to exam validation was on the state, who, in that case, was defending the validity of the examination. We pointed out in that case that the allocation of the burden was not governed by absolute rules, citing McCormack, Evidence (2d Ed.), S. 337, pp. 788-789:

In summary, there is no key principle governing the apportionment of the burdens of proof. Their allocation, either initially or ultimately, will depend upon the weight that is given to any one or more of several factors including: (1) the natural tendency to place the burdens on the party desiring change, (2) special policy considerations such as those disfavoring certain defenses, (3) convenience, (4) fairness, and (5) the judicial estimate of the probabilities.

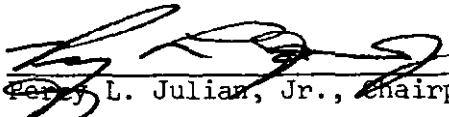
In the instant case the Appellants are not represented by counsel and do not appear to have any particular expertise in the area of examination development or validation. Their position so far on the selection process in question seems to rest primarily on the assertion that a number of appointments were made from the register and the appointees successfully completed their probationary periods. The Respondent correctly points out that this does not validate the examination under EEOC guidelines. However, this is at least some kind of prima facie indication of the utility of the selection process. The selection process was developed and evaluated by the state, and the state has the peculiar means of knowledge relating to the test's validity or invalidity. Compare Erving Paper Mills v. Hudson Sharp Machine Co., 332 F. 2d 674, 677-78 (7th Cir. 1964). Under all of these circumstances we conclude that it is fairer, more convenient, and more efficacious in this case to allocate the burden of proof as to the exam's validity or invalidity on the Respondent. We re-emphasize, in keeping with the foregoing authorities, that there is no particular formula to follow and the decision of necessity involves an exercise of discretion. Other cases may not require the presence of the same factors as are present here to reach the same result. Each decision turns on consideration of all of the facts and circumstances of each case.

ORDER

IT IS HEREBY ORDERED that the Respondent shall have the burden of proceeding on all issues and the burden of proof on the issue of the examination's validity or invalidity.

Dated April 19, 1976.

STATE PERSONNEL BOARD


Percy L. Julian, Jr., Chairperson