

1987

Walter K. Gilmore v. Salt Lake Area Community  
Action Program, Hal J. Schultz, Robert E. Philbrick,  
Fred Geter, Richard Fields, Ann O'Connell, John  
Does 1-30 : Brief of Appellant

Utah Court of Appeals

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_ca1](https://digitalcommons.law.byu.edu/byu_ca1)



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

John K. Rice; Stephen W. Cook; Cook & Wilde, P.C.; Attorney for Defendants.

Nann Novinski-Durando; Mark S. Miner; Attorney for Appellant.

---

#### Recommended Citation

Brief of Appellant, *Gilmore v. Community Action Program*, No. 870395 (Utah Court of Appeals, 1987).  
[https://digitalcommons.law.byu.edu/byu\\_ca1/597](https://digitalcommons.law.byu.edu/byu_ca1/597)

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at [http://digitalcommons.law.byu.edu/utah\\_court\\_briefs/policies.html](http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html). Please contact the Repository Manager at [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu) with questions or feedback.

UTAH COURT

IN THE UTAH COURT OF APPEALS

WALTER K. GILMORE,  
Plaintiff/Appellant,

vs.

SALT LAKE AREA COMMUNITY  
ACTION PROGRAM,  
HAL J. SCHULTZ,  
ROBERT E. PHILBRICK,  
FRED GETER,  
RICHARD FIELDS,  
ANN O'CONNELL,  
JOHN DOES 1-30,  
Defendants/Respondents.

UTAH  
DOCKET

KFU

50

.A10

DOCKET NO.

870395-CF

Case No. 870395-CA

BRIEF OF PLAINTIFF/APPELLANT

Appeal from a Summary Judgment  
Third Judicial District Court  
The Honorable Homer F. Wilkinson

FILED

NOV 16 1987

Timothy M. Snea  
Clerk of the Court  
Utah Court of Appeals

John K. Rice  
Stephen W. Cook  
Cook & Wilde, P.C.  
Suite 490  
6925 Union Park Center  
Salt Lake City, UT 84047  
801-255-6000

Attorneys for  
Defendants/Respondents

Nann Novinski-Durando  
4348 S. Jupiter Dr.  
Salt Lake City, UT 84124  
801-277-8853

Mark S. Miner  
525 Newhouse Building  
Salt Lake City, UT 84111  
801-363-1449

Attorneys for  
Plaintiff/Appellant

Argument Priority Classification 146

PARTIES TO THE PROCEEDING

PLAINTIFF

Walter K. Gilmore, an employee of Salt Lake Area Community Action Program (CAP).

DEFENDANTS

Salt Lake Area Community Action Program (CAP), employer of Walter K. Gilmore.

Hal J. Schultz, executive director of CAP and immediate supervisor of Gilmore.

Robert E. Philbrick, elected president of the CAP board of trustees on April 20, 1977.

Fred Geter, chairman of the personnel committee of the CAP board of trustees.

Richard Fields, CAP personnel administrator.

Ann O'Connell, president of the CAP board of trustees at the time of Gilmore's discharge, succeeded by Philbrick.

OTHER PERSONS MENTIONED IN FACTS

David E. Vanderburgh, director of region 8 of the Community Services Agency.

<u>Bernice Benns</u>	}	members of the CAP personnel committee
<u>Anita Roach</u>		
<u>Glen Larsen</u>		
<u>Janet Hanson</u>		

Gary Parara, a person hired by CAP just prior to Gilmore's termination.

## TABLE OF CONTENTS

i.....	List of parties
ii.....	Table of Contents
iii.....	..Authorities
1.....	Jurisdiction
1.....	Nature of Proceedings Below
2.....	Statement of the Issues
2.....	Determinative Rules and Regulations
3.....	.Statement of the Case
3.....	Nature of the Case
3.....	Course of the Proceedings Below
5 .....	Statement of Facts
17.....	Summary of the Argument
19.....	Argument
19....	...Point I
27.....	Point II
33.....	Point III
38.....	Relief Sought
40.....	Addendum Contents
A.1.....	Termination letter of March 14, 1977
A.2.....	"Blue slip"
A.3.....	Appeal letter of March 15, 1977
A.4.....	Letter of March 16, 1977, denying appeal
A.5.....	Letter of April 13, 1977, from personnel committee
A.6.....	Vanderburgh letter to Philbrick
A.8.....	..Schultz's evaluation of Gilmore
A.9-16....	CAP Personnel Policies Manual sections
A.17 54...	Schultz deposition
A.55-61...	Vanderburgh deposition
A.62-71...	Geter deposition
A.72-77 ..	Philbrick deposition
A.78-82...	Fields deposition
A.83-85...	Benns deposition
A.86-89...	Roach deposition
A.90-108..	Parara deposition



## TABLE OF AUTHORITIES

### STATUTES

Utah Code Annotated 78-2a-3-2(h).....	1
Utah Code Annotated 78-12-40.....	4

### CASES

Bihlmaier v. Carson 603 P.2d 790 (Utah 1979).....	28
Brewster v. Martin Marietta Aluminum Sales, Inc. 378 N.W.2d 558 (Mich.App. 1985).....	26
Cleary v. American Airlines, Inc 111 Cal.App.3rd 443, 168 Cal.Rptr. 722 (1980)....	27, 29, 30, 32
Damrow v. Thumb Cooperative Terminal, Inc. 337 N.W.2d 338 (Mich.App. 1983).....	26, 32
Forrester v. Parker 606 P.2d 191 (N.M. 1980).....	19
Geneva Pipe Co. v. S & H Ins. Co. 714 P.2d 648 (Utah 1986).....	20
Moore v. Utah Technical College 727 P.2d 634 (Utah 1986).....	22, 38
Perry v. Sindermann 408 U.S. 593, 92 S.Ct. 2694 (1972).....	29
Piacitelli v. Southern Utah State College 636 P.2d 1063 (Utah 1981).....	22, 23, 38, 39
Pugh v. See's Candies, Inc. 116 Cal.App.3d 311, 171 Cal.Rptr. 917 (1981).....	30, 32

Rose v. Allied Development Co.	
719 P.2d 83 (Utah 1986) .....	20,27,28,32,33
Toussaint v. Blue Cross & Blue Shield of Michigan	
292 N.W.2d 880 (Mich. 1980).....	24,25,26,32,38
Wagner v. Sperry Univac, Division of Sperry Rand Corporation	
458 F.Supp. 505 (E.D.Pa. 1978).....	27
Wiskotoni v. Michigan National Bank-West	
716 F.2d 378 (6th Cir.1983).....	27

#### ADDITIONAL CASES

The following cases are cited herein on page 28, not in support of the main issues that are determinative of this case but as authority for certain statements made concerning a trend in the general area.

Kelsay v. Motorola, Inc.	
384 N.E.2d 353 (Ill. 1979).....	28
Monge v. Beebee Rubber Co.	
316 A.2d 549 (New Hampshire 1974).....	27,28
Ness v. Hocks	
536 P.2d 512 (Ore. 1975).....	28
Petermann v. International Brotherhood of Teamsters	
344 P.2d 25 (Cal.App. 1959).....	28
Tameny v. Atlantic Richfield Co	
164 Cal.Rptr. 839, 610 P.2d 1330 (Cal. 1980).....	28

WALTER K. GILMORE,  
Plaintiff/Appellant,  
vs.  
SALT LAKE AREA COMMUNITY  
ACTION PROGRAM,  
HAL J. SCHULTZ,  
ROBERT E. PHILBRICK,  
FRED GETER,  
RICHARD FIELDS,  
ANN O'CONNELL,  
JOHN DOES 1-30,  
Defendants/Respondents.

## JURISDICTION

NATURE OF THE PROCEEDINGS BELOW

This is a non-domestic relations civil case. The Third Judicial District Court, Salt Lake County, Utah, granted Defendants' motion for summary judgment and denied Plaintiff's motion for summary judgment. The matter was appealed to the Supreme Court of Utah, which transferred jurisdiction to the Court of Appeals.

## STATEMENT OF THE ISSUES

The issues in this case are:

1. Does a written personnel policies manual issued by an employer operate as a contract, express or implied, between employer and employee or give rise to contractual rights, express or implied, between employer and employee? Specifically here, is the Personnel Policies Manual issued by the Defendant Salt Lake Community Action Program (CAP) a contract, express or implied, with Plaintiff Gilmore?

2. Does a written personnel policies manual issued by an employer limit the employer's right to fire an employee or limit the manner in which an employee may be fired? Specifically here, does CAP's Personnel Policies Manual limit CAP's right to fire Gilmore by requiring that certain procedures concerning termination be followed?

3. Does an employer breach its contract with an employee when the employer fails to comply with the rules, regulations and procedures laid out in the company's policies and procedures manual? Specifically here, was the contract with Gilmore breached?

## DETERMINATIVE RULES AND REGULATIONS

Plaintiff Gilmore claims that certain rules and regulations contained in the CAP Personnel Policies Manual issued by his employer were not complied with when his

employment was terminated. The pertinent provisions of the Manual are included in the Addendum of this brief.

#### STATEMENT OF THE CASE

##### NATURE OF THE CASE

This is an appeal in a non-domestic relations civil case, seeking reversal of a final ruling granting Defendants' motion for summary judgment and denying Plaintiff's motion for summary judgment.

##### COURSE OF THE PROCEEDINGS, DISPOSITION BELOW

Plaintiff Gilmore originally filed a wrongful termination of employment suit in United States District Court for the Central District of Utah. Various causes of action alleged violation of Gilmore's civil and constitutional rights and breach of his employment contract.

The Federal District Court found an absence of the state or federal action required for constitutional and civil rights suits and dismissed the suit for lack of jurisdiction. Because the federal claims were dismissed, the pendant state claims (the contract action) were also dismissed without consideration. The 10th Circuit Court upheld the dismissal.

Within one year of the 10th Circuit's final ruling, Plaintiff filed an action in the Third Judicial District

Court for the State of Utah, pursuant to Utah's tolling statute, Utah Code Annotated 78-12-40. In the state suit, Plaintiff Gilmore alleged, among other things, wrongful termination of his employment based on breach of his express and/or implied contract with his Defendant employer.

All defendants named in the state suit had been named in the federal suit; some additional defendants in the federal suit were not included in the state suit. By agreement of the parties, all depositions originally taken in the federal case were filed for use in the state action.

Plaintiff Gilmore and the defendants filed motions for summary judgment. The Complaint had alleged nine causes of action. The 6th, 7th, 8th and 9th causes of action were dismissed by stipulation. At the hearing, the court, the Honorable Homer F. Wilkinson presiding, granted Defendants' motion for summary judgment and denied Plaintiff's motion on the 1st, 2nd, 3rd, 4th and 5th causes of action. Only the 1st and 2nd causes of action involve contract issues and only the rulings on the contract issues are being appealed. (The judgment is R.547, 548, 549.)

## STATEMENT OF FACTS

NOTE: The following facts are as alleged in Plaintiff's memorandum supporting his motion for summary judgment, R.60-73. (Plaintiff's motion was denied.) No additional facts are alleged here and no changes have been made that would affect or alter the meaning of any fact or inferences that may be drawn. In their response memorandum below, Defendants argued that 8 of these facts were in dispute, R.127-130. However, in a reply memorandum, Plaintiff demonstrated that the arguments offered by Defendants were illusory and did not actually contradict or refute any fact Plaintiff has stated. That reply memorandum is the final document in Vol.II of the record as prepared by the lower court. However, the memorandum, although timely filed as shown by the court stamp, is out of chronological order, not numbered and not included in the index. The pertinent pages of that memorandum are 9-14.

Writings, documents, Manual sections and pages of depositions cited in the Statement of Facts have been included in the Addendum and are referenced herein by A. and the page number in the Addendum.

1. Plaintiff Gilmore was hired by Defendant Salt Lake Community Action Program (hereafter CAP) on March 6, 1974, in the temporary position of accountant. On or about September 9, 1974, he was promoted to the position of fiscal director in a probationary status. He became a permanent employee in the position of fiscal director on or about January 1, 1975. [Uncontroverted. R.53-54. Evidenced by Position & Salary Record and Requests for Salary Payroll Change documents, which are included in Schultz deposition Exhibit P-36 and Gilmore deposition Exhibit D-3.]

2. Defendant Schultz at all times material herein was executive director of CAP and was the immediate supervisor of Gilmore in the position of fiscal director. [Uncontroverted. Admitted in #3 of Defendants' Answer, R.24-25.]

3. CAP was at all times material a non-profit corporation organized under the laws of the State of Utah. [Uncontroverted. Admitted in #2 of Defendants' Answer, R.24.]

4. CAP is a grantee agency of the Community Services Administration (CSA), which is the federal agency established by law to administer the Economic Opportunity Act of 1964, 42 U.S.C. 2781 et seq. [Vanderburgh deposition, p.10, A.55. Schultz deposition, p.12, A.19.]

5. As a grantee agency, CAP receives federal funds from CSA [Schultz deposition, pp.12-13, A.19-20] and must govern its activities through a board that is constituted according to the provisions of the Economic Opportunity Act. [Vanderburgh deposition, p.11, A.56.]

6. As a condition of qualifying as a grantee agency for the receipt of federal funds from CSA, CAP was required to formulate and maintain personnel policies. [Vanderburgh deposition, p.27, A 57. Philbrick deposition, pp.8, 11; A.72, 73. Schultz deposition, p.14, A.21.]

7. With regard to personnel policies of CSA grantee agencies, including CAP, CSA instruction 6900-01(c)(5) requires that grantee agencies "give employee grievances prompt and fair consideration" and that grantee agencies "make provision for review of personnel actions." [The language of the instruction speaks for itself.]



8. CSA instructions are binding on CAP. [Vanderburgh deposition, p.29, A.58.]

9. If CAP violates CSA instructions, CSA is authorized to withhold federal funds. [Vanderburgh deposition, pp.30-31, A.59-60.]

10. Prior to the times material herein, CAP or its predecessors promulgated and duly adopted a Personnel Policies Manual, the introduction [A.9] to which states: "The rules and policies set forth in this manual shall follow in accordance with the rules and regulations established by the Office of Economic Opportunity." [Uncontroverted. The entire Manual is Exhibit P-1 to the Schultz deposition.]

11. Schultz and CAP maintained a policy of advising persons hired by CAP of the Personnel Policies Manual in order to advise employees of the terms under which they would work. [Schultz deposition, p.16, A.23.]

12. When he became fiscal director of CAP, Gilmore was informed that his employment relationship with CAP would be governed by the provisions of the Personnel Policies Manual of CAP. [R.54.] Gary Parara, who was hired by CAP at about the time Gilmore's employment was terminated, was told about the Personnel Policies Manual at the time of his hiring. [Parara deposition, p.18, A.91.]

13. On or about March 18, 1977, Gilmore's employment with CAP was terminated. He received a letter dated March

14, 1977, from Schultz, informing Gilmore that his position as fiscal director of CAP was being eliminated. [R.54. The letter, R.82 and A.1, speaks for itself and is Schultz deposition Exhibit P-4 and Gilmore deposition Exhibit D-15.]

14. At the time of Gilmore's termination, the Personnel Policies Manual of CAP was in full force and effect and applicable to Gilmore's employment and any termination of his employment by CAP. [R.54. Schultz deposition, pp.9-10, 15; A 17-18, 22. Geter deposition, pp.10-11, A.62-63.]

15. On the Utah Department of Employment Security Separation Notice (a document commonly referred to as a "blue slip"), Schultz stated the reason for Gilmore's termination as "reduction in force." [R.54. The "blue slip," R.84 and A.2, speaks for itself, is Gilmore deposition Exhibit D-17 and is part of Schultz deposition Exhibit P-36.]

16. At the time of his termination, Gilmore was a permanent fulltime employee of CAP. [R.54. Schultz deposition, p.97, A.43.]

17. Chapter VII, Section B, of the Personnel Policies Manual delineates the procedures for termination of employees of CAP when such termination is due to "reduction in force." Said chapter and section require that employees be given 15 days written notice specifying reasons for the

action. [The Manual chapter, R.91 and A.12, speaks for itself.]

18. The termination letter of March 14, 1977, did not set forth any facts of budgetary limitations as justification for the elimination of the position of fiscal director or any facts to show that the decision to terminate Gilmore's employment was based upon an evaluation of his seniority, performance, skills, abilities or the importance of his position. The setting forth of such facts is required by Chapter VII, Section B, of the Personnel Policies Manual. [R.54-55, 82, 91; A.1, 12.]

19. The termination letter did not afford Gilmore 15 days written notice of his termination, contrary to the requirements of Chapter VII, Section B, of the Personnel Policies Manual. [R.54-55, 82, 91; A.1, 12.]

20. On or about March 15, 1977, Gilmore filed a written notice appealing the decision of Schultz to terminate Gilmore's employment, done in accordance with the provisions of Chapter IX, Section B, of the Personnel Policies Manual. [R.55. The notice, R.83 and A.3, is Schultz deposition Exhibit P-9 and Gilmore deposition Exhibit D-16. The Manual section, R.94-95 and A.15-16, speaks for itself.]

21. Schultz, by letter dated March 16, 1977, denied the appeal and informed Gilmore that he would not give Gilmore a formal hearing before him. Such action was in violation of Chapter IX, Section B, of the Personnel

Policies Manual. [The letter, R.85 and A.4, speaks for itself and is Schultz deposition Exhibit P-8 and Gilmore deposition Exhibit D-13.]

22. No hearing before Schultz was held after March 15, 1977. The "hearing" referred to in the first paragraph of Schultz's letter of March 16 actually took place before Gilmore was terminated and before he received the March 14 termination letter. [R.55. Schultz deposition, pp.116-118, A.49-51.]

23. Pursuant to provisions of Chapter IX, Section B, of the Personnel Policies Manual, Gilmore informed Fred Geter, chairman of the personnel committee of the CAP board of trustees, that he appealed the decision of Schultz to terminate his (Gilmore's) employment. [R.55. Geter deposition, p.15, A.64.]

24. Pursuant to the appeal procedures contained in Chapter IX, Section B, of the Personnel Policies Manual, Geter scheduled what he called a "hearing" of Gilmore's appeal and grievance against Schultz and CAP. Geter informed Gilmore that such hearing would be conducted before the personnel committee of the CAP board of trustees. [R.55. Geter deposition, p.15, A.64.]

25. Members of the personnel committee at this time were Geter, Bernice Benns, Anita Roach, Glen Larsen and Janet Hansen. [Geter deposition, p.17, A.65.]

26. Gilmore's "hearing" before the personnel committee.

began on March 16, 1977, at which time only two (Geter and Roach) of the five committee members attended, and was continued on March 21 1977, at which time only three (Geter, Roach and Benns) of the five committee members attended. Hansen and Larsen did not participate at any time. [R.55-56. Geter deposition, pp.51, 56-57, 78; A.68, 69-70, 71. Schultz deposition, p.111, A.46. Roach deposition, p.25, 28; A.87, 88. Tape recordings of the proceedings in the possession of Defendants verify dates and who was present.]

27. At the sessions of the "hearing," Gilmore was not present at the time that Schultz presented evidence and testimony in support of his decision to terminate Gilmore's employment. [R.56. Geter deposition, pp.29-30, A.66-67. Roach deposition, p.18, A.86. Fields deposition, p.14, A.78. Benns deposition, pp.23, 40-41; A.83, 84-85. Schultz deposition, pp.64, 65-66, 111; A.40, 41-42, 46. Also verified by the tapes.]

28. During the "hearing," Gilmore was never advised of the evidence or testimony given by Schultz, was not able to confront Schultz and was not given the opportunity to rebut evidence of testimony given by Schultz. [R.56. Fields deposition, pp.16-17, A.79-80. Also verified by the tapes.]

29. Schultz gave the personnel committee a letter dated March 22, 1977, to which was attached a document outlining his reasons supporting his decision to terminate .

Gilmore's employment. [The letter is Schultz deposition Exhibit P-10.] The last time Gilmore appeared before the personnel committee was March 21, the day prior to the date of this letter. [R.56. Verified by tapes ] At no time prior to the personnel committee's reaching its decision was Gilmore shown that letter, given an opportunity to respond to it or questioned about it. [R.56.] Nor did Schultz provide Gilmore with a copy of it. [Schultz deposition, p.66, A.42.]

30. In reaching its eventual decision to uphold Schultz's termination of Gilmore's employment, the personnel committee "considered most" that March 22 letter from Schultz and "primarily" based its decision on that. [Roach deposition, p.31, A.89.]

31. Chapter IX, Section B, of the Personnel Policies Manual requires that notice of findings of the personnel committee regarding an appeal and grievance shall be given within 5 days of a hearing. Gilmore did not receive any such notice within 5 days of the so-called "hearing" on March 16 and March 21. [Uncontroverted. R.56. The Manual section, R.94-95 and A.15-16, speaks for itself.]

32. Approximately three weeks subsequent to the "hearing" before the personnel committee, Gilmore received a letter dated April 13, 1977, from Geter stating that the personnel committee "after reviewing the contents of the hearing" had decided to uphold the decision of Schultz in terminating Gilmore's employment as a "reduction in force."

[R.57. The letter, R.86 and A.5, is Schultz deposition Exhibit P-11 and Gilmore deposition Exhibit D-14.]

33. On or about April 20, 1977, the CAP board of trustees at a regular meeting decided not to review the personnel committee's handling of Gilmore's appeal. [Philbrick deposition, p.26, A.77. See last page of minutes of the April 20 meeting, which are part of Schultz deposition Exhibit P-6.]

34. On or about April 22, 1977, Gilmore spoke with Philbrick, who informed Gilmore that Schultz had given some pretty conclusive examples of Gilmore's incompetence but did not inform Gilmore as to what information Schultz had conveyed in that regard. [R.57. Philbrick deposition, p.24, A.75, where he admitted that was possible.]

35. Gilmore asked Philbrick and Geter for a rehearing on the matter. Such requests were made to both of them on several, separate occasions. [R.57. Schultz deposition, pp.112-113, A.47-48. Philbrick deposition, pp.24-26, A.75-77.] No rehearing was ever granted. [R.57 Uncontroverted.]

36. On or about August 3, 1977, Gilmore wrote to Julian Garza, counsel for Region 8 of CSA, requesting an investigation of the manner in which his termination as fiscal director of CAP was handled. [R.57-58. The letter is Gilmore deposition Exhibit D-4.]

37. An investigation was conducted by Garza. It was

determined that CAP had violated its own personnel policies manual as well as CSA regulations on personnel matters.

[Vanderburgh deposition, p.57, A.61.]

38. As a result, Vanderburgh notified Philbrick by letter dated December 20, 1978, that the Defendants had failed to comply with CSA regulation 6900-01(c)(5) in the termination of Gilmore's employment and that federal funds from CSA would be decreased by 10 per cent for the next two program years as a sanction against CAP. [The letter, R.87-88 and A.6-7, speaks for itself and is Schultz deposition Exhibit P-19.]

39. Schultz, as Gilmore's immediate supervisor, was required by Chapter V, Paragraph 2, of the Personnel Policies Manual, to make regular and periodic evaluations of Gilmore's job performance. [Schultz deposition p.27, A.29. Philbrick deposition, p.22, A.74. The Manual section, R.89-90 and A.10-11, speaks for itself.]

40. Schultz did not make regular and periodic evaluations of Gilmore's job performance. [Schultz deposition, pp.103, 143-144; A.45, 53-54. Fields deposition, pp.39-40, A.81-82.]

41. Schultz made only one attempt to evaluate in writing Gilmore's job performance. That one evaluation, dated September 27, 1976, was, in fact, never completed but was put into Gilmore's personnel file. In that incompleated evaluation, Schultz rated Gilmore's performance as fiscal



director as "Exceptional" (in three of six categories), "Above Average" and "Average," the three highest ratings, in all areas covered by the evaluation. [Schultz deposition, pp.22-25, A.24-27. The evaluation, A.8, speaks for itself and is Schultz deposition Exhibit P-2.]

42. The Personnel Policies Manual, Chapter VIII, Section C, Paragraph 5, requires that termination of an employee for incompetence or inefficiency must be "evidenced by at least two consecutive performance evaluations" and that such termination must be in writing, must specifically state the reasons therefor and must be delivered to the employee at least 15 days prior to the date of termination. [The Manual chapter, R.92-93 and A.13-14, speaks for itself.]

43. If Gilmore was discharged for incompetency or inefficiency, none of said provisions of Paragraph 5 was complied with. [Schultz deposition pp.40, 59; A.37-39.] Nor was any type of disciplinary action described in Chapter VIII, Paragraphs 1-4, ever taken against Gilmore. [Schultz deposition, pp.35-41, A 32-38.] The March 14 termination letter was the first written communication Gilmore had received. [Schultz deposition, pp.41, 59; A.38, 39.]

44. On or about March 1, 1977, Schultz hired a man named Gary Parara as "accounting supervisor" and claimed to assume the title of "fiscal director" himself. [Schultz deposition, p.129, A.52. Parara deposition, pp.24-25,

A.95-96.]

45. Schultz was not an accountant and did not have training as an accountant. [Schultz deposition, p.22 A.24.]

46. Prior to the hiring of Parara, no person held a position entitled "accounting supervisor." [R.59. Uncontroverted.]

47. Parara, in fact, assumed and performed the duties that Gilmore had performed in the course of his employment as fiscal director of CAP. Gilmore's duties were detailed in a job description, which is Exhibit P-3 to the Schultz deposition. [Schultz deposition, pp.33-34, A.30-31.] In his deposition, Parara was asked about the duties listed on the Exhibit P-3 job description and he stated that each one of those duties was assumed by and performed by him after the termination of Gilmore's employment. [Parara deposition, pp.47-55, A.99-107 ] When asked if he had additional duties and responsibilities other than those enumerated, Parara said no. [Parara deposition, p.55, A.107.]

48. When Parara began his employment with CAP, Gilmore showed him how the books were set up and showed him the accounting system. [Parara deposition, pp.22, 23, 33; A.93, 94, 97. R.59.] During his first month with CAP, Parara was involved in the preparation of a monthly financial report under the instruction of and with the assistance of Gilmore.

[Parara deposition, p.45, A.98.] And when Gilmore was terminated, Parara physically took over Gilmore's desk. [Parara deposition, p.24, A.95.]

49. At Schultz's request, it was Gilmore who oriented Parara to the CAP office. [R.59. Schultz deposition, p.103, A.45.]

50. Parara was told by Schultz that he (Parara) was replacing Gilmore. [Parara deposition, p.15, A.90.]

51. Parara was hired at a salary of \$1,018.00 per month [Parara deposition, pp.19, 89; A.92, 108.], an amount close to the salary of \$1,121.00 which Gilmore was earning at the time of his termination. [Schultz deposition, pp.102, 103; A.44, 45.]

52. In February of 1977, the month before his employment was terminated, Schultz approved a pay raise for Gilmore from \$1,018.00 per month to \$1,121.00 per month. [Schultz deposition, pp.102-103, A.44-45. Requests for Salary Payroll Change documents are Schultz deposition Exhibit P-36 and Gilmore deposition Exhibit D-3.]

#### SUMMARY OF ARGUMENT

When Gilmore became an employee of Salt Lake Area Community Action Program (CAP), the agency had promulgated and had in effect its Personnel Policies Manual, which

contains rules, regulations and procedures concerning the employment relationship. CAP and its supervisors had a policy of informing employees about the Manual so that they (the employees) would know the terms and conditions under which they would work. As an employee of CAP, Gilmore was told his employment would be governed by the Manual.

This Manual should be viewed as a promise, a contract, either express or implied; it is not a mere guide of pick-and-choose suggestions or helpful hints on how to run the office. At the very least, the Manual should act as a limit on the right to fire Gilmore, a limit that simply requires nothing more than compliance with proper procedures when an employee is discharged. The Manual was a promise relied on by Gilmore. Gilmore's employer and supervisors should be estopped from claiming otherwise or that they do not have to comply with it.

The Utah Supreme Court has recognized the duty of employers to comply with the rules and regulations they promulgate. The U.S. Supreme Court has recognized that rules and understandings promulgated and fostered by an employer may justify expectations on the part of employees.

To not require compliance with the Manual is to render it meaningless and to make illusory the legitimate expectations and reasonable reliance it gives rise to.

After two-and-a-half years of employment with a series of promotions and raises, an evaluation (only partially

completed) indicating "exceptional" work and no disciplinary actions ever taken against him, Gilmore was discharged and another person was hired to perform the duties he had performed. Gilmore did not receive proper warning, notice or explanation. His discharge was in violation of procedures stated in the Manual. He was denied an appeal by his immediate supervisor and was subjected to a flawed and unfair appeal "hearing" conducted by the personnel committee, all in further violation of the Manual.

In light of the circumstances, (1) the Manual should be deemed either a contract, express or implied, or a limit on the right to fire Gilmore (the limit being the requirement that procedures in the Manual be complied with) and (2) it should be found that failure to comply with the Manual was a breach of the contract or implied promise.

#### ARGUMENT

##### POINT I.        THE CAP PERSONNEL POLICIES MANUAL IS A CONTRACT WITH PLAINTIFF GILMORE.

The question of whether a Community Action Program's policy manual is a contract between employer and employee was answered in Forrester V. Parker, 606 P.2d 191 (N.M., 1980), a case whose fact situation is identical to the instant case. Like Mr. Gilmore in the instant case, Mr. Forrester sued his employer, a Community Action Program (CAP), and his immediate supervisor Mr. Parker, alleging that he had been unlawfully discharged because the CAP

personnel policy procedures concerning termination had not been complied with. As in the instant case, the lower court granted summary judgment for Defendants, ruling that the plaintiff was an employee-at-will and, therefore, the guide procedures did not have to be complied with. The New Mexico Supreme Court reversed, stating clearly:

We think it clear that under these circumstances the guide did control the employee-employer relationship here in question. Forrester should have and did expect Parker to conform to the procedures for terminating him as spelled out in the guide. For the guide constituted an implied employment contract; the conditions and procedures provided in it bound both Forrester and Parker...

The trial court was wrong as a matter of law in holding that the personnel policy guide did not control the employee-employer relationship between Forrester and Parker. (At 192.)

Other than the state in which the suit was brought, there is not one fact in the Forrester case that differs from the Gilmore case.

On appeal, the court is obliged to look at the facts and all inferences fairly arising from the facts in the light most favorable to Gilmore, the party against whom summary judgment was entered. Geneva Pipe Co. v. S & H Ins. Co., 714 P.2d 648 (Utah 1986); Rose v. Allied Development Co., 719 P.2d 83 (Utah 1986).

The Salt Lake Area CAP formulated and promulgated its Personnel Policies Manual. Gilmore was told his employment relationship would be governed by it. Gary Parara, who took over Gilmore's job duties, was also advised of the it. Schultz, the executive director, says he maintained a policy

of advising employees about it so they would know the terms and conditions under which they would work.

The Manual created both rights and duties on the part of both employer and employees. CAP had duties (to issue paychecks on a certain day, for example) and rights (to deny annual wage increase in certain circumstances). Likewise, employees had duties (to conform to certain dress standards) and rights (to wear a political button).

Since the Manual both prescribed and proscribed actions for both employers and employees, it cannot be said to be a mere statement of gratuities that could be withdrawn at any time by the employer anymore than it could be said to be a list of obligations that an employee could refuse to perform at any time. The Manual delineated the behavior that CAP and Schultz could expect and insist upon from Gilmore as well as the behavior that Gilmore could expect from CAP and his supervisors.

An employee did not have a choice as to which of the rules and regulations he would adhere to; adhering to all of the rules and regulations in the Manual was a condition of employment. Likewise, CAP and the other defendants in their supervisory capacities did not have a choice as to which policies and procedures they would follow. The Manual was not a cafeteria of suggestions from which either side could pick and choose.

The Manual uses the terms "shall" and "must" through-

out. The language is affirmative and commanding; the words do not indicate choices and options. If either party (Gilmore or the Defendants) failed to keep the bargain, the agreement was breached.

The seriousness of personnel policies is evidenced by the fact that formulating and maintaining such policies was a condition of receiving federal funding from the Community Services Agency. And the seriousness of not adhering to the policies is evidenced by the Agency's willingness to investigate Gilmore's charges that the policies had been violated and to order a funding cut as a sanction for violating the procedures. The Agency's attitude and actions point to a recognition of CAP's Manual as mandatory, as an agreement that bound CAP.

The Utah Supreme Court considered the issue of policy manuals as contracts in two cases, Moore v. Utah Technical College, 727 P.2d 634 (1986), and Piacitelli v. Southern Utah State College, 636 P.2d 1063 (1981). Both of these cases support Plaintiff's position that a contract existed.

In Moore, a professor at Utah Technical College was fired. At various times during the course of Moore's employment different policy manuals concerning employment had been in effect (referred to in the case as the 1977 policy, the 1979 policy and the 1981 policy). Moore contended that his termination did not comply with either the 1977 policy or the 1981 policy, either or both of which



were applicable to him. The college argued that the 1979 policy was the one applicable. The court was asked to determine which policy was in effect and whether it had been complied with. For reasons not material here, the court ruled that that 1979 policy was in effect and since Moore had made no claim the 1979 policy had not been complied with, he could not prevail.

Moore had been employed by the college under a series of one-year probationary appointments (see footnote 1 at 635) memorialized in notices incorporating the school's policies. But the Utah Supreme Court explicitly recognized that incorporation does not have to be express in order for a contract to exist:

There can be little dispute that an educational institutions policies and procedures can be implicitly incorporated into an instructor's contract...Furthermore, language in the...the 1979 policy and a substantially similar provision...of the 1977 policy, indicates the policies were intended to form a basis of the bargain. (At 641-642.) [Emphasis added.]

With such language, the court recognized that a policy manual can implicitly be part of the contractual bargain between employer and employee.

In the Piacitelli case, the plaintiff had also sued his employer claiming his termination was in violation of Southern Utah State College's Personnel Manual. In an earlier suit, the Fifth District Court had ruled that the College's Manual was a contract, that the contract had been breached and that termination was improper. That judgment

was not appealed. In accord with the ruling, the College proceeded to terminate Piacitelli, following procedures in the Manual; the College denied both reinstatement and back wages. Piacitelli then filed a second suit, claiming he was entitled to both. In the second case, the district court ruled that Piacitelli had been properly terminated the second time and was, thus, not entitled to reinstatement; but he was awarded back pay for the period between the wrongful termination and the proper termination. Both parties appealed.

The Supreme Court noted that the Fifth District Court's ruling in the first case that the College's Personnel Manual was a contract had not been appealed so it was not at issue in the appeal. (At 1065.) But the court added: "This finding comports with the numerous holdings that an educational institution may undertake a contractual obligation to observe particular termination formalities by adopting procedures or by promulgating rules and regulations governing the employment relationship." (At 1066.) The court, in a footnote to that statement, pointed out that "an employer's policy manual may give rise to employee contractual rights," citing with approval Toussaint v. Blue Cross & Blue Shield, 292 N.W.2d 880 (Mich. 1980), a leading case on the subject.

Upholding the lower court ruling in the second case, the Utah Supreme Court wrote:

In sum, we hold that, where the College breached its contract with this employee by originally discharging him without observing the formal termination procedures in the College Personnel Manual, (1) even though the College had good cause to dismiss the employee, it was under a contractual obligation to continue to pay his salary until he was properly dismissed... (At 1070.)

In Toussaint, the Michigan Supreme Court clearly recognized an employer's manual of personnel policies to be enforceable as a contract. Blue Cross' personnel manual stated that the company "would release employees for just cause only." After Mr. Toussaint was fired, he sued for wrongful discharge, claiming he was fired without just cause and without "requisite warnings, notice, hearing and other termination procedures as provided" in the Blue Cross Manual. (At 903.) The court held that provisions and procedures concerning employment and termination "may become part of the contract either by express agreement, oral or written, or as a result of an employee's legitimate expectations grounded in an employer's policy statements." (At 885.)

The court also wrote:

...We hold only that an employer's express agreement to terminate only for cause, or statements of company policy and procedure to that effect, can give rights enforceable in contract...(At 890)

...Blue Cross had established a company policy to discharge for just cause only, pursuant to certain procedures, had made that policy known to Toussaint, and thereby had committed itself to discharge him only for just cause in compliance

with the procedures...We hold that employer statements of policy...can give rise to contractual rights in employees...(At 892.)

...The right to continued employment absent cause for termination may, thus, because of stated employer policies and established procedures, be enforceable in contract...(At 894.) [Emphasis added.]

In Damrow v. Thumb Cooperative Terminal Inc., 337 N.W.2d 338 (Mich.App. 1983), the court went even further in looking at a company's manual. The Touissant court had considered the question of whether it would violate the manual to fire without just cause. In Damrow, the court, still looking at the company manual, said that even if the employer had just cause to fire the employee, the employer was still obligated to comply with the manual with regard to procedure.

Ms. Damrow was discharged for unsatisfactory performance but did not receive the two written warnings followed by a final warning with suspensions as the company policy manual required. The appellate court, although indicating that just cause for the firing probably existed, ruled: "We hold that defendant [the company] was obligated to comply with the rules set forth in the employee manual in discharging its employees..." (At 343.)

The court, quoting Toussaint, also pointed out that employers are "not free to depart from existing policies simply because they were under no obligation to adopt them in the first place..." (At 342.)

See also Brewster v. Martin Marietta Aluminum Sales,

378 N.W.2d 558 (Mich.App. 1985); Wiskotoni v. Michigan National Bank-West, 716 F.2d 378 (6th Cir. 1983); Wagner v. Sperry Univac, Division of Sperry Rand Corp. 458 F.Supp. 505 (E.D.Pa. 1978). Each of these supports the proposition that company policies and practices can give rise to contractual obligations.

POINT II. THE CAP PERSONNEL POLICIES MANUAL PLACED LIMITS ON THE RIGHT TO TERMINATE PLAINTIFF GILMORE'S EMPLOYMENT. DEFENDANTS SHOULD BE ESTOPPED FROM NOT FOLLOWING THE PROCEDURES IN THE MANUAL.

Under the common law, an employer had the right to fire an at-will employee for the best of reasons or the worst of reasons, for any reason or no reason at all. Rose v. Allied Development, supra. That principle, however, has been gradually eroding and is continuing to do so.

The law in this area evolves "to reflect the changing legal, social and economic conditions," according to the court in Monge v. Beebee Rubber Co., 316 A.2d 549 (New Hampshire 1974).

"[W]hen viewed in the context of present-day economic reality and the joint reasonable expectations of employers and their employees, the 'freedom' bestowed by the rule of law [that an employer may fire an employee at will] may indeed be fictional." Cleary v. American Airlines, 111 Cal.App.3d 443, 168 Cal.Rptr. 722, 725 (1980).

Two Utah cases, Rose v. Allied Development, supra, and

Bihlmaier v. Carson, 603 P.2d 790 (Utah 1979), recognize and accept exceptions to the general at-will doctrine.

Some of the limits placed on the unfettered right to fire have been statutory such as laws giving special consideration to minorities in firings or laws that forbid firings on the basis of age, sex, race. Rose v. Allied Development, supra. However, the majority of such limitations have evolved through the courts under the broad heading of public policy exceptions to the right to fire at will.

Employees have been able to successfully sue their employers when they have been fired for refusing to commit an unlawful act like lying under oath, Petermann v. International Brotherhood of Teamsters, 344 P.2d 25 (Cal.App. 1959); for performing a public obligation like serving on a jury, Ness V. Hocks, 536 P.2d 512 (Ore. 1975); for exercising a statutory right like filing a workers compensation claim; Kelsay v. Motorola, Inc., 384 N.E.2d 353 (Ill. 1979); for refusing to participate in the illegal or unethical activities of an employer, Tameny v. Atlantic Richfield Co., 164 Cal.Rptr. 839, 610 P.2d 1330 (Cal. 1980); when the firing has been motivated by bad faith or malice, Monge v. Beebee Rubber Co., supra.

In essence, the courts in those cases and in a myriad of others like them have determined that firings for those activities are in violation of some public policy.

But limitations on the right of an employer to fire an employee have continued to expand in another and distinct direction. Company practices, employee handbooks and policy manuals are being recognized as contracts, express or implied, and as limitations on the employer's right to fire persons who under the common law would have been considered at-will employees.

This reasoning was given approval in Perry v. Sindermann, 408 U.S. 593, 92 S.Ct. 2694 (1972). A teacher at Odessa Junior College was discharged. He sued claiming that even though he had no written contract, he was entitled to a kind of de facto tenure based on the "college's official Faculty Guide." The U.S. Supreme Court pointed out that absence of a written contract with explicit tenure provisions would not preclude a finding that "the existence of rules and understandings promulgated and fostered" by the employer may justify and support the teacher's claims.

In Cleary v. American Airlines, supra, the defendant employer failed to afford plaintiff a fair and impartial hearing, appeal and review as required by company regulations. The court, citing the trend of cases, held that among other factors, the express policy of the employer operated "as a form of estoppel, precluding any discharge of such an employee by the employer without good cause [required by company regulations]." (At 729.)

The court pointed to a company regulation which

involved specific procedures for adjudicating employee disputes such as Cleary's. The existence of the regulation "compels the conclusion that this employer [American Airlines] had recognized its responsibility to engage in good faith and fair dealing rather than in arbitrary conduct..." (At 729.)

The following year, the California Court of Appeals followed Cleary in Pugh v. See's Candies Inc., 116 Cal.App.3d 311, 171 Cal.Rptr. 917 (1981). The fired employee, Mr. Pugh, had never received formal or written criticism of his work, had never had complaints raised against him at annual meetings, had never been denied a raise or bonus, had not received notice that there was a problem that needed correction. His employment was unexpectedly and without warning terminated by letter, which contained no reasons for the termination. In analyzing the case, the court pointed out that two principles have developed to limit the absolute right of an employer to fire at will, "one of them based on public policy and the other upon traditional contract doctrine," the latter precluding dismissal "when the discharge is contrary to the terms of the agreement, express or implied." (At 922.) In determining whether an agreement exists, courts look at a variety of factors, including "the personnel policies or practices of the employer." (At 925.)

In the instant case, the court is not being asked to



find that Gilmore's firing violated some public policy. Rather, the court is being asked to determine that CAP's Personnel Policies Manual placed a limitation on the right to fire Gilmore. That is, in discharging Gilmore, CAP and the other named defendants in their supervisory capacities were obligated to follow and adhere to the policies and procedures laid out in the CAP Manual. To rule otherwise is to say that the Manual had no real purpose other than as a list of helpful suggestions. Such a reading would be clearly contrary to the mandatory language used throughout the Manual ("shall," "must"). The coverage of such topics as work schedules, pay periods, salary administration, dress standards, benefits, retirement, insurance, vacations and sick leave further indicates that the Manual is much more than a pick-and-choose list of suggestions.

The Manual was promulgated. Gilmore was told his employment would be governed by its terms and conditions. It was Gilmore's expectation that he was required to adhere to the rules and regulations (show up for work on time, dress properly, etc.). He likewise expected his employer and those in supervisory capacities above him to adhere to the regulations and procedures when his employment was terminated, whatever the reason was.

Having promulgated the Manual and having given Gilmore expectations regarding it, CAP and the other named defendants should now be estopped either from refusing to

follow the proper procedures or from claiming they were not required to follow them. Toussaint v. Blue Cross & Blue Shield, supra; Damrow v. Thumb Cooperative Terminal, supra. The express policy should operate as a form of estoppel. Cleary v. American Airlines, supra. The Manual should be viewed as no less than an implied promise of good faith and fair dealing. Pugh v. See's Candies, supra.

In the two Utah cases mentioned above, Rose and Bihlmaier, the court, while recognizing exceptions to the at-will doctrine, did not find an exception in either of the cases. In both, the plaintiffs had sued for wrongful termination, basing their claims on mere oral discussions. No policy manual, company regulations or writings of any kind were involved in either case.

In determining whether to move an employment contract "out of the at-will category via one of the exceptions" (at 86), the Utah Supreme Court in Rose laid out the following test:

We must look at the alleged "understanding," the intent of the parties, business custom and usage, the nature of the employment, the situation of the parties, and the circumstances of the case to ascertain the terms of the claimed agreement. (At 86.)

In seeking an exception to the at-will doctrine in Rose, the plaintiff relied on an oral conversation of "five minutes (at 85) and a "few sentences" (at 86) exchanged between the parties. The Supreme Court found that insufficient for an exception to the at-will doctrine.

In the Gilmore situation, we have a written and detailed personnel policy promulgated by the employer and relied on by Gilmore. The terms of the agreement are clear. Applying the Rose test, one should clearly find an exception to the at-will doctrine. The Manual should operate as a limitation on the right to fire Gilmore, a limitation that is simply a requirement that procedures in the CAP Personnel Policies Manual be followed when an employee is discharged.

POINT III. THE DEFENDANTS BREACHED THEIR CONTRACT WITH PLAINTIFF GILMORE. THE TERMINATION OF GILMORE'S EMPLOYMENT WAS WRONGFUL.

Among the Personnel Policy Manual's obligations imposed on the defendants and the corresponding rights accorded to Gilmore were specified procedures to be followed in job performance evaluations and the termination of employment. CAP and the other defendants failed to follow those procedures. Looking at the facts and inferences therefrom in a light most favorable to Gilmore (Rose v. Allied Development Co., supra), it is clear that Gilmore's contract was breached.

Gilmore's termination letter said his position was being eliminated and his "blue slip" said his termination was due to a "reduction in force." The CAP Manual, Chapter VII, Section B, specifically states that an employee terminated due to a reduction in force is entitled to 15 days written notice with the notice specifying reasons for

the reduction. Gilmore did not receive 15 days written notice. He received a letter on March 14 terminating his employment four days later on March 18. Two weeks pay in lieu of notice is not an option permitted by the Manual. The letter did not state any reasons for the move nor was Gilmore ever given any written explanation for the action.

Furthermore, it should be noted that a reduction in force apparently did not actually occur. Gary Parara was hired just prior to Gilmore's termination, he was told he was replacing Gilmore, he assumed all of Gilmore's duties and no others, he took over Gilmore's desk and he received a salary similar to Gilmore's

So whether or not Gilmore's employment was terminated due to an actual and bonafide reduction in force, the termination procedures were not complied with. The Manual was violated; the contract was breached.

If Gilmore was terminated for cause, the contract (Manual) was likewise breached. Chapter VIII, Section A, of the Manual permits an employee to be discharged for incompetence or inefficiency if the incompetence or inefficiency is "evidenced by at least two consecutive performance evaluations." And, under Chapter VIII, Section C, Paragraph 5, a discharge for those reasons must be in writing, must specifically state the reasons and must be delivered to the employee at least 15 days prior to the date of termination. Gilmore did not receive two consecutive

performance evaluations indicating incompetence or inefficiency and, since no writing terminating Gilmore for inefficiency or incompetency exists, he obviously was not given such a writing 15 days prior to termination.

Gilmore had, in fact, never received any written evaluation indicating incompetency or inefficiency. The one written evaluation that Schultz did prepare (but did not complete) gave Gilmore the three highest ratings in all areas covered by the evaluation. In three of the six ratings, Schultz rated Gilmore "exceptional."

Schultz, as Gilmore's immediate supervisor, was required by Chapter V of the Manual to make regular and periodic evaluations of Gilmore's work performance. He did not do this, again breaching the contract. If a problem with Gilmore's performance existed, Schultz had an obligation, under the Manual, to inform him. To not inform him was a violation of the Manual and a breach of the implied duty of good faith and fair dealing.

That one evaluation of Gilmore's work that Schultz prepared but never completed was put into Gilmore's personnel file, thus giving Gilmore good reason to believe he was doing his job well. Only a month before his discharge, Schultz approved a raise of more than \$100.00 per month for Gilmore, further leading Gilmore to believe his job was secure. The existence of the Manual, coupled with this kind of conduct, induced justifiable reliance on the

part of Gilmore. To fire him in violation of the Manual was a breach of contract as well as a breach of good faith and fair dealing.

On March 15, the day after Gilmore received his termination letter, he filed a written notice with Schultz appealing the decision to terminate him. This was done in accordance with Chapter IX, Section B, of the Manual.

The following day without meeting with Gilmore, Schultz by letter of March 16 denied the appeal. He wrote that he would not give Gilmore a formal hearing before him, explaining that he considered a meeting he had had with Gilmore the previous week to be the appeal. In other words, Schultz claimed that a meeting he had with Gilmore prior to the termination was an appeal hearing on the termination. Clearly this was improper, a violation of the Manual and a breach of the contract.

Gilmore then filed an appeal with Geter, the chairman of the personnel committee, pursuant to Chapter IX, Section B, of the Manual. Fred Geter, chairman of the personnel committee, scheduled what he called a hearing. This so-called hearing, held on March 16 and March 21, was flawed in the following ways:

1. At the first session only two of the five members were present; at the second session only three of the five members were present.

2. Gilmore was never present when Schultz presented

evidence to the committee members, was never advised of the evidence or testimony presented by Schultz, was not given any opportunity to rebut or respond to Schultz's evidence and testimony.

3. On March 22, the day after the final session, Schultz gave the committee a letter outlining reasons for Gilmore's discharge. Gilmore was never given an opportunity to respond to that letter and, in fact, never saw or knew of it prior to the announcement of the committee's decision. Yet, that letter was what the personnel committee "considered most" in reaching its decision and "primarily" based its decision on that letter, according to one of the committee members.

4. The Manual, Chapter IX, Section B, requires that notice of the findings of the personnel committee be given within 5 days of the hearing. It was not until April 13, approximately three weeks after the so-called hearing, that Gilmore was informed that the committee had decided to uphold Schultz's decision. The letter contained no findings, as required by the Manual.

Aside from the fact that the Manual was violated and the contract breached as detailed above, the procedures followed hardly provided the prompt and fair consideration that the Community Services Agency requires its grantee agencies (like CAP) to provide employees in personnel matters.

Having promulgated the Manual, CAP and the other defendants were obligated to follow it; failure to follow it constitutes a breach of the contract. Toussaint v. Blue Cross & Blue Shield, supra.

The two Utah cases, Moore v. Utah Technical College, supra, and Piacitelli v. Southern Utah State College, supra, both recognize that employers must comply with the termination procedures they lay out. The court in Piacitelli expressly spoke of the breach of contract caused by discharging the employee without observing the formal discharge procedures in the employer's manual. (At 1070.)

In this light and based on the actions of CAP and the other defendants, it is fair and proper that the contract with Gilmore be deemed breached.

#### RELIEF SOUGHT

Plaintiff seeks:

(1) reversal of the summary judgment for Defendants entered by the court below.

(2) a ruling that summary judgment be entered for Plaintiff on his contract actions.

(3) a ruling that CAP's Personnel Policies Manual was a contract (express or implied) with Gilmore, or, in the alternative, that the right to terminate Gilmore was limited



by the Manual in that Defendants are required to comply with the Manual.

(4) a ruling that failure to comply with the procedures in the Manual was a breach of contract.

(5) a ruling that Gilmore is entitled to reinstatement with back salary and benefits, or, in light of Piacitelli v. Southern Utah State College, supra, that Gilmore is entitled to his salary with accrued benefits until he is properly terminated.

-end-

November 16, 1987

11-16-87

Mark S. Myers

Wann  
Novinski - Durando

## ADDENDUM CONTENTS

- 1.....Termination letter of March 14, 1977
- 2....."Blue slip"
- 3.....Appeal letter of March 15, 1977
- 4.....Letter of March 16, 1977, denying appeal
- 5.....Letter of April 13, 1977, from personnel committee
- 6.....Vanderburgh letter to Philbrick
- 8.....Schultz's evaluation of Gilmore
- 9-16....CAP Personnel Policies Manual sections
- 17-54...Schultz deposition
- 55-61...Vanderburgh deposition
- 62-71...Geter deposition
- 72-77...Philbrick deposition
- 78-82...Fields deposition
- 83-85...Benns deposition
- 86-89...Roach deposition
- 90-108..Parara deposition



# COMMUNITY ACTION PROGRAM

ADMINISTRATIVE OFFICE

2033 South State  
Bldg. 1 Am B  
Salt Lake City, Utah 84115  
Phone: (801) 487-2556

March 14, 1977

## EXECUTIVE DIRECTOR

H. J. Schultz

## BOARD OF TRUSTEES

### Officers

President, Ann O'Connell  
Vice President, Terry Williams  
Secretary, Fred Geter  
Treasurer, John E. Delaney

## ADVISORY SECTOR

### Mayor

Wilson  
Sullivan (alternate)

### Commissioners

James Phillips, Jr.  
Stewart (alternate)  
James Peterson (alternate)  
C. Snow (alternate)  
Dunn  
Wright (alternate)  
Al Clure  
Delaney (alternate)  
J. J. Hogen  
Hogen (alternate)

Phillips  
Phillips

## ADVISORY SECTOR

Larson  
Harris  
Williams  
Jensen  
Chapman  
Crawford

## NEIGHBORHOOD REPRESENTATIVES

Paulis  
Lynch  
Delgado  
Martinez  
Martinez  
Jury  
Jury  
Jury  
Jury

Walter K. Gilmore  
2033 South State  
SLC, Utah 84115

Dear Walt:

Per our previous discussions, your position as Fiscal Director is being eliminated as of March 15, 1977. Since we need your help in the department through March 18th you will be given 2 weeks pay in lieu of notice as of that date.

We much appreciate your loyalty to the program and your hard work in a difficult position for nearly 3 years and will be happy to provide any recommendations you may need.

It is with deep regret this decision has been made.

Sincerely,

*H. J. Schultz*  
Hal J. Schultz  
Executive Director

## NEIGHBORHOOD CENTERS

City	Central City Center	Northwest Center	Magna Center	Redwood Center	PFW Center	South Salt Lake Center	Westside Center
Address	451 East 3rd South	776 West 1st North	9013 West 2700 South	3060 Lester Street	568 South 300 West	7364 South Main	1430 Andrew Blvd
City	Salt Lake City, Utah	Salt Lake City, Utah	Magna, Utah	Salt Lake City, Utah	Salt Lake City, Utah	Salt Lake City, Utah	Salt Lake City, Utah
Phone	531 8111	359 8741	297 6414	466 8755	328 4749	467 7711	485 1215

EQUAL EMPLOYMENT OPPORTUNITY EMPLOYER - FUNDED BY C.S.A. OFFICE OF THE PRESIDENT

Addendum-1

Last date hired or rehired 3/6/84 Date last worked 3/20/84

REASON FOR UNEMPLOYMENT: Reduction in Force

PLEASE EXPLAIN: \_\_\_\_\_

WILL THIS INDIVIDUAL BE REPLACED? YES ☐ NO ☒ UNKNOWN ☐

ENTER ADDRESS TO WHICH REQUESTS FOR WAGE INFORMATION SHOULD BE SENT

Employer's Name Salt Lake Community Action Program Employment Security Registration Number 18-8399-184

Street Address 2033 South State City S.L.C. State Utah Zip 84115

TYPE OF OWNERSHIP: INDIVIDUAL ☐ PARTNERSHIP ☐ CORPORATION ☒ OTHER ☐

I certify this information is true and correct.

Signed by [Signature] Title Executive Dir. Date 3/18

Form 637-A Rev. 9/72

(SEE REVERSE SIDE)

March 15, 1977

Mr. Hal J. Schultz,  
Executive Director,  
Community Action Program,  
Salt Lake Area.

Dear Hal:

A feeling of need for fairness compels me to appeal your decision to discharge me.

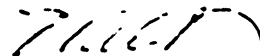
I am aware of some of the many problems facing you concerning the direction of the Agency, and the accounting department in particular, and the urgency for prompt and even drastic action to solve those problems, but I cannot agree that firing me would be such a solution.

My competence and efficiency may not be great, but my loyalty and willingness are, and I feel entitled to a fair and thorough study and evaluation of my work performance by a competent, impartial individual or group.

If the Westminster terminal proves to be the solution to our computer needs, it should not require that we employ a computer specialist accountant to operate the CAP end of the system. Workshop training, plus the consultant services of Dick Jepperson, should be sufficient with the staff we now have.

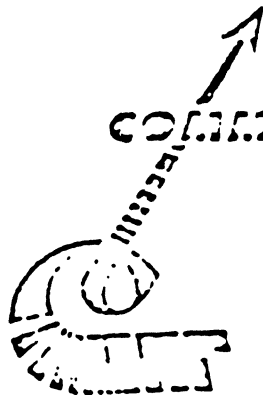
I respectfully ask that you give this appeal your most serious consideration.

Personal regards,



Walter K. Gilmore  
Fiscal Director

cc: Personnel Department.



# COMMUNITY ACTION PROGRAM

## ADMINISTRATIVE OFFICE

2033 South State Street  
Rm. 1 Am 370  
Salt Lake City, Utah 84115  
Phone (801) 417 3641

March 16, 1977

### EXECUTIVE DIRECTOR

H. J. Schultz

### BOARD OF TRUSTEES

#### Officers

Chair, Ann D. Connell  
Vice Pres., Terry Williams  
Vice Pres., Fred Carter  
Treas., John E. Delaney

### PUBLIC SECTOR

#### Mayor

L. L. Wilson  
Vice Mayor (alternate)  
Commissioners  
George Phillips, Jr.  
George Johnson (alternate)  
No. 1 Council  
Josephine Peterson (alternate)  
No. 2 Council  
James C. Brown (alternate)  
James E. Brown  
Lester Wright (alternate)  
Edith McChesney  
John E. Delaney (alternate)  
William J. Thompson  
Ed. Apple  
Lauri Johnson (alternate)

#### Council

Ed. Apple  
My. Brown  
John E. Phillips

### PRIVATE SECTOR

James M. Johnson  
James M. Johnson  
Terry Williams  
James M. Johnson  
James M. Johnson  
James M. Johnson  
James M. Johnson

### NEIGHBORHOOD REPRESENTATIVES

James M. Johnson  
James M. Johnson  
James M. Johnson  
James M. Johnson  
James M. Johnson  
James M. Johnson  
James M. Johnson  
James M. Johnson  
James M. Johnson  
James M. Johnson

Walter K. Gilmore  
2033 South State  
SLC, Utah 84115

Ref: Your 3/15/77 letter

Dear Walt:

I have considered your appeal to me of your termination to have been heard in our second meeting on the subject, last week.

Well aware as I am of the need for written communications regarding personnel actions, I have avoided writing anything except your notification that the position of Fiscal Director was being eliminated (you have not been "fired") for the following consideration to you:

You could leave the agency with a good record.

You could be eligible for Unemployment Compensation.

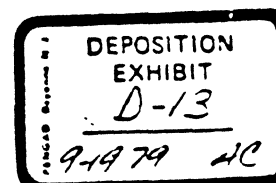
Nothing in writing with which the media could make into their typical headlines.

You, of course have every right to appeal this action to the Personnel Committee, which I understand you have done and this reply to your letter is necessarily quite brief as I will do or say nothing to interfere with or discourage any appeal process in this agency.

I believe I have already told you that in no way do I doubt your loyalty or willingness and that, being only a few years away from where you now are, I fully recognize and empathize with the trauma of this interruption of your career.

Sincerely,

Hal J. Schultz  
Executive Director



mm

### NEIGHBORHOOD CENTERS

with County	Central City Center	Northwest Center	Magna Center	Redwood Center	PLW Center	South Salt Lake Center	Westside Community C
1 North Main	451 East 7th South	776 West 1st North	9013 West 27th South	3044 Center Street	518 South 10th West	7116 South Main	1418 Anderson, Rm. 12
Indevco Utah	Salt Lake City, Utah	Salt Lake City, Utah	Magna, Utah	Salt Lake City, Utah	Salt Lake City, Utah	Salt Lake City, Utah	Salt Lake City, Utah
Phone 251 1516	Phone 511 8111	Phone 359 8741	Phone 271 1414	Phone 466 8755	Phone 324 4747	Phone 467 7711	Phone 481 1211



# COMMUNITY ACTION PROGRAM

## ADMINISTRATIVE OFFICE

2033 South State Street  
Bldg 1 Rm 300  
Salt Lake City, Utah 84115  
Phone: (801) 487 3641

April 13, 1977

### CUTIVE DIRECTOR

H. J. Schultz

### RD OF TRUSTEES

#### Officers

ent, Ann O'Connell  
ce Pres, Terry Williams  
ico Pres, Fred Geter  
urer, John E. Delaney

### LIC SECTOR

#### Mayor

Wilson  
ia Sanford (alternate)

#### Commissioners

iqs Phillips, Jr.  
r Stowell (alternate)  
Green  
hume Peterson (alternate)  
utulus  
s C. Snow (alternate)  
n Dunn  
ean Wright (alternate)  
McClure  
E. Delaney (alternate)  
in J. Hogensen  
graz  
Jorgensen (alternate)

Meziva  
Otero  
t E. Philbrick

### 'ATE SECTOR

A. Larsen  
n Bruns  
Williams  
rtus Jansen  
an Chacon  
Reese  
O'Connell

### HBORHOOD RESENTATIVES

de Paulis  
d Ligh  
Delgado  
eter  
t Martinez  
Lindsay  
berhart  
t Jay  
itz  
rown  
Morrocks  
nu Jex

Mr. Walter K. Gilmore  
436 Milton Ave.  
SLC, Utah 84115

Dear Walt:

After very carefully reviewing contents of the hearing and legal ramifications, the Personnel Committee upholds the decision of Hal Schultz in your reduction of force and re-organization of the Fiscal Department.

Thank you for your patience in this matter.

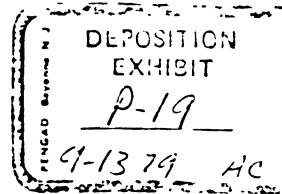
Sincerely,

Fred Geter  
Chairman, Personnel Committee

cc: Hal Schultz  
Personnel Committee  
File

### NEIGHBORHOOD CENTERS

unty	Central City Center	Northwest Center	Magna Center	Redwood Center	PFW Center	South Salt Lake Center	Westside Community Center
Main	451 East 3rd South	776 West 1st North	9013 West 2700 South	3060 Lester Street	568 South 300 West	2364 South Main	1430 Andrew Rm 123
Utah	Salt Lake City, Utah	Salt Lake City, Utah	Magna, Utah	Salt Lake City, Utah	Salt Lake City, Utah	Salt Lake City, Utah	Salt Lake City, Utah
35 3516	Phone: 531 8111	Phone: 359 8741	Phone: 297 6414	Phone: 466 8755	Phone: 328 4749	Phone: 467 7711	Phone: 485 1203



DEC 20 1978

Mr. Robert E. Philbrick,  
President, Board of Trustees,  
Dept. of Employment Security,  
1234 South Main  
Salt Lake City, Utah 84115

Dear Mr. Philbrick:

A review of Mr. Walter Gilmore's termination appeal to this office has been concluded which prompts us to take the action delineated below.

CSA Instruction 6900-01(c) (5) imposes basically two requirements regarding Personnel Policies on CSA grantees:

(1) It requires that grantees or employers give "employee grievances prompt and fair consideration," and (2) It requires that grantee agencies "make provision for review of personnel actions."

In the instant case, we find that CAP for Salt Lake City failed to give Gilmore fair consideration when it violated its Personnel Policies

(1) in terminating Gilmore for Reduction-In-Force reasons without justification, (2) failing to give Gilmore reasons for his termination thus precluding him from being able to rebut the charges against him, and (3) in shortening the notice requirements by compensating Gilmore possibly, not adequate, in lieu of notice.

Our conclusion in the RIF issue is based on the fact that Julian S. Garza, Jr., Regional Counsel for Region VIII found that there was no showing by the Salt Lake City CAP during his investigation and review of funding or budgeting limitations to justify the RIF termination. Moreover, his interviews with the Personnel Committee members, indicated that the real reason was another reason other than RIF. In addition, the hiring by the CAP of an individual within six months of Gilmore's termination with almost identical duties in the fiscal department for identical dollars led us to conclude that the RIF termination was indeed an avoidance by the CAP.

Finding and concluding that your agency has violated CSA Instruction 6900-01(c) (5), please be hereby advised that I am decreasing the amount of your \$221 funding level by 10% for the next two program years.



Mr. Robert E. Philbrick  
Page 2 \_\_\_\_\_

There are no requirements in our regulations which would require us to afford you a hearing with respect to the decrease of 10% indicated above. The 10% is substantially less than the 20% which would trigger the requirement on our part to provide your agency a hearing, see CSA Instruction 6730-1a(3) (a).

We are, however, giving you a final opportunity to respond to our findings and our conclusions before we implement our proposed action. You have thirty days from the date of this letter within which to respond to our conclusions or in the alternative propose a course of action which would correct past as well as future violations of your personnel policy regulations.

Sincerely,



DAVID E. WENDERSBURGH  
Regional Director

Not completed

**EMPLOYEE PERFORMANCE REVIEW REPORT**  
(Top of Form to be Filled in By  
Personnel Office Prior to Routing)

NAME WALTER K. Calmes DATE 9/27/76

POSITION Fiscal Director TIME IN POSITION 20 months

Check One

PROBATIONARY ☐

REGULAR ☒

DEPARTMENT OR  
PROGRAM COMPONENT Central Admin SUPERVISOR EXEC. DIRECTOR

1. The standards of performance for this position have ☒ have not ☐  
been discussed with this employee.
2. Using the employee's job description and assignments given during period  
employee is being evaluated as a focal point, describe in descending order  
in proportion to time spent, the major activities he performed in the  
period under review. Opposite each major activity, state whether the  
employee's performance in that area was Exceptional, Above Average, Average,  
or Needed Improvement, and state in specific detail your evaluation of the  
relative success the employee has displayed in handling each of these areas.  
Each Exceptional grade should be fully explained.

**PRIMARY FUNCTIONS AND  
RESPONSIBILITIES**

**EVALUATION OF  
PERFORMANCE**

new agency and delegate agency  
initial operations  
ult with neighborhood coordin-  
on budget matters.  
wise. Maintenance of books of  
unt.  
are monthly financial statements  
Board of Trustees, Administration,  
Region Office, HEW Region Office,  
neighborhood Councils.  
are all cash disbursements,  
al journal entries, purchase order  
budgetary compliance  
in financial and personnel  
records.

- ~~and message~~

- Exceptional

- Average

- Exceptional

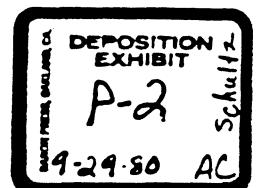
Exceptional  
Form #14

White: Personnel

Blue: Employee

Green: Retain for your files

- Above Average



Addendum 8

## INTRODUCTION

This manual constitutes the personnel policies, procedures, practices and regulations for the Salt Lake Area Community Action Program hereinafter referred to as the Board of CAP.

The purpose of these rules is to establish a policy and framework for a system of personnel administration, based upon merit, principled and designed to secure efficient and effective administration.

These rules provide for the selection and appointment, promotion, demotion, reassignment, termination, discipline, employee relations and general working conditions and performance for employees of the Salt Lake Area Community Action Program;

The rules and policies set forth in this manual shall follow in accordance with the rules and regulations established by the Office of Economic Opportunity.

Policies included in this manual supersedes all previous policies approved by the Salt Lake Board of Trustees.

Approved by the Salt Lake Area Community  
Action Program Board of  
Trustees Personnel Committee  
2/13/72

The Salt Lake Area Community  
Action Board of Trustees 10/11/72

Death Leave, Funeral Leave, Veterans Day,  
Columbus Day Approved by the Salt Lake  
Community Action Program Board of Trustees  
Personnel Committee 1/10/73

Temporary Employment, Food Stamp Sales  
Approved by Community Action Program  
Board of Trustees Personnel Committee 5/77

Maternity Leave Approved by Community  
Action Program Board of Trustees 8/77

Transitions Approved by Community  
Action Program Board of Trustees  
Personnel Committee 1977

## CHAPTER V

### EMPLOYEE PERFORMANCE EVALUATION

#### SECTION A. EMPLOYEE PERFORMANCE EVALUATION

It shall be the responsibility of every supervisor or program director, to make a written evaluation of each employee assigned to them. The rating established by such evaluation shall be considered in determining salary increases or decreases within the limits established by the pay plan; considered as a factor in promotions; and considered along with seniority and other criteria in determining the manner of a reduction of force if such shall be necessary. Performance evaluations shall also be considered in other personnel actions including suspension, demotion, reassignment, or termination.

##### Paragraph 1. Purpose of Evaluation

- a. To establish short and long range goals for the employee and supervisor to work toward.
- b. To provide a tool for staff growth and career development.
- c. To provide a uniform basis for personnel action.
- d. To provide information necessary to develop an effective training program.
- e. To allow each employee an opportunity to know if his job performance is satisfactory, or to help him overcome his shortcomings and weaknesses.
- f. Establish an agreement of past performance between employee and supervisor.
- g. Establish what performance level is expected of the employee in the future and what support the supervisor will provide during this period of time to aide the employee in achieving this level.

##### Paragraph 2. Frequency of the Evaluation and Procedure

- a. Every employee shall receive a copy of a written evaluation to be completed at the end of the first 90 and 180 days of employment and every year thereafter. Evaluations may be conducted at any time the supervisor, or program director feels that an employee's performance has been either above or below the standard, or is advantageous to management. It shall be the supervisor or program director's responsibility to make continual evaluations of the employee's performance and initiate action for improvement.
- b. An evaluation of an employee's work performance shall be conducted at the time of termination.
- c. The evaluation shall be made in triplicate. the original shall be filed in the employees personnel file, with copies for the supervisor or program director and the employee.

Paragraph 2, Frequency of the Evaluation and Procedure (Cont.)

- d. The evaluation shall reaffirm, modify, or establish other goals for the employee to work toward during the next review period.
- e. The evaluation shall be signed by the employee and the supervisor or program director, after it has been discussed and reviewed but shall not necessarily constitute an acceptance of it, the employee may add any additional comments that he may deem proper and justified..

CHAPTER VII  
RESIGNATION AND REDUCTION OF FORCE

SECTION A. RESIGNATION

To resign in good standing, an employee shall submit a letter of resignation to the Executive Director with copies to the Personnel Administrator at least fifteen (15) days prior to the expected date of termination, stating the reason for such action. Employees who resigned according to this procedure may be eligible for re-employment upon their application for rehire and may not have to be screened for the position they are applying for as long as the position is the same position as they terminated and said application is submitted within one (1) year period from date of resignation.

SECTION B. REDUCTION OF FORCE

When it becomes necessary because of funding or budgetary limitations to terminate, reassign, transfer, or demote an employee, the Executive Director shall take such action based upon employee seniority, performance, skills, abilities and importance of position. All employees reassigned, terminated, transferred, or demoted shall be given fifteen (15) days of written notice, said notice specifying the reasons which dictated the actions of the Executive Director.

CHAPTER VIII  
DISCIPLINARY ACTION

SECTION A. DISCIPLINARY ACTION

The Executive Director may order disciplinary action such as demotions, transfers, admonishments, reprimands, suspensions or termination of any permanent employee for any of the following reasons:

1. Violation of Personnel Policies or Procedures and Standard Table of Penalties adopted by the Board of Trustees or administrative directives issued or approved by the Executive Director.
2. Incompetence or inefficiency in the performance of duties as evidenced by at least two consecutive performance evaluations.
3. Scandalous or disgraceful conduct while on or off duty which reflects upon, or brings the office into public disrepute.

SECTION B. STANDARD FOR DISCIPLINARY ACTIONS

All disciplinary actions taken against employees shall be in accordance with approved Personnel Policies or Standard Table of Penalties (See Attachment II). These policies and penalties shall be administered uniformly to all employees without respect to race, color, religion, sex, age, national origin, creed, and ancestry.

All permanent employees shall have the right to appeal disciplinary actions as provided in these Personnel Policies.

SECTION C. TYPES OF DISCIPLINARY ACTION

Paragraph 1. Warning Letter

Letter with intent of notifying employee of violation committed, stating that disciplinary action will be taken if violation reoccurs. Warning letters may be considered when taking further disciplinary actions. Authority to issue warning letters is delegated to the supervisor, coordinator, or program director for employees directly under their immediate supervision.

Paragraph 2. Letter of Admonishment

A letter of admonishment is a letter stating a specific violation(s) giving employee up to ninety (90) days to correct such action. If the action is corrected, the violation(s) shall not be held against the employee for future disciplinary actions.

Paragraph 3. Letter of Reprimand

A letter of reprimand is a formal charge of violation which is made a permanent part of the personnel record.

Authority to issue letters of admonishment or reprimand is delegated to the coordinator or program director for employees under their supervision. Concurrence of the Executive Director is required before letters of admonishment and reprimands are issued.

Paragraph 4. Suspension

The Executive Director may order an employee suspended without pay for such length of time as is considered appropriate, but not to exceed fifteen (15) working days at a time in accordance with Standard Table of Penalties. Such order of suspension shall be in writing specifically stating the reasons for such action. A copy of the order shall be personally delivered or mailed to the employee within 48 hours after being filed with the Personnel Administrator.

Paragraph 4. Demotion

The Executive Director, may for disciplinary purposes, demote an employee. Such order of demotion shall be in writing specifically stating the reasons for the action. A copy of the order shall be personally delivered or mailed to the employee and Personnel Department at least fifteen (15) days prior to the effective date of the order. A Letter of Warning or a Letter of Admonishment must precede demotion. Demotion shall not be made unless the employee being demoted, meets the qualifications for the lower grade to which he is demoted, and shall not be made if a regular employee in good standing in the lower class would be laid off by reason of such action.

Paragraph 5. Termination

The Executive Director may for disciplinary purposes order an employee terminated. Such order of termination shall be in writing specifically stating the reasons for such action. A copy of the order shall be personally delivered or mailed to the employee and Personnel Department at least fifteen (15) days prior to the effective date of such termination.



CHAPTER IX  
GRIEVANCE AND APPEAL

SECTION A. GRIEVANCE POLICY

Employees who feel that personnel actions have been taken which may affect their position, status, or future and are improper, or not in accordance with Personnel Policies and Practices as approved by the Board of Trustees, may submit a grievance, which must be in writing, no later than fourteen (14) days after the incident, through their supervisors to the Personnel Administrator who shall attempt to resolve the issue. If an agreement cannot be reached, the Personnel Administrator shall refer the matter to the Executive Director for decision. The Executive Director's decision shall be considered final in all cases except for permanent full-time employees where the grievance concerns an allegation that the employee has been discriminated against because of politics, religion, race, sex, national origin, creed, ancestry, or color. In such cases, if the employee is not satisfied with the decision of the Executive Director, his grievance may be presented in writing to the Personnel Committee of the Board of Trustees, and its decision shall be final.

SECTION B. APPEAL POLICY

A permanent full-time employee who has been terminated, reassigned, transferred, demoted, or suspended by an order of the Executive Director may appeal to the Executive Director and still, if not satisfied may appeal to the Personnel Committee of the Board of Trustees. The appeal to the Executive Director must be in writing and filed with the personnel department within fourteen (14) days from the date the employee receives notice of the administrative order. The Executive Director will provide the employee a hearing within a period not to exceed seven (7) days from date of receipt of the notice of appeal unless extenuating circumstances would prevent a fair hearing. In such cases, the hearing shall be held at the earliest possible date.

If not satisfied with the hearing before the Executive Director, the employee may appeal to the Chairman of the Personnel Committee of the Board of Trustees. The appeal shall be in writing directed to the Chairman of the Personnel Committee and must be filed within twenty-eight (28) days from the date the employee receives notice of the administrative order. It shall be the responsibility of the Chairman of the Personnel Committee upon receipt of written appeal to provide the employee a hearing within a period not exceeding seven (7) days from date of receipt of the written notice of appeal, unless extenuating circumstances would prevent a fair hearing. In such cases, the hearing shall be held at the earliest possible date.

It shall be the burden of the employee to show cause why the order of the Executive Director should not be upheld. Parties involved shall be provided an opportunity to present witnesses and evidence in his behalf.

The Committee shall within five (5) days after the conclusion of the hearing prepare and submit in writing its findings and if recommendations of the

SECTION B. APPEAL POLICY (Cont'd)

Committee determine that the action taken by the Executive Director is improper and without just cause, the employee shall be reinstated and entitled to recover all back pay and benefits that would have been accrued to the employee the same as if said employee had been regularly employed.

SECTION C. APPEAL POLICY FOR APPLICANTS APPLYING FOR POSITIONS

Applicants applying for positions who feel that they have been discriminated against due to race, creed, color, sex, ancestry, national origin, religion or age may appeal the decision of the hiring supervisor to the Executive Director. In all cases the decision of the Executive Director shall be final.

1 1977?

2 A Yes.

3 (Whereupon, an off-the-record discussion was held.)

4 MS. COLLARD: By stipulation of counsel, any original

5 exhibits that are submitted, copies may be substituted and

6 included in all other copies of the original deposition;

7 is that correct?

8 MR. COOK: So stipulated.

9 (Exhibit No. P-1

10 was marked for

11 identification.)

12 Q (By Ms. Collard) Mr. Schultz, I ask you to look at

13 what's been marked for purposes of identification as

14 Plaintiff's Exhibit No. 1 and ask you if those are the

15 personnel policies that were in force during the year 1977

16 of the Salt Lake Area Community Action Program.

17 MR. COOK: Same objection. I object to the form of the

18 question as calling for a legal conclusion.

19 MS. COLLARD: What's the legal conclusion?

20 MR. COOK: I'm not going to argue. But on your

21 questions you're calling for whether or not they were in

22 force and effect, and it's calling for a legal conclusion.

23 Q (By Ms. Collard) Was this exhibit the policies that

24 you were operating under in 1977?

25 A Yes, I believe they are. Some of the amendments were

late in 1977. These are the policies that were in effect as

1 of the end of 1977.

2 Q Were they in effect in March of 1977?

3 A With the exception of three amendments which took place  
4 later than March.

5 Q Do those three amendments appear any place in those  
6 policies and procedures?

7 A I presume they're in here because they are listed on  
8 the cover page.

9 Q When did those amendments become effective?

10 A May of 1977, August of 1977--the transition policy is  
11 not dated by months, only 1977, but I believe it was adopted  
12 about in October.

13 Q With the exception of those policies that you have  
14 referred to on the cover page as amendments, were the other  
15 policies and procedures contained in that manual in effect  
16 during the year 1977?

17 A Yes.

18 Q You stated that there were several amendments to the  
19 policies and procedures that occurred after March of 1977  
20 that are listed there. Could you briefly describe for me  
21 the method whereby these policies and procedures are  
22 amended?

23 A The process generally would be that the executive direc-  
24 tor and personnel administrator would conclude that a change  
25 was needed and discuss it with the personnel committee; per-

1 Q (By Ms. Collard) Community Services Administration is  
2 a department of the United States Government?

3 A Yes.

4 Q When you say that the Salt Lake Area Community Action  
5 Program is a grantee of that department, what do you mean by  
6 grantee?

7 MR. COOK: May I just interpose an objection, continuing  
8 objection, Kathy, here, so that I don't have to continually  
9 interrupt your line of questioning. I think you're calling  
10 for conclusions and possibly even legal conclusions, because  
11 this whole area is defined by statute and regulations. I  
12 want the record to note that as to my opinion you're asking  
13 him for not only a conclusion, but also a legal conclusion  
14 as well.

15 MS. COLLARD: All right, that objection will be a con-  
16 tinuing objection.

17 Would you answer, Mr. Schultz?

18 THE WITNESS: Would you repeat the question?

19 Q (By Ms. Collard) I asked you when you stated that the  
20 Salt Lake Area Community Action Program was a grantee of  
21 the Community Services Administration, what do you mean when  
22 you use the term "grantee"?

23 A That the Salt Lake Community Action Program is a  
24 recipient of grant funds from Community Services Administra-  
25 tion.

1 Q Are those federal funds?

2 A Yes.

3 Q Has the Community Action Program received federal funds  
4 from departments of the United States Government other than  
5 the Community Services Administration?

6 A Yes.

7 Q What departments would those be?

8 A Over the years, Department of Health, Education and  
9 Welfare; Department of Housing and Urban Development.

10 MR. COOK: When you spoke of the federal government,  
11 are you talking about federal funds now still?

12 MS. COLLARD: Yes.

13 THE WITNESS: From Action, which is not a department  
14 but it's an agency.

15 Q (By Ms. Collard) Did Salt Lake Area Community Action  
16 Program receive such funds from those agencies during the  
17 year 1977?

18 MR. COOK: If you know.

19 THE WITNESS: It received funds from the Community  
20 Services Administration and Department of Health, Education  
21 and Welfare. I don't remember any other federal funds at  
22 that time.

23 Q (By Ms. Collard) During the past year has the Salt  
24 Lake Area Community Action Program received funds from the  
25 Department of Health, Education and Welfare?

1 A. Yes.

2 Q. Has it received funds from the Community Services  
3 Administration?

4 A. Yes.

5 Q. Has it received funds from the Action Program?

6 A. Yes.

7 Q. During the past year has it received funds from any  
8 other department or agency of government that you're aware  
9 of, federal government?

10 A. The Department of Housing and Urban Development.

11 Q. Mr. Schultz, do you know whether or not as a condition  
12 of receiving federal funds from the Community Services  
13 Administration the Salt Lake Area Community Action Program  
14 is required to promulgate and maintain personnel policies?

15 MR. COOK: Same objection there, and also calling for  
16 a legal conclusion.

17 THE WITNESS: I believe there is a regulation requiring  
18 the grantee to maintain personnel policies.

19 Q. (By Ms. Collard) Do you know whether or not in fact  
20 that in the course of the annual audit of the Community  
21 Action Program that the agency's maintenance of personnel  
22 policies is required to be verified?

23 A. I think it's supposed to be. I believe over the years  
24 that verification has happened on some occasions but not  
25 always.

1 Q Is that a requirement, as far as you know?

2 A I'm not familiar with the details of the audit guides.

3 I don't know.

4 Q So you don't know whether or not that is a condition

5 of receiving federal funds, to have such a statement in the

6 annual audit?

7 A No, I don't.

8 Q Was there ever any time during the year 1977 when the

9 Personnel Policies referred to here as Plaintiff's Exhibit

10 1 were not in effect?

11 A No, not to my knowledge.

12 Q Other than Plaintiff's Exhibit 1, do you claim that any

13 other policies, procedures, rules, or regulations were in

14 force or applicable to the termination of Mr. Gilmore's

15 employment?

16 A Not to my knowledge.

17 Q Do you recall the approximate date on which Mr. Gilmore

18 was first employed by the Salt Lake Area Community Action

19 Program?

20 A I believe it was August--no--first employed, I think,

21 in March or April of 1974.

22 Q At the time that he was employed was he employed by

23 you, personally?

24 A No. Well, I had the ultimate responsibility, but

25 the deputy director said, I want to hire this person tempor-

66-11144-114



1 arily. I said, Okay, your judgment is good.

2 Q Who was the deputy director at that time?

3 A Glen Parsons.

4 Q So you didn't deal directly with Mr. Gilmore?

5 A No.

6 Q Did you ever interview him?

7 A No.

8 Q During the time that you have been executive director

9 of the Salt Lake Community Action Program, have you maintained

10 a policy of advising persons who were hired for employment by

11 the agency of the existence of the Personnel Policies?

12 A Yes. I don't personally advise each employee that's

13 hired, but it's a policy that we do that.

14 Q Why do you do that?

15 A To advise a new employee on the terms under which they

16 are going to work.

17 Q Are copies of the Personnel Policies, as referred to

18 here in Plaintiff's Exhibit 1, are those maintained in the

19 offices of the Salt Lake Area Community Action Program?

20 A Yes.

21 Q Is there only one copy or does the head of each depart-

22 ment have one or how are they distributed?

23 A Each employee should have one, although we occasionally

24 run into a printing short-fall, and there will be periods of

25 time when a new employee may have to wait some time because

1 at CAP?

2 A I don't think so.

3 Q Did you make any report of his explanation to the Board?

4 A No, I don't think so.

5 Q You're not an accountant, Mr. Schultz, are you?

6 A No.

7 Q You have no training as an accountant?

8 A No.

9 Q Did you discuss--

10 A Excuse me. I've had some basic accounting education,

11 very basic.

12 Q Where was that?

13 A College of Eastern Utah.

14 Q What year?

15 A 1940.

16 Q What did that education consist of?

17 A It was one quarter of basic accounting.

18 Q Did you discuss Mr. Gilmore's explanation of the

19 discrepancies with any person trained in accounting?

20 A Probably not at that specific time. It's difficult

21 to remember. I had ongoing discussions with our auditors,

22 so I couldn't be specific.

23 Q So that you never completed a written evaluation of

24 Mr. Gilmore; is that correct?

25 A That's correct.

1 Q Mr. Schultz, I served your counsel earlier with a  
2 subpoena duces tecum for your deposition. In that subpoena  
3 I asked you to bring any evaluation that you had made,  
4 whether formal or informal, of Mr. Gilmore. Did you have  
5 anything to produce in that regard?

6 A Yes, the one that I mentioned, which was not completed,  
7 is here.

8 Q Can you produce that at this time, please?

9 MR. COOK: I think I'm going to object, Kathy, on that  
10 one, because it's irrelevant and immaterial, in the event  
11 he did not provide that to Mr. Gilmore.

12 MS. COLLARD: All right, I think your objection will  
13 be noted. I'd still like to have it produced.

14 THE WITNESS: This is an original from Mr. Gilmore's  
15 personnel file.

16 MS. COLLARD: We can have a copy substituted in  
17 accordance with the stipulation.

18 THE WITNESS: The subpoena ordered me to bring  
19 originals wherever possible, so I didn't make copies.

20 MS. COLLARD: That's all right. We'll have a copy made.  
21 That will be marked as Plaintiff's Exhibit 2.

22 (Exhibit No. P-2  
23 was marked for  
identification.)

24 Q (By Ms. Collard) You have the original of that document;  
25 is that correct?

1 A Yes.

2 Q That currently appears in Mr. Gilmore's personnel file;  
3 is that right?

4 A Yes.

5 Q Mr. Schultz, with respect to Plaintiff's Exhibit 2,  
6 the evaluation of Mr. Gilmore that you prepared, or at  
7 least began to prepare, entitled Employee Performance Review  
8 Report, that's dated September 27, 1976; is that correct?

9 A Yes.

10 Q On the left column there at the bottom of the page  
11 entitled Primary Functions of Responsibilities, there's  
12 a list of functions and responsibilities; is that correct?

13 A Yes.

14 Q Did you write that list, Mr. Schultz?

15 A No. That's, I believe, Walter Gilmore's writing.

16 Q Did you ask him to list his functions and responsibilities  
17 as he viewed them?

18 A That's my normal procedure.

19 Q On the right-hand column there under Evaluation of  
20 Performance, across from the function and responsibility,  
21 stating review agency and delegate agency financial opera-  
22 tions, there appears evaluation average; is that correct?

23 A Yes.

24 MR. COOK: May I also interpose an objection to the  
25 line of testimony here, because Mr. Schultz previously testi-

1   fied that this was never completed and he's testified briefly  
2   as to the reasons why it wasn't completed.   So therefore I  
3   think it's irrelevant as to going through the evaluation  
4   performance at this time.

5       MS. COLLARD: All right.

6       MR. COOK: It's immaterial, as well.

7       MS. COLLARD: That objection will be noted.

8   Q    (By Ms. Collard) That notation average, that is in  
9   your handwriting; is that correct?

10   A    Yes.

11   Q    With respect to the evaluation of the function desig-  
12   nated "consult with neighborhood coordinators on budget  
13   matters," the evaluation is exceptional; is that correct?

14   A    Yes.

15   Q    That is in your handwriting?

16   A    Yes.

17   Q    That would be true of the other ratings that appear on  
18   the evaluation side of the sheet; is that correct?

19   A    Yes.

20   Q    On page 2, are those written comments there your  
21   comments, your handwriting?

22   A    Yes.

23   Q    Are you aware, Mr. Schultz, of any provision of the  
24   Salt Lake Area Community Action Program Personnel Policies,  
25   referred to here as Plaintiff's Exhibit 1, whereby you're

1 required to make an evaluation of Mr. Gilmore on at least  
2 an annual basis?

3 MR. COOK: I have to object. This calls for a conclu-  
4 sion. Allow me to include the rest of my objection.

5 Furthermore, the document is now in evidence and it  
6 speaks for itself.

7 MS. COLLARD: I want to know about his knowledge of the  
8 requirement.

9 MR. COOK: If you have a provision that you have in  
10 mind, you can call it to his attention.

11 Q (By Ms. Collard) Mr. Schultz, would you refer to  
12 Plaintiff's Exhibit 1, please, specifically to chapter 5,  
13 paragraph 2 of the Personnel Policies Manual, Plaintiff's  
14 Exhibit 1? Does that portion of the Personnel Policies  
15 require periodic evaluations to be made of the Salt Lake  
16 Area Community Action Program employees?

17 MR. COOK: Same objection. I think the document speaks  
18 for itself.

19 MS. COLLARD: I think it's going to take a lot of time  
20 during these depositions--

21 MR. COOK: It's true, if you don't do it right.

22 MS. COLLARD: Would you like to stipulate to waive your  
23 objections, except as to the form of question, until the  
24 time of trial?

25 MR. COOK: No, I wouldn't. I think you realize another

1 motion is going to be placed before the court shortly. I  
2 want the testimony to be accurate.

3 MS. COLLARD: Obviously I can ask him a lot of questions  
4 in a deposition that I may not be able to ask at trial, and  
5 perhaps some of your objections on a technical legal basis  
6 will be successful at trial. He's still going to have to  
7 write in the--

8 MR. COOK: I still have a right to set forth my  
9 objections on the record.

10 MS. COLLARD: With your objection noted, will you  
11 answer the question, Mr. Schultz?

12 Were you aware of the requirement at chapter 5, para-  
13 graph 2 in the Personnel Policies Manual referred to here  
14 as Plaintiff's Exhibit 1, that at least annual evaluations  
15 be made of Salt Lake Community Action Program employees?

16 THE WITNESS: I'm aware of it now.

17 Q (By Ms. Collard) Were you aware of it in 1977?

18 A Possibly, but I don't remember. There were lots of  
19 documents. I'm not sure exactly what I knew then.

20 Q Were you aware of it in September of 1976?

21 A I was aware that employee evaluations were something  
22 that were my responsibility for those that I directly  
23 supervised.

24 Q You directly supervised Mr. Gilmore, did you not?

25 A Yes.

1 A Not under that title. He operated under the job  
2 description that was titled from the previous period deputy  
3 director for--something like deputy director for finance,  
4 but he was never given or never assumed a stature of deputy  
5 director, only the content of the work program that's applied  
6 to the fiscal responsibility.

7 Q Isn't it true that his job description from the agency  
8 reflects his job title as fiscal director?

9 A Yes.

10 Q You say there is no specific job description for fiscal  
11 director?

12 A At some period in time that job description I referred  
13 to entitled deputy director for something was redone, re-  
14 titled fiscal director. I don't remember exactly when it  
15 took place. I'm sure it was--it could have been prior to the  
16 --I don't know, very likely was in effect at the beginning  
17 of 1977.

18 Q Mr. Schultz, in my subpoena duces tecum that I delivered  
19 to your counsel earlier, I asked for any written job  
20 description of the position that Mr. Gilmore occupied. Do  
21 you have anything to produce in that regard?

22 A The personnel director assured me that everything  
23 required was here. So there should be--

24 MR. COOK: They put it all in one.

25 THE WITNESS: Yes, there it is. It's not dated, but



1 it's titled Fiscal Director. So I would presume that was the  
2 one that Walt was operating under as of 1977.

3 MS. COLLARD: You have no direct knowledge of that?

4 MR. COOK: Kathy, what do you mean by "direct know-  
5 ledge"? He's testifying to the best of his knowledge and  
6 recollection.

7 MS. COLLARD: He says he assumes that. I'm asking if  
8 he has any firsthand knowledge?

9 THE WITNESS: No.

10 MS. COLLARD: I'd like to have that particular page with  
11 the fiscal director job description marked for identifica-  
12 tion.

13 (Exhibit No. P-3  
14 was marked for  
identification.)

15 Q (By Ms. Collard) With regard to Plaintiff's Exhibit 2,  
16 have you verified, Mr. Schultz, that that is a correct  
17 copy of the original which we earlier referred to as P-2  
18 which appeared in Mr. Gilmore's personnel file?

19 A Yes.

20 Q Now, if I could see Plaintiff's Exhibit 3.

21 Mr. Schultz, do you know who drafted this job descrip-  
22 tion?

23 A I don't know. It could have been me; it could have  
24 been the personnel administrator.

25 Q It could have been you?

1 A Yes, possibly.

2 Q What you're saying is you don't know?

3 A I don't know.

4 Q Do you have any knowledge that Plaintiff's Exhibit 3 was  
5 ever delivered to Mr. Gilmore?

6 A No positive knowledge.

7 Q Do you have any knowledge?

8 A No.

9 Q In December of 1976, after you had this conversation  
10 with Mr. Gilmore--could I have Plaintiff's Exhibit 1, please?  
11 Did you ever at any time, as a result of your conversation  
12 with him regarding the matter that you described, issue to  
13 him a warning letter as described in paragraph 1, chapter VIII,  
14 page 1, under the heading C: Types of Disciplinary Actions?

15 A No.

16 Q Would you like to look at that and see what that con-  
17 sists of?

18 A The answer is no.

19 Q Did you ever, with respect to that incident in December  
20 of 1976, issue to Mr. Gilmore a letter of admonishment as  
21 described under paragraph 2 of the same section?

22 A No.

23 Q Did you ever in regard to that incident of December,  
24 1976 issue him a letter of reprimand as described in para-  
25 graph 3 of that section?

1 A. No.

2 Q. Did you ever, with regard to the same incident, suspend  
3 Mr. Gilmore, either with or without pay?

4 A. No.

5 Q. With respect to the same incident, did you ever demote  
6 Mr. Gilmore as described in paragraph 4 of the same section?

7 A. No.

8 Q. With regard to the same incident, did you ever tempor-  
9 arily--not temporarily. Did you ever terminate or threaten  
10 to terminate Mr. Gilmore's employment by the termination  
11 procedure set forth under paragraph 5 of the same section?

12 A. Paragraph 5?

13 Q. Yes, in December of 1976.

14 MR. COOK: I'm going to have to object to that as a  
15 compound question.

16 MS. COLLARD: What was the compound?

17 MR. COOK: Did you ever terminate or threaten to  
18 terminate by the particular procedure set forth in here?

19 Q. (By Ms. Collard) I'll rephrase it. With regard to that  
20 same incident in December of 1976, did you ever take any  
21 action in regard to the termination of Mr. Gilmore, as  
22 described under paragraph 5 of the same section?

23 A. Paragraph 5--

24 Q. Under paragraph C.

25 A. Paragraph 5 is specific termination for--

1 Q Did you ever take some action against Mr. Gilmore in  
2 December of 1976?

3 A No, other than the statement I previously made, that  
4 I told him his job was in jeopardy and so was mine if we  
5 didn't get it straightened up.

6 Q You stated you had another conversation with him about  
7 some financial matters in January of 1977; is that correct?

8 A I believe it was in January.

9 Q What did that conversation consist of?

10 A Pretty much the same thing as the other conversation,  
11 trying to find out why our accounts didn't jibe, why the  
12 auditors didn't audit the books, why we hadn't been able to  
13 get the payroll into a computer service as promised to the  
14 federal agencies--just trying to resolve the situation and  
15 find out if Mr. Gilmore had any answers.

16 Q Did you question him in January, 1977, about this  
17 same discrepancy that was the subject of your conversation  
18 in December of 1976?

19 A I don't know if it was the same thing or just ongoing  
20 accumulation of problems. I did refer at that time to a  
21 conversation that took place in his office in the presence  
22 of Mr. Dewey Pleake some months previously in which I said,  
23 Walt, there's nothing in your accounts but garbage.

24 I reminded him of that and we had talked that we had  
25 purchased technical assistance from the auditors for him,

1 that we had had assistance from a computer expert in trying  
2 to get the payroll computerized, trying to get the answers  
3 for why none of this had happened and why we were in continual  
4 trouble financially.

5 Q Did you ever put any of these queries to him that you  
6 discussed in January of 1976 in writing? Did you ever ask  
7 him to specifically respond in writing to these questions?

8 A No.

9 Q Was anybody else present in that conversation that you  
10 had with Mr. Gilmore in January of 1977?

11 A No.

12 Q Did you make any notes or written memoranda from that  
13 conversation?

14 A No.

15 Q Did you ever make any report to the Board of Trustees  
16 of that conversation?

17 A No.

18 Q With respect to the conversation incident that you  
19 referred to, in your conversation with Mr. Gilmore in January  
20 of 1977, did you at any time issue to him a warning letter  
21 as described in paragraph 1, under section C, Types of  
22 Disciplinary Action, chapter XIII of Disciplinary Action,  
23 Personnel Policies, Plaintiff's Exhibit 1?

24 A No.

25 Q Did you ever, in regard to the same incident and conver-

1 sation, issue to him a letter of admonishment as described  
2 in paragraph 2 of the same section?  
3 A. No.  
4 Q With regard to the same conversation and incident, did  
5 you ever issue to Mr. Gilmore a letter or reprimand as  
6 described in paragraph 3 of the same section?  
7 A. No.  
8 Q With regard to the same incident conversation, did  
9 you ever suspend Mr. Gilmore in accordance with the pro-  
10 vision of paragraph 4 of the same section?  
11 A. No.  
12 Q With regard to the same incident and conversation in  
13 January of 1977, did you ever demote Mr. Gilmore in accordance  
14 with the provision of paragraph 4 of the same section?  
15 I should indicate for the record there appears to be  
16 two paragraph 4's, both referring to--one referring to sus-  
17 pension and one referring to demotion, is that correct,  
18 Mr. Schultz?  
19 A. That's correct.  
20 Q It appears to be misnumbered. With regard to the same  
21 incident and conversation in January of 1977, did you ever  
22 terminate Mr. Gilmore's employment in accordance with the  
23 provisions of paragraph 5 in the same section?  
24 MR. COOK: Again you're asking a compound question  
25 there.

1 MS. COLLARD: I asked him if he ever terminated Mr.  
2 Gilmore in accordance with that section.

3 MR. COOK: I note my objection. Go ahead and answer  
4 it unless I advise you you do not have to.

5 THE WITNESS: No.

6 Q (By Ms. Collard) Mr. Schultz, you did notify Mr.  
7 Gilmore by letter, dated March 14, 1977, that his employment  
8 with the Salt Lake Area Community Action Agency was being  
9 terminated, did you not?

10 MR. COOK: Before he gets into that, Kathy, as you may  
11 recall, we were talking about the conversation that Mr.  
12 Schultz and your client were engaged in approximately March  
13 1, 1977. We were going through that. Then Mr. Schultz  
14 said, I reminded him of the previous conversation.

15 Then we went back through those. I think it would be  
16 fair for him to come back and complete that conversation.

17 MS. COLLARD: I'm going to come back to that. I do  
18 want to cover that. I think I have an option to ask the  
19 questions in the order I choose.

20 MR. COOK: I want you to be fair with the witness,  
21 that's all.

22 Q (By Ms. Collard) Mr. Schultz, you do recall the letter  
23 of March 14, 1977, do you not?

24 A Yes.

25 Q Do you claim that you served upon Mr. Gilmore, prior to

1 March 14, 1977, any written communication stating that his  
2 employment with the agency was being terminated?

3 A No.

4 Q So March 14, 1977 would be the date of the first letter  
5 giving notice of Mr. Gilmore's termination; is that correct?

6 MR. COOK: Why don't we have that marked as an exhibit.

7 MS. COLLARD: That's fine.

8 THE WITNESS: It says "per our previous discussions,"  
9 so I presume I didn't issue anything in writing prior to  
10 that.

11 Q (By Ms. Collard) Prior to March 14, 1977, would it  
12 also be true, Mr. Schultz, that you did not either suspend  
13 or demote Mr. Gilmore in accordance with the provision of  
14 paragraph 4, subsection C of chapter XIII, Personnel  
15 Policies, Plaintiff's Exhibit 1?

16 A That's true.

17 Q Mr. Schultz, you state, "Per our previous discussions,  
18 your position as fiscal director is being eliminated as of  
19 March 15, 1977."

20 Do you claim, Mr. Schultz, that prior to March 14,  
21 1977 that you informed Mr. Gilmore that the position of  
22 fiscal director was being eliminated?

23 A Yes.

24 Q When did you do that?

25 A In the two prior discussions that we've already mentioned



1 14 is the date that he was actually terminated?

2 MS. COLLARD: I haven't said anything in that regard.  
3 All I've asked him is whether there was any written communica  
4 tion prior to March 14, 1977 that he's aware of stating in  
5 writing his reasons for terminating Mr. Gilmore's employment.

6 MR. COOK: Well, then, that's irrelevant and immaterial.  
7 You can answer it, Hal, but it's irrelevant.

8 MS. COLLARD: Would you please answer the question, Mr.  
9 Schultz?

10 THE WITNESS: Not to my knowledge.

11 Q (By Ms. Collard) Did you also have occasion to  
12 communicate with Mr. Gilmore by letter dated March 16, 1977?

13 A Yes.

14 Q Did you produce that letter?

15 (Exhibit No. P-8  
16 was marked for  
identification.)

17 Q (By Ms. Collard) Prior to March 16, did you receive  
18 a letter from Mr. Gilmore in response to your letter of  
19 March 14?

20 A Yes.

21 Q Do you have that letter?

22 A Yes.

23 Q Could you produce that now?

24 (Exhibit No. P-9  
25 was marked for  
identification.)

1 Q Were you present during the time Mr. Gilmore made his  
2 tape recorded statement?

3 A No.

4 Q You're not present at all for that?

5 A I don't believe. As I remember, we were interviewed  
6 separately.

7 Q Did you make a tape recorded statement to the committee?

8 A I made statements in response to their questions. As  
9 I say, there was an attempt being made to tape them.

10 Q So, as far as you know, your comments to the committee  
11 were taped?

12 A As far as I know.

13 Q Did you appear with legal counsel at the hearing, or  
14 did you appear by yourself?

15 A By yourself.

16 Q The people on the committee asked you questions?

17 A As nearly as I remember, yes.

18 Q Did you present any written evidence or documents or  
19 submit any kind of evidence to the committee other than your  
20 written statements?

21 A It seems to me that between the meetings--after the first  
22 meeting they asked me to get to them a written resume of all  
23 that led up to this termination.

24 Q Did you provide that?

25 A Yes.

1 Q Do you have that here to produce today in response to  
2 subpoena?  
3 A Yes.  
4 MS. COLLARD: I'd like this marked as Plaintiff's Exhibi  
5 10.  
6 (Exhibit No. P-10  
7 was marked for  
8 identification.)  
9 Q (By Ms. Collard) This is a statement you provided to  
10 the personnel committee, Mr. Schultz?  
11 A Yes.  
12 Q This was between the two hearings or the two meetings  
13 at which the hearing was held?  
14 A It's dated March 22, 1977.  
15 Q My copy doesn't show a date.  
16 A It isn't dated, I'm sorry. It's another--  
17 Q Are we looking at the same document, Mr. Schultz?  
18 A Yes. I had an attachment I was looking at.  
19 Q I'd like a complete document. If there's a cover page  
20 on it, I think we ought to have that.  
21 MR. COOK: That's fine.  
22 Q (By Ms. Collard) Isn't it true, Mr. Schultz, during  
23 the time you made your statements to the committee that Mr.  
24 Gilmore was not present?  
25 A Mr. Gilmore was not present?  
Q Yes.

1 A That's correct.

2 Q Isn't it true that you did not deliver a copy of what's  
3 been marked as Plaintiff's Exhibit 10, your letter specifying  
4 what you believe to be the problems with Mr. Gilmore's  
5 performance, to Mr. Gilmore?

6 A That's true.

7 Q Aside from what's been marked as Plaintiff's Exhibit 10,  
8 did you provide any other documents or written statements or  
9 other evidence other than your testimony to the personnel  
10 committee in connection with the hearings on the termination  
11 of Mr. Gilmore's employment?

12 A I'm checking my file. I think not.

13 Q Did you ever supply what's been marked as Plaintiff's  
14 Exhibit 10 to the executive committee of the Board?

15 A Exhibit 10?

16 Q Yes. That was your letter to the personnel committee.

17 A No, not to the executive committee, at least I don't  
18 believe I did.

19 Q Do you know if any members of the personnel committee,  
20 at the time of the hearings on Mr. Gilmore's termination,  
21 were also members of the executive committee?

22 A I'm not certain. It's possible Mr. Geter, chairman of  
23 the personnel committee, was also on the executive. He was  
24 at one time, but I'm not sure about at that time.

25 Q What about Mr. Fields?

1 I didn't look in the file there to see. But, yes, anyone  
2 that's hired into what is classified as a permanent position  
3 is on probation for six months.

4 Q Fiscal director was classified as a permanent position?

5 A Yes.

6 Q After six months in that position did you make a written  
7 evaluation of his performance during the probationary period?

8 A No.

9 Q But he did become a permanent employee at that time; is  
10 that correct?

11 A Yes.

12 Q At the time he was terminated, his employment with the  
13 agency was terminated, he was a permanent employee, was he  
14 not?

15 A Yes.

16 Q Mr. Schultz, are there rules and regulations of the  
17 agency that govern whether or not an employee of the agency  
18 can be given a salary raise?

19 A Yes. There are a number of rules and regulations.

20 Q Isn't one of those rules and regulations that an employee  
21 cannot be given a salary raise unless they're performing  
22 satisfactorily?

23 A I forget the exact wording. I think the implication is  
24 that they're performing satisfactorily. You're not restricted.  
25 You could give a salary increase even though an employee's

1 was perhaps two or three months before we injected the  
2 payroll.

3 Q Wasn't it, in fact, approximately six months before  
4 any payroll information was forthcoming from the computer so  
5 that you could pay the payroll off the computer?

6 A What?

7 Q So that you could pay the payroll off the computer?  
8 Wasn't it approximately six months?

9 A Yes, the payroll became secondary priority to the  
10 general ledger.

11 Q When you say that the auditor said the books were  
12 unauditable, what auditor?

13 A Joe Pacheco. I think it was Catten, Stagg, Pacheco  
14 & Rock, the firm.

15 Q Did they mail to you any communication in writing so  
16 stating?

17 A Yes, I think so.

18 Q Where would that correspondence be?

19 A It should be in the files down there, in the fiscal  
20 office.

21 Q Maybe under Mr. Pararra's control?

22 A Yes.

23 Q Mr. Schultz, is it true that in February of 1977 that  
24 you approved a pay raise of 10 percent from a salary of  
25 \$1,018 per month to a salary of \$1,121 per month for Mr.

1 Gilmore?

2 A February of 1977?

3 Q Yes. In that regard I can refer you to--I'm looking at  
4 a sheet that appears in Plaintiff's Exhibit 36.

5 A Yes.

6 Q Mr. Schultz, I neglected to ask you earlier whether or  
7 not you had prepared any written evaluations of Mr. Gilmore's  
8 performance as fiscal director for the years 1974 and 1975.

9 A I thought you had asked me, but, no, I didn't.

10 Q In your letter of March 14, 1977, you stated to Mr.  
11 Gilmore that his employment would be terminated as of, I  
12 believe it was, March 18; is that correct?

13 A I believe that was correct.

14 Q What was the reason for having him work the additional  
15 time?

16 A I asked him to orient Mr. Pararra into where things were  
17 at the office.

18 Q Since the termination of Mr. Gilmore's employment have  
19 you continued to retain the policy making aspects of his  
20 position which you claimed you assumed in connection with  
21 the reorganization of the financial department?

22 A Pretty much.

23 Q Can you describe those to me, what they are?

24 A It's hard to describe it. I can give you some examples.  
25 For example, the negotiating of a contract to do the account-

1 by the personnel committee, that you and Mr. Gilmore were at  
2 any time in the hearing room together with the personnel  
3 committee?  
4 A. I don't recollect that we were. I think we went in  
5 separately.  
6 Q. You weren't even there together at the beginning of the  
7 hearing?  
8 A. Only out in the hallway.  
9 Q. So you never appeared before the committee together?  
10 A. Not as I recollect.  
11 Q. During the time that you appeared before the personnel  
12 committee, on each occasion how many members of the personnel  
13 committee were present?  
14 A. I believe, as I remember, at the first hearing there  
15 were just two of the three, and the second hearing all three  
16 of them.  
17 Q. Weren't there at least five members of the personnel  
18 committee?  
19 MR. COOK: If you know.  
20 THE WITNESS: I don't know. It seems like there was  
21 a period of time when someone increased that committee and  
22 then we pointed out that the function--I don't recall that  
23 there were more than that.  
24 Q. (By Ms. Collard) So you just don't know. Is that true?  
25 A. I don't know.

Addendum-46



1 Q Subsequent to the termination of Mr. Gilmore's employ-  
2 ment for the Salt Lake CAP, have any perspective employers  
3 of Mr. Gilmore or people to whom he had applied for employment  
4 contacted your agency for references?

5 A No, not to my knowledge. It has certainly never come to  
6 my attention.

7 Q If they called the switchboard or said, you know, I'd  
8 like to talk to somebody about a reference for a former  
9 employee, would that call come to you or who would it go to?

10 A It would come to me or Mr. Fields.

11 Q You haven't received any such communication?

12 A No.

13 Q Have you received any written queries?

14 A No.

15 Q Subsequent to the termination of Mr. Gilmore's  
16 employment and personnel committee's issuing a stipulation  
17 upholding that action, has Mr. Gilmore ever asked you for a  
18 rehearing of that matter?

19 A I don't think so.

20 Q Has he ever made such a request to the Board, that you're  
21 aware of?

22 A Through other people. There's the incident of the  
23 motion by Mr. Macri.

24 Q Were you aware that Mr. Gilmore requested Mr. Robert  
25 Philbrick, who became president of the Board after these

addendum 47

1 incidents occurred, for a rehearing on the matter?

2 A I believe Mr. Philbrick told me that, come to think  
3 about it.

4 Q Was that question of granting a rehearing ever presented  
5 to the Board by Mr. Philbrick, so far as you're aware?

6 A The minutes reflect one time, I believe, when Mr.  
7 Philbrick said something about it, but I don't recall the  
8 contents.

9 Q Mr. Schultz, do you claim that Mr. Gilmore's employment  
10 with the Salt Lake Community Action Program Agency could be  
11 terminated except in compliance with the Personnel Policies  
12 Manual, Plaintiff's Exhibit 1? Do you claim that Mr.  
13 Gilmore's employment with the Salt Lake Area Community  
14 Action Program could be terminated except in accordance  
15 with the policies and procedures set forth in the Personnel  
16 Policies Manual that we've identified as Plaintiff's  
17 Exhibit 1?

18 MR. COOK: I still don't understand the question.

19 THE WITNESS: I think he was terminated within the  
20 framework of the policies.

21 MS. COLLARD: That answers the positive side of it.  
22 You agree that the policies and procedures contained in that  
23 manual were applicable to the termination of Mr. Gilmore's  
24 employment?

25 THE WITNESS: They're applicable, as far as they go.

1 A. Yes. It was at his request and the time and place and  
2 length of time that he requested. So even though it was  
3 more or less informal, I considered it to be a hearing.

4 Q Would you consider your conversation of March 1 with  
5 Plaintiff Gilmore to be a hearing within the meaning of the  
6 first paragraph of section B entitled Appeal Policy that  
7 appears at chapter XIV, Grievance and Appeals section of  
8 the Personnel Policies Manual, Plaintiff's Exhibit 1?

9 A Yes. I have my doubts about that date of March 1 you  
10 keep referring to.

11 Q I only refer to that because that was the date that  
12 you referred to. Do you have some other date in mind?

13 A I was thinking it was later than that. But, at any  
14 rate, that second meeting in my office at Mr. Gilmore's  
15 request I consider to be the appeal hearing outlined in this  
16 appeal policy.

17 Q Did you outline the appeal policy to him in that meeting?

18 A I don't recall.

19 Q Wasn't this the meeting that you testified that you spent  
20 about an hour telling Mr. Gilmore what you thought was wrong  
21 with his performance?

22 A Well, that was the first of the two meetings. He called  
23 me at home and asked for further hearing and I said okay. We  
24 met for more than an hour, I think. At the end of that same  
25 week I went over the whole discussion of the first meeting.

1 I don't recall whether I told him at that moment or that time  
2 what the appeal policy was.

3 I later mentioned in correspondence, of course, that he  
4 had the right to appeal.

5 Q But the second meeting you're talking about did not  
6 occur subsequent to March 15, did it?

7 A No, it's prior.

8 Q So after March 15 when he said, "I'm appealing your  
9 decision terminating me," you did not provide him with a  
10 hearing and said that you considered your earlier meeting  
11 to constitute the hearing; is that correct?

12 MR. COOK: I think he answered.

13 Q (By Ms. Collard) Is that your testimony?

14 A Run that by again.

15 Q In his letter of March 15 to you when he said, "I'm  
16 appealing your decision to terminate my employment," you  
17 didn't provide him with a hearing subsequent to March 15,  
18 but stated to him in your letter of March 16 that you con-  
19 sidered your earlier meeting with him to constitute a hearing;  
20 is that correct?

21 MR. COOK: What do you classify as a hearing? What are  
22 you contending is a hearing within the parameters of chapter  
23 XIV, Grievance and Appeals.

24 MS. COLLARD: That's what I asked him.

25 MR. COOK: You're asking him did he provide him with a

1 hearing?

2 MS. COLLARD: I believe he testified earlier that after  
3 the 15th he did not give Mr. Gilmore a hearing and told him,  
4 in fact, in his first letter of March 16, that he considered  
5 their earlier meeting to have been a hearing. Then I asked  
6 him before that did he consider that hearing to be a hearing  
7 within the meaning of the first paragraph there on appeals,  
8 under the grievance proceeding.

9 MR. COOK: His reply was yes.

10 MS. COLLARD: That's what I was trying to clarify.

11 Q (By Ms. Collard) So your answer to that question is  
12 yes? Your counsel says it is, but I'd like to have your  
13 answer.

14 A. My answer was yes.

15 MS. COLLARD: I'd like to take a five minute break.

16 (Whereupon, a short recess was taken.)

17 Q (By Ms. Collard) I remind you you're under oath,  
18 Mr. Schultz. With regard to your prior employment, I guess  
19 I made another mistake in the way I went about this. Were  
20 you ever employed with the Southeast <sup>UTAH</sup> ~~County~~ CAP in Price?

21 A. Yes.

22 Q I don't think you mentioned that before. What was  
23 your position there?

24 A. Executive director.

25 Q What were the years of your employment?

1 just hire another accountant and let the other personnel  
2 go along. We had to substitute added personnel for that.  
3 We didn't have the money to hire another body.

4 Q What about hiring other consultants?

5 A I think we may have talked about that, but we were  
6 desperately exploring the computer thing and we had a free  
7 consultant on the Board, Mr. Shafer, and Mr. Jeppson who  
8 had designed the Westminster system was also being very  
9 helpful at no cost.

10 Q Did you have any conversation with Mr. Gilmore concerning  
11 his computer skill and knowledge or lack thereof?

12 A Yes. We talked about it, and particularly when we kept  
13 trying to get the payroll into service and having it break  
14 down. It was evident, and I believe Mr. Shafer confirmed  
15 to me that Walt simply hadn't the comprehension of computer  
16 systems to get our system moving.

17 Q So then in March of 1977 did you make a determination  
18 it was necessary to reorganize the whole fiscal department?

19 A Yes.

20 Q And tell me what you did in the substantive nature in  
21 changing the fiscal department.

22 A I hired an accounting supervisor with specified computer  
23 accounting background and reduced the force, terminating Mr.  
24 Gilmore, and I took over all the policy type functions of  
25 the fiscal director and ordered the computer specialist to

1 Q To the extent that a policy or situation is specifically  
2 covered by the Personnel Policies, Plaintiff's Exhibit 1,  
3 do you suggest or claim that you have any authority to act  
4 other than in accordance with those policies?

5 MR. COOK: Argumentative.

6 MS. COLLARD: Go ahead and answer.

7 THE WITNESS: If a policy is silent on a particular  
8 instance.

9 MS. COLLARD: I'm not asking you about that. I'm asking  
10 you where the policy specifically covers a particular instance

11 THE WITNESS: Did you say this particular instance?

12 MS. COLLARD: I said a particular instance. Do you  
13 believe that you have authority to act in any way other  
14 than in accordance with what the policies provide?

15 THE WITNESS: Unless it's not clear and consistent.

16 Q (By Ms. Collard) In 1976, in the fall of 1976, according  
17 to your testimony, you had reason to believe that Mr. Gilmore  
18 was not doing his job; is that correct?

19 A Correct.

20 Q And that feeling on your part apparently was not changed  
21 through the winter of 1976 and the spring of 1977; is that  
22 correct?

23 A Correct.

24 Q You state that you didn't make an evaluation, written  
25 evaluation, of Mr. Gilmore in September of 1976 or that you did;

1 complete the evaluation and file it because of this change  
2 in your perception about the performance of his job; is  
3 that correct?

4 A. Correct.

5 Q. Yet you did not make an evaluation, a written evalua-  
6 tion, of Mr. Gilmore's work in 1974 or 1975; is that  
7 correct?

8 A. That's correct.

9 Q. Even though the Personnel Policies require that such  
10 an evaluation be made; is that correct?

11 A. Correct.

12 Q. Is there any reason you didn't make an evaluation of  
13 Mr. Gilmore's performance in the years 1974 and 1975?

14 A. Just that I was so preoccupied with the other problems  
15 in the fiscal department, which I later had to terminate  
16 another second person, and the extent, overpowering extent,  
17 of the fraud audit and other things, that I just simply  
18 didn't have time.

19 Q. That wasn't in any sense attributable to Mr. Gilmore,  
20 was it?

21 A. No.

22 Q. Do you know why the personnel policies and procedures  
23 require that an annual evaluation of an employee be made?

24 A. I think I know. It's good management, good personnel  
25 management to keep tabs of what people are doing and keep



1 BY MS. COLLARD:

2 Q. As deputy director, did you have  
3 knowledge of what was going on in the community action  
4 agencies in region 8 during that period?

5 A. In general, yes. I did not have the  
6 kind of knowledge or close involvement in situations  
7 that I did as regional director.

8 Q. After you were reinstated as director of  
9 region 8 by the Civil Service Commission, did you make  
10 efforts to bring yourself up-to-date on what had  
11 occurred in the states covered by region 8 during the  
12 period when you were not officially director?

13 A. Certainly.

14 Q. Could you tell me generally what the  
15 Community Service Administration is?

16 A. Community Services Administration is the  
17 federal agency established by law to administer the  
18 Economic Opportunity Act of 1964.

19 Q. Generally, what are the purposes of the  
20 agency under that act?

21 A. The major purpose is the combat the  
22 paradox of poverty amidst plenty in the United States.

23 The major programs that the agency  
24 administers are community action and economic  
25 development-- community economic development.

1 Q. And can you tell me how the Community  
2 Services Administration is organized?

3 A. It's organized with a headquarters  
4 office and 10 regional offices.

5 Q. And how does it operate on the local  
6 levels?

7 A. It does not operate as a federal agency  
8 on the local level. It makes grants in aids and  
9 occasionally contracts with outside agencies primarily  
10 private non-profit corporations and sometimes state or  
11 local units of Government.

12 Q. Are you familiar with the term CAA?

13 A. Yes.

14 Q. What does that term refer to?

15 A. Community action agency as far as our  
16 programs are concerned.

17 Q. What is a community action agency?

18 A. A community action agency is a public  
19 organization or a private non-profit organization that  
20 is designated by elected official with standing to--  
21 designated as a community action agency and recognized  
22 as such by CSA.

23 It must govern its activities through  
24 a board that is constituted according to the provision  
25 of the Economic Opportunity Act.

1 Action Program?

2 MR. COOK: Objection to the form of  
3 question. Leading.

4 A. Yes.

5 BY MS. COLLARD:

6 Q. And how often would that type of review  
7 occur?

8 A. It varies. Again whenever there are  
9 changes, we ask that they submit the changes to us.  
10 In general, we ask that things such as personnel  
11 policies be developed and approved by the board and  
12 that they be available for our inspection or for  
13 public inspection at the office of the agency.

14 Q. And when you say be approved by the  
15 board, are you referring to the board of trustees of  
16 the local CAA?

17 A. Yes, the board as I have defined it,  
18 either the governing board of a private agency or the  
19 administering board of a public agency.

20 Q. Are local CAA's required to maintain  
21 personnel policies as a general condition of receiving  
22 funding from the Community Services Administration?

23 MR. COOK: Objection as calling for a  
24 legal conclusion.

25 A. To the best of my knowledge, yes.

1 can't give you an informed opinion as to whether  
2 they're all codified in the U. S. Code.

3 Q. My question perhaps wasn't very clear.  
4 What I meant to ask was, when the policies are updated,  
5 is this done by official memos or how is that done?

6 A. It's done in a standard system of  
7 publication. At the present time, I believe it's done  
8 both via the federal register and through the  
9 publication of what are known as CSA instructions, CSA  
10 notices, CSA guidances. There is a publication system  
11 and a general classification of the internal or  
12 external application of these rules.

13 Q. I see. And with respect to CSA  
14 instructions, are those generally binding on the local  
15 CAA's?

16 MR. COOK: Objection as to the form of  
17 the question as calling for a legal conclusion.

18 A. Yes.

19 BY MS. COLLARD:

20 Q. What about the CSA guidances that you  
21 mentioned, are those binding on the local CAA's?

22 MR. COOK: Same objection.

23 A. In my opinion they do not have the force  
24 of instructions. As an administrator, I would advise  
25 a CAA that their departure from the guidance might

1 require some justification or explanation.

2 BY MS. COLLARD:

3 Q. What if a local CAA violated a CSA  
4 instruction? What action would you take as director?

5 MR. COOK: Object to form of the  
6 question as calling for speculation and also in this  
7 context it's irrelevant and immaterial to the issues  
8 of the lawsuit.

9 A. There is a fairly wide range of action  
10 that we could take. My main intent would be to remedy  
11 the situation and to see that the agency involved did  
12 not further violate the instruction; but, of course, I  
13 would try to take into consideration the total  
14 circumstances, the seriousness of the violation, what  
15 harm was being done to the program and its objectives  
16 through the violation and so forth.

17 BY MS. COLLARD:

18 Q. Now, if a local CAA violated Community  
19 Services Administration instruction, what would be the  
20 ultimate sanction that you as director would be  
21 authorized to impose against the agency?

22 MR. COOK: Objection, calls for legal  
23 conclusion.

24 A. Well, the most ultimate sanction, if you  
25 will, if I understand your question correctly, that I

1 am currently authorized to impose, would be to suspend,  
2 terminate or refuse to refund that agency with CSA  
3 funds.

4 BY MS. COLLARD:

5 Q. And how much of a local CAA's funding  
6 could you suspend or terminate without a hearing--  
7 without affording the agency a hearing?

8 MR. COOK: Objection as calling for a  
9 legal conclusion.

10 A. My understanding is that I am not  
11 required to hold a meeting or a show cause process if  
12 I reduce the funding of any given program by up to 20  
13 percent. Reduction imposed by national policy or  
14 required by Congressional action, is not covered by  
15 that.

16 BY MS. COLLARD:

17 Q. That would be in some special case?

18 A. Yes.

19 Q. Do Community Services Administration  
20 regulations limit the purposes for which monies  
21 granted to local CAA's by the Community Services  
22 Administration can be spent?

23 MR. COOK: May I interpose an objection  
24 as calling for a conclusion, first of all.

25 Second of all, calling for a legal

1 Action Program to change their policies regarding  
2 termination of employees?

3 MR. COOK: May the record reflect Mr.  
4 Vanderburgh is now conferring with counsel and the  
5 file.

6 MS. COLLARD: Certainly. Perhaps this  
7 would be a convenient time to break for lunch.

8 (Luncheon recess was taken.)

9 MS. COLLARD: This is a continuation of  
10 the deposition of Mr. David E. Vanderburgh. Same  
11 parties are present as were present this morning, with  
12 their counsel.

13 Mr. Vanderburgh, let me have the  
14 reporter read back the last question.

15 A. All right.

16 (Question read.)

17 A. In reviewing the record, it would appear  
18 that when I notified Salt Lake CAP by my letter of  
19 December 20, I felt that --

20 BY MS. COLLARD:

21 Q. Can you state the year?

22 A. Of 1978, excuse me. It was my opinion  
23 that they had violated their own personnel policies  
24 and also our regulation on personnel matters.

25 MR. COOK: I object to the answer as not

1 A Yeah.

2 Q Was it a couple of years prior to that or more?

3 A Well. I think I started out in about '72, somewhere  
4 around there, '71 or '72.

5 Q Now, I hand you what has been previously marked in  
6 Mr. Schultz' deposition as Plaintiff's Exhibit 1, and ask  
7 you if you recognize that document?

8 A I remember seeing something like this.

9 Q I'm sorry, I can't hear your answer.

10 Q I remember seeing this.

11 A And that exhibit is a copy of the Personnel Policies  
12 Manual of the Salt Lake Community Action Program.

13 Were you on the board, Mr. Geter, when that document  
14 was first put together in 1972?

15 A I don't think so.

16 Q You are familiar with the document, is that correct?

17 A Yes.

18 Q Have you had occasion to become familiar with its  
19 contents as in your capacity as chairman of the personnel  
20 committee of the Salt Lake CAP?

21 A Yes.

22 Q Thank you. Now, Mr. Geter, as far as you're aware,  
23 was Plaintiff's Exhibit 1, the Personnel Policies of the  
24 Salt Lake Community Action Program, in full force and effect  
25 during the year 1977?



1 A As far as I know.

2 Q Now, Mr. Geter, as chairman of the personnel committee,  
3 what was your understanding of the matters to which  
4 Plaintiff's Exhibit 1, the Personnel Policies of the  
5 Community Action Program, applied?

6 MR. COOK: I will object to the form of the question.  
7 I don't understand it and I don't think the witness does.

8 MS. COLLARD: Do you understand?

9 THE WITNESS: No.

10 Q (By Ms. Collard) What I'm asking you is, what was  
11 your understanding, as chairman of the personnel committee  
12 of the Salt Lake Community Action Program board, as to what  
13 these personnel policies were for? What was their effect,  
14 as far as you understood?

15 MR. COOK: I still don't understand your question,  
16 Kathy. Can you be more specific?

17 MS. COLLARD: I think that's pretty specific.

18 MR. COOK: I will object to the form of the question.

19 Q (By Ms. Collard) Do you understand the question?  
20 I'm just asking what were they used for in the organization?

21 A Oh, I don't--

22 Q You're not familiar with the purposes of the personnel  
23 policies?

24 MR. COOK: Well, I don't think that was the question  
25 you earlier asked. If you're asking that now, then fine.

1 in touch with me and asked for a hearing.

2 Q All right. That would have been by a phone conversa-  
3 tion on or about March 14, 1977?

4 A I can't recall the date but that is what did transpire.

5 Q He contacted you by phone and asked you for an  
6 appointment the following day, is that correct?

7 A I don't remember whether it was the following day or  
8 not.

9 Q But you did meet with him subsequent to his telephone  
10 call to you?

11 A Yes, I did.

12 Q On the time that he met with you regarding his termina-  
13 tion, didn't you instruct him to file a written appeal?

14 A No, I think he done this on his own.

15 Q You didn't advise him that that was what he was to do?

16 A This is how he got an appeal, is by writing for one, yes.

17 Q I know, but did you advise him to do that?

18 A I don't remember whether I did or not.

19 Q Did you tell him on that occasion when he met with you  
20 that you would arrange for a hearing with the personnel  
21 committee, that you would let him know when the hearing  
22 would be?

23 A Yes.

24 Q Have you ever, prior to that time, held a hearing  
25 regarding the termination of an employee?

1 termination of an employee's job?

2 A No.

3 Q So you haven't or you don't recall?

4 A I don't recall.

5 Q During the year 1977, who were the members of the  
6 personnel committee? Is Bernice Benns a member?

7 A Yes.

8 Q How about Anita Roach?

9 A Yes.

10 Q Glen Larsen?

11 A Yes.

12 Q Janet Hansen?

13 A Yes, she is.

14 Q And you were the chairman of that committee at that  
15 time?

16 A Yes, I was.

17 Q At the time that you held the hearing on the termination  
18 of Mr. Gilmore's employment, how did you determine the  
19 format for the hearing?

20 A As near as I can remember, Mr. Gilmore asked for a  
21 hearing and--well, that's it.

22 Q After he asked for a hearing, how did you decide how  
23 the hearing would be held in terms of who would be present,  
24 who would take notes, how the evidence would be presented  
25 to the committee, who would go first; how did you decide

1 all of the members of the committee unanimously decided that?

2 A Yes.

3 Q Do you have a specific recollection of their making

4 that decision?

5 A Yeah, I think so.

6 Q Was that matter discussed whether or not to have both

7 of them present?

8 A Well, I think our thinking on that was in order for

9 Walt to be able to tell us just exactly what was on his

10 mind, without his ex-employer there, it would be more fair.

11 We felt he could feel free to speak his mind.

12 Q And so the personnel committee made a decision not to

13 have Mr. Schultz present during the time that Mr. Gilmore

14 was making his statement, is that correct?

15 A Yes, we heard them separately.

16 Q Did the committee also decide that Mr. Gilmore would

17 not be allowed to be present during Mr. Schultz' statement?

18 MR. COOK: That is a different question than what was

19 asked before.

20 MS. COLLARD: That's right.

21 THE WITNESS: As I said before, I really think we did

22 it separately. We talked to both of them separately.

23 Q (By Ms. Collard) And it's true, then, that Mr. Gilmore

24 was not present during the time that Mr. Schultz made his

25 statement to the committee?

1 A No, nor was Mr. Schultz present when Walt made his  
2 statement.

3 Q And that decision to hear the employee and the employer  
4 separately, that was a decision of the personnel committee,  
5 is that correct?

6 MR. COOK: I think he has testified to that before as  
7 being accurate.

8 Q (By Ms. Collard) Is that a policy not to have the  
9 employer present while the employee is testifying and  
10 vice-versa?

11 MR. COOK: I don't think he has testified vice-versa.

12 MS. COLLARD: I think he did. I just asked him that  
13 and he answered that.

14 MR. COOK: I don't think that was the question, Kathy.

15 Q (By Ms. Collard) Wasn't it your testimony, Mr. Geter,  
16 that the committee decided not to have Mr. Gilmore present  
17 when Mr. Schultz testified and not to have Mr. Schultz  
18 present when Mr. Gilmore testified?

19 MR. COOK: That is a compound question and I object to  
20 the form. Ask him separately, was there two separate  
21 decisions.

22 MS. COLLARD: You can have your objection noted.

23 THE WITNESS: Are you waiting for an answer from me?

24 Q (By Ms. Collard) Yes. What did you say? I asked you  
25 whether or not the personnel committee decided not to have

1 Q (By Ms. Collard) Did you ever show him a letter from  
2 Mr. Schultz after you received it?  
3 A I don't remember.  
4 Q Do you recall ever asking him to respond before the  
5 committee with regard to the matters contained in that  
6 letter?  
7 A If I don't remember the letter, you know--I just don't  
8 remember whether I did or not.  
9 MS. COLLARD: Why don't we take about a ten-minute  
10 break.  
11 (Whereupon, a ten-minute recess was commenced.)  
12 Q (By Ms. Collard) Mr. Geter, can you tell me who was  
13 present in terms of members of the personnel committee at  
14 the second hearing on Mr. Gilmore's termination?  
15 A I really don't remember.  
16 Q Isn't it true that neither Mr. Glen Larsen nor  
17 Mrs. Janet Hansen were in attendance?  
18 A You say is it true that they weren't in attendance?  
19 Q Right.  
20 A Yes.  
21 Q So it would have been you and Bernice Benns and Anita  
22 Roach, is that correct?  
23 A I think so.  
24 Q Besides making a tape recording of the hearings on the  
25 termination of Mr. Gilmore's employment, was there a

1 committee had heard the evidence on the termination of  
2 Mr. Gilmore's employment, Mr. Gilmore's statement and  
3 Mr. Schultz' statement, and whatever documents were sub-  
4 mitted, did they have a meeting to deliberate and talk about  
5 what they had heard after the hearings?

6 A Who are you referring to now?

7 Q The members of the personnel committee.

8 A Yes, we conferred amongst ourselves.

9 Q Did you have a separate meeting after both hearings  
10 to do that?

11 A Yes.

12 Q How soon after the second hearing did that occur?

13 A As near as I can remember, it was right after.

14 Q Wasn't it the morning after the second hearing?

15 A I don't know.

16 Q Do you recall who was present at that meeting?

17 A I think it was still the three of us.

18 Q And Mr. Larsen and Ms. Hansen were not present, is that  
19 correct?

20 A No.

21 Q So that in terms of making the decision regarding the  
22 termination of Mr. Gilmore's employment, whether to uphold  
23 that decision, or that only yourself and Bernice Benns and  
24 Anita Roach that made that decision?

25 A I think we went before the trustee board with it,

1 something like that, if I'm not mistaken.

2 Q I had you earlier refer to Plaintiff's Exhibit P-11.  
3 This was with regard to Mr. Schultz' deposition, the letter  
4 of April 13, 1977, from Mr. Gilmore to yourself where you  
5 state that, "After very carefully reviewing contents of the  
6 hearing and legal ramifications, the personnel committee  
7 upholds the decision of Hal Schultz in your reduction in  
8 force...". I'm asking you who on the personnel committee  
9 upheld Mr. Schultz' decision?

10 A The committee as a whole.

11 Q And that includes Mr. Glen Larsen and--

12 A No.

13 Q Mrs. Hansen?

14 A It includes the three people that I--that we were  
15 talking about, myself, Bernice Benns, and Anita Roach.

16 Q That is what I wanted to clarify.

17 Did anyone on the personnel committee hear from anyone  
18 else other than Mr. Gilmore or Mr. Schultz in making its  
19 decision?

20 A Not that I can recall.

21 Q Did the personnel committee consult with any attorneys  
22 regarding that decision?

23 A No, we consulted the trustees, board of trustees, I  
24 think.

25 Q When did you do that?



1 to the board of trustees?

2 A No, I don't.

3 Q In your letter of April 13, 1977, where you tell

4 Mr. Gilmore that the personnel committee has made a

5 decision to uphold Defendant Schultz' action in terminating

6 his employment, did the members of the committee actually

7 take a vote to do that?

8 A It was a unanimous decision.

9 Q Of the three people?

10 A Yes.

11 Q What about the other members of the personnel committee,

12 Mrs. Hansen and Mr. Larsen. Did they participate at all?

13 A No.

14 Q Are you aware of how many days after a hearing the

15 employee must be advised of the personnel committee's

16 decision?

17 A I think it is five days.

18 Q Prior to the time, specifically, April 13, 1977, that

19 you communicated to Mr. Gilmore that the personnel committee

20 had decided to uphold Mr. Schultz' action in firing him,

21 did you or any other member of the committee consult with

22 anybody else in regard to making that decision?

23 MR. COOK: First of all, he wasn't fired. He was

24 reduced in force.

25 MS. COLLARD: Well, the distinction alludes me.

1 A. Yes, it has. It has to be reviewed by the regents--  
2 and they have shown us spots that were weak and needed to  
3 be updated, and we have changed it occasionally.

4 Q Mr. Philbrick, is the Salt Lake Community Action Program  
5 required to submit its personnel policies to the Community  
6 Services Agency on an annual or some other basis?

7 A. I know of no requirement for that.

8 Q You know of no requirement for that?

9 A. Community Services Agency, no, I do not.

10 Q Community Services Administration.

11 A. Oh, CSA, yes. We have to submit to the offices of CSA.

12 Q How often?

13 A. Yearly, as far as I know.

14 Q Do you do that as a condition of receiving funding?

15 A. Yes.

16 Q Do they at times make suggestions for revision in the  
17 Personnel Policies Manual?

18 A. Yes, they do make suggestions, called specific conditions  
19 sometimes.

20 Q If the suggestion is made as a specific condition, does  
21 that mean that the suggested change must be made as a special  
22 condition of receiving funding?

23 A. I think so.

24 Q Has the agency made revisions or amendments to the  
25 Personnel Policies Manual during the last several years based

1 A I hadn't looked upon it in that manner, but I knew we  
2 had to take action on it or it could affect. So perhaps I  
3 then knew.

4 Q You don't know if it was particularly designated as a  
5 special condition?

6 A I don't know that.

7 Q Do you know whether or not in the annual audit of the  
8 Salt Lake Community Action Program you're required to affirm  
9 that Personnel Policies are being maintained by the agency?

10 A I don't think I know the answer to that specifically.  
11 That's a program audit you're talking about?

12 Q Yes, CSA audit.

13 A Fiscal audits I'm aware of. Program audits--I know they  
14 audit them all the time and make sure we're following, but a  
15 specific audit I don't remember having read.

16 Q You don't know whether or not it's a requirement in  
17 terms of the annual audit that the agency state that it does  
18 maintain Personnel Policies?

19 A We do have to indicate that we have a personnel policy.  
20 It's required that we have to follow it.

21 Q Is that a condition of receiving funding?

22 A Yes.

23 Q From CSA?

24 A Yes.

25 Q Mr. Philbrick, as president of the Board of Trustees,

1 MS. COLLARD: Yes, formal written evaluation.

2 THE WITNESS: You're talking about three years?

3 MS. COLLARD: You weren't aware of that?

4 THE WITNESS: No.

5 Q (By Ms. Collard) Were you aware that Mr. Schultz was  
6 Mr. Gilmore's immediate supervisor?

7 A. Yes.

8 Q Were you aware that under the Personnel Policies Mr.  
9 Schultz had a responsibility and duty to make at least an  
10 annual evaluation of Mr. Gilmore's performance?

11 MR. COOK: Written evaluation.

12 THE WITNESS: Yes.

13 Q (By Ms. Collard) And you were not aware that that had  
14 not been done?

15 A. No.

16 Q Is there any person or committee of the Board that has  
17 specific responsibility to see that Mr. Schultz performs  
18 his duties and responsibilities as executive director?

19 A. Being a Board of Directors, the Board is responsible.  
20 Ultimately, being president, I speak for the Board. Perhaps  
21 I should know.

22 Q Are you aware that there has been a problem in the agency  
23 generally in terms of having written evaluation of employees  
24 made?

25 A. No.

1 Q You don't remember having said that?

2 A I don't remember telling Walt that he was incompetent.  
3 I don't remember giving him that information, no.

4 Q Do you recall telling him that Mr. Schultz had given  
5 the Board of Trustees some pretty conclusive examples of  
6 his incompetence? Not that you said it to him directly,  
7 but that Mr. Schultz had made some representation along that  
8 line to the Board?

9 A May I have a clarification?

10 Q Certainly.

11 A When you said "Board," are you talking about a Board  
12 meeting with all the people involved on the Board?

13 Q I'm talking about to the Board, generally.

14 MR. COOK: You're talking about the Board of Trustees?

15 MS. COLLARD: Yes.

16 THE WITNESS: We have a time on the Board--if I may  
17 say this--where the director does clarify his actions and  
18 what he's going to do. During this time he probably expressed  
19 that. I don't recall his words.

20 Q (By Ms. Collard) So it is possible that you could have  
21 said to Mr. Gilmore that Mr. Schultz gave some examples of  
22 Mr. Gilmore's incompetence to the Board?

23 A It's possible.

24 Q Subsequent to April 13, 1977, isn't it a fact that Mr.  
25 Gilmore requested you on at least two occasions to ask the

1 Board to entertain a rehearing of the decision to terminate  
2 his employment?

3 A. The dates again confuse me, but he did approach me on  
4 that question.

5 Q Did you put that matter to the Board of Trustees?

6 A Yes.

7 Q How did that occur?

8 A Our procedure for hearing a case of that--for his  
9 appeal, we have a standing committee, a personnel committee,  
10 who's responsible to hear a grievance. And consequently we  
11 had to be assigned to do that, to take care of that problem,  
12 and it was subsequently done.

13 Q But after the personnel committee met, held hearings  
14 and reached a decision, and that decision was communicated  
15 to Mr. Gilmore, didn't he, subsequent to those events,  
16 communicate with you and ask you on at least two occasions  
17 to help him obtain another hearing or review of the personnel  
18 committee's decision by the Board?

19 A He wanted it reviewed.

20 Q Did you make a request or indicate to the Board of  
21 Trustees at some subsequent meeting that Mr. Gilmore desired  
22 to have a review of the personnel committee's action?

23 A Yes.

24 Q Did they take any action with regard to that?

25 A Yes. He had another hearing with the personnel committee

1 to review the facts, whatever additions he wanted to add.

2 There were two hearings.

3 Q I think you're confusing the time frame. I'm not talkin  
4 about the two hearings where Mr. Gilmore appeared or the  
5 two sections of the hearing where Mr. Gilmore appeared after  
6 the personnel committee. I'm talking about after those two  
7 hearings, after the personnel committee reached its decision  
8 and told Mr. Gilmore, "We're upholding Mr. Schultz's action  
9 and terminating your employment based on reduction of force."

10 Didn't he come to you after that and tell you he wanted  
11 the Board to rehear the matter and asked you to help him get  
12 another hearing?

13 A I'm confused on time here. He asked me, but I can't  
14 put it in relationship to that, to the time frame. He did  
15 talk to me after the hearings were held, after they were  
16 presented, the results were presented. The Board accepted  
17 the recommendation of the personnel committee.

18 Q And they declined to review that again?

19 A Yes.

20 Q During the May 18, 1977 meeting of the Board of  
21 Trustees, didn't you make a formal request to have Mr.  
22 Schultz put his side of the reasons for his termination of  
23 Mr. Gilmore in writing, have that distributed to the Board?  
24 Do you recall that?

25 A I don't recall that.

1 at those times that Mr. Gilmore was making his statements and  
2 presenting evidence to the personnel committee, that Mr.  
3 Schultz was not present? Are you aware of that fact?

4 A That's correct.

5 Q Were you aware of the fact that at the time that Mr.  
6 Schultz was making statements and presenting evidence to the  
7 committee, that Mr. Gilmore was not present?

8 A That's correct.

9 Q Isn't it true, Mr. Fields, that there is no policy or  
10 practice of the personnel committee which allows the agrieved  
11 employee to confront the person who is responsible for the  
12 action that they are challenging at the hearing?

13 A I'd like to confer with my attorney on this one.

14 Q I'm asking you for your knowledge.

15 A There is precedence. I mean, it has happened before.  
16 There's no policy. There have been confrontations before.  
17 There's no policy that defines whether it can be or not be.  
18 As I stated earlier, the procedures that that committee wants  
19 to use is at the whims of each chairman.

20 Q So, in other words, there's no written policy that  
21 guarantees the employee who's agrieved the right to confront  
22 the person physically at the hearing who has challenged his  
23 conduct?

24 A The answer to that would be yes, but there is a prece-  
25 dent.



1 personnel committee in connection with the hearings of the  
2 termination of Mr. Gilmore's employment?

3 A Okay, the document went to the personnel committee, but  
4 I don't know what time frame. There is a possibility that  
5 it could have went after the hearing, you know. As I  
6 recollect--and you're taking me back quite a few years, okay  
7 --as I recollect, Mr. Gilmore came in and he presented his  
8 case and his documentation. I think that the personnel  
9 committee may have asked him to respond to that.

10 Q There's no policy or practice of the committee that  
11 would require the committee to show Mr. Gilmore the evidence  
12 that Mr. Schultz had presented against him?

13 A No.

14 Q Isn't it also true, Mr. Fields, that there is no provi-  
15 sion in the Personnel Policies Manual or any other written  
16 document or practice of the personnel committee which require  
17 or--I shouldn't say requires--which gives the employee in  
18 such a hearing the right to cross-examine the party whose  
19 action he's challenging?

20 A The word "provision" implies that there is a written  
21 document. I stated earlier there is no written document.  
22 I stated earlier that how the hearing is conducted is at  
23 the whims of each personnel chairman.

24 Q Are you aware that in the hearing of the termination of  
25 Mr. Gilmore's employment that he did not have the opportunity

1 to cross-examine Mr. Schultz?

2 A Yes.

3 Q Other than written policy, was there any practice or  
4 policy of the committee at that time which gave him the  
5 right to do so, that you're aware of?

6 A No.

7 Q Mr. Fields, I believe you testified earlier that you  
8 were the one who gave Mr. Gilmore notice of the hearing;  
9 is that correct?

10 A Well, I don't know if the word is gave, mailed, or  
11 what. I know my responsibility was that he receive--you're  
12 speaking of the notice of the final decision of the committee

13 Q I'm talking about notice of when the hearing would be  
14 held and so forth.

15 A At that time it was a working relationship. I don't  
16 know whether there was correspondence or I went over to  
17 say, The hearing is set up today.

18 Q Do you recall whether or not you informed him of what  
19 the format of the hearing would be?

20 A No.

21 Q You basically told him to show up for the hearing on  
22 "X" day and time?

23 A Right.

24 Q Isn't it true, Mr. Fields, that there is no written  
25 policy or--let me ask you with regard to written policies

Addendum-80

Q In your opinion as personnel administrator, what is the purpose of that requirement?

A It is to basically establish goals, working goals, between employee and supervisor to measure your performance to look at an employee's strength and weaknesses, to set future goals, training needs. The purpose of the evaluation is spelled out in the Personnel Policies.

Q Did it have any particular benefit to the employee to receive the evaluation?

A Yes, if it's used timely and correctly.

Q What would the benefit to the employee be?

A The benefit to the employee would be that he, himself, would be able to at that time, if an evaluation is conducted properly, he would be able to give input into where he was going, what his problem areas would be, to know what his supervisor thinks of him, to be able to maybe say what the deficiencies of the supervisor is.

Q Were you aware that after Mr. Gilmore became fiscal director in 1974 that Mr. Schultz was his immediate supervisor?

A I am, correct, I was aware of it.

Q Were you aware during the years 1974 and 1975, 1976, and for the part of 1977 that Mr. Gilmore was employed that no formal written evaluation was made of his performance Mr. Schultz?

1 A Yes, I'm aware of it. I'm aware of a lot of other  
2 employees that didn't receive that.  
3 Q That didn't receive evaluations?  
4 A Yes.  
5 Q Did you take any action during any of those years to  
6 inquire why an evaluation was not made?  
7 A Yes. We tried to establish a system to get evaluations,  
8 and the agency we have is a social agency, and we still have  
9 that problem. No one wants to criticize anybody else or to  
10 sit down and do that. That's one of the problems of the  
11 agency: we have never been able to get that functional  
12 because the agency--I can't say why, but we've never been  
13 able to get that function.  
14 Q Isn't it true that one of the purposes of an employee  
15 evaluation is so that the employee can become aware if there  
16 are problem areas in his performance and correct those?  
17 A Yes, the evaluation does afford that.  
18 Q To work with supervisory personnel and plan to do that  
19 A Yes, a formal evaluation does that. Our agency operates  
20 mostly on an informal evaluation system, which is not good  
21 especially when you get into matters like these. But there  
22 is a formal evaluation system in our agency that hasn't been  
23 functional. It's better than what it's ever been.  
24 Q Mr. Fields, I notice in the Personnel Policies Manual  
25 there is provision for a number of disciplinary types of

1 A. No, I don't remember that.

2 Q. At the time that Mr. Gilmore made his statement to the  
3 committee, was Mr. Schultz present?

4 A. No, they weren't in the same meeting together.

5 Q. Was that as a result of a decision by the Personnel  
6 Committee that each should appear separately?

7 A. I'm sure it was.

8 Q. At the time of the hearing, before you actually heard  
9 Mr. Gilmore's statement or Mr. Schultz's statement, did you  
10 have an understanding or did you have information about why  
11 Mr. Gilmore's employment had been terminated?

12 A. My understanding up until now is that Mr. Gilmore wasn't  
13 terminated to give somebody else the job. They went to the  
14 computer system.

15 Q. How did that affect Mr. Gilmore's job, as far as you  
16 understood it? Why did that result in Mr. Gilmore losing  
17 his employment?

18 A. Something to do with the accounting system. Community  
19 Action had a large budget and we weren't getting reports as  
20 accurate or on time, and someone in daily operations felt  
21 that, you know, they needed to get to this computer system  
22 in order to get things moving faster. With that kind of an  
23 operation, I guess it gets kind of hard to do something  
24 manually like that.

25 Q. In what way did that affect Mr. Gilmore's

1 That didn't happen.

2 Q That is your understanding?

3 A That's my understanding.

4 Q Did you have any understanding or was there any evidence  
5 presented at the hearing as to whether or not Mr. Gilmore  
6 had been provided any training with respect to the computer  
7 system that the agency was going to put in, or whether or  
8 not such training was available?

9 MR. COOK: I object as to the form. It is a compound  
10 question.

11 THE WITNESS: I don't know if anybody said that or not.

12 Q (By Ms. Collard) You don't recall?

13 A I don't recall that being talked about.

14 Q Do you recall that after Mr. Gilmore made a statement to  
15 the Personnel Committee, Mr. Schultz also made a statement?

16 A Yes.

17 Q Isn't it true that Mr. Gilmore was not present during  
18 the time that Mr. Schultz made his statement?

19 A Neither one was present when we interviewed the other.

20 Q All right. Isn't it true that Mr. Gilmore never had an  
21 opportunity, as far as you know, to hear either by listening  
22 to the tape recording that was made of the hearing, or any  
23 other way, what Mr. Schultz had said at the time that he  
24 talked to the committee?

25 MR. COOK: Objection as to the form of the question.

1 THE WITNESS: The Personnel Committee didn't share  
2 either person's conversation with the other.

3 Q (By Ms. Collarld) So as far as you know, Mr. Gilmore  
4 didn't have an opportunity to hear what Mr. Schultz said  
5 were the reasons why he terminated Mr. Gilmore's employment,  
6 is that correct?

7 A I don't know if he did or not.

8 Q Well, as far as you know, did he?

9 A As far as I know--I don't know what went on when I  
10 wasn't there, so I don't know if he did or not.

11 Q I'm not asking what you don't know; I'm asking what you  
12 do know.

13 A I don't know if he did or not--hear.

14 Q Did he ever hear it in your presence? That is, after  
15 Mr. Schultz made his statement to the committee, did you  
16 ever have Mr. Gilmore come in when you were present and play  
17 back Mr. Schultz's statement?

18 A Not that I recall.

19 Q Do you know whether or not a transcript of Mr. Schultz's  
20 statement was made available to Mr. Gilmore before the  
21 Personnel Committee reached its decision?

22 A I don't know if that transpired or not.

23 Q Did you receive any written documents that you're aware  
24 of from either Mr. Gilmore or Mr. Schultz during the course  
25 of these proceedings?

1 Q You think there was something that he had got before  
2 the hearing but you don't recall what it was?

3 A Yes.

4 Q Do you have any recollection of anything being said  
5 about the format of the hearing in terms of how it would be  
6 conducted or what rights he had in the hearing that was  
7 actually given at the time of the hearing on the 21st?

8 A No, I don't recall.

9 Q Is it the case that at the time that Mr. Gilmore gave  
10 his statement to the committee that Mr. Schultz was not  
11 present?

12 A Yes.

13 Q Why was that? Was there a reason for that?

14 A We requested that.

15 Q Why was that?

16 A I don't recall.

17 Q It was just a decision that the committee made at some  
18 point?

19 A Yes.

20 Q Was this before the hearing?

21 A I don't recall.

22 Q At the time that Mr. Schultz gave his statement to the  
23 committee, is it also true that Mr. Gilmore was not present?

24 A Yes.

25 Q In your meeting on the 22nd when you met to deliberate

98-11114-1000



1 A Yes.

2 Q This transcript seems to indicate that you and Mr.  
3 Geter and Mrs. Benns were present at that meeting, is that  
4 correct?

5 A Yes.

6 Q Do you recall that now?

7 A Yes.

8 Q That they were present?

9 A Yes.

10 Q It seems that the three of you made the decision that  
11 the matter relating to the termination of Mr. Gilmore's  
12 employment should be referred to the board of trustees,  
13 is that correct?

14 MR. COOK: Objection as to form.

15 THE WITNESS: Yes.

16 Q (By Ms. Collard) The minutes do not indicate what  
17 happened as a result of your decision. What action was  
18 taken? Do you, of your own personal knowledge, know what  
19 action was taken?

20 A No.

21 Q Do you know if the matter was ever referred to the  
22 board?

23 A No.

24 Q You don't know if Mr. Geter ever contacted Mrs.  
25 O'Connell about that?

1 A Yes.

2 Q Do you recall when that vote occurred?

3 A No.

4 Q But you recall that it did occur?

5 A Yes.

6 Q So that at some point there was a motion made and  
7 members of the committee voted on that proposition?

8 A Yes.

9 Q You don't recall when it was in relation to this  
10 March 23rd deliberation?

11 A No.

12 Q Who was present at the meeting where the vote was  
13 taken, if you recall?

14 A Just the members of the committee.

15 Q Just you and Ms. Benns and Mr. Geter?

16 A Yes.

17 Q I take it that the other members of the personnel  
18 committee were not present?

19 A No.

20 Q Was that vote formalized in any written fashion that  
21 you're aware of? Does it appear in any document or--

22 A Yes.

23 Q Did that vote take the form of a recommendation to the  
24 board of trustees or just a vote of the committee? What  
25 did it say, do you recall?

it has been a long time ago.

Well, we looked over the records and then we looked over the things that Mr. Schultz had given us as well as Mr. Gilmore.

Q (By Ms. Collard) When you say the things Mr. Schultz had given you, did you include in that this letter of March 22nd?

A Yes, that's what we considered most.

Q That letter?

A Yes.

Q What was your decision based on out of all this?

A That letter.

Q That letter, primarily?

A Yes.

Q . What was there in the letter that you found to be reason or justification for the termination?

A Well, Mr. Schultz telling me different things, and he didn't correct that situation. That was the main thing that I had objection for not keeping Mr. Gilmore.

Q So you felt that Mr. Gilmore was incompetent in some respect; is that what you're saying?

A For that job, yes.

Q That was based on what you read in this letter of March 22nd?

A Yes.

'76, there was problems with it. So it really didn't have anything to do with reorganization.

Q All right. Did he mention anything to you specifically about reorganization?

A Not that I can remember, no.

Q Did he say anything to you about Mr. Gilmore or his performance at that time?

A I believe he asked, you know, questions about my ability and indicated that there was a problem with balancing the books and preparing financial statements to be audited, and indicated that there were problems. He wanted to know if--asked questions if I was capable of assisting in the solution or solving of that problem.

Q Did he refer to Mr. Gilmore specifically in that conversation?

A I can't remember.

Q Did Mr. Schultz indicate that you would be replacing Mr. Gilmore?

A No, not initially, no.

Q Did he at a later time?

A Yes.

Q What did he say in that regard?

MR. COOK: Can we establish when the later time would be?

MS. COLLARD: Yes. When did he say that?

A When I was hired I filled out the group insurance forms and all of that, and I was told what the benefits were in detail, and filled out the application forms.

Q Were you told anything about your rights regarding employee grievances or due process or anything of that nature?

A Right, the personnel policies were referred to.

Q Who gave you that information?

A I can't remember.

Q Did you have an understanding that your rights as an employee at CAP would be covered by the Personnel Policies Manual?

A Yes.

Q What was the basis for that understanding?

MR. COOK: I object to the form of the question.

MS. COLLARD: I'm asking the basis for his--

MR. COOK: Whose basis?

MS. COLLARD: His.

MR. COOK: All right.

THE WITNESS: I was told the personnel policies existed I can't remember--it's a large book. I didn't read them at that time but, you know, I was allowed to if I wanted to, and I assumed that personnel policies--that that was their intent.

2 (By Ms. Collard) Now, after you were interviewed by

Mr. Schultz, were other people interviewed for the position, as far as you know?

A I couldn't answer that.

Q How long after the interview were you hired?

A Maybe a week, two, something like that.

Q When did you actually start working at CAP?

A March 1st.

Q Did you actually start working that day?

A I believe so.

Q Were you hired to begin working March 1st at an earlier time?

A No, March 1st.

Q Were you notified that you had been chosen for the position the same day that you first started working there?

A No, I was notified a little bit in advance.

Q A week or how far?

A The whole period of time wasn't more than two weeks, if my memory serves me right. So it was less than two weeks.

Q When you went to work on March 1st--this would be 1977?

A Yes.

Q What was your salary, your starting salary?

A \$1,018 a month.

Q Was that gross or net?

A Gross.

Q Can you tell me, when you worked at Christensen Diamond

MR. COOK: Restate the question so I understand it.

Q (By Ms. Collard) Following the orientation, was there somebody that showed you what to do or showed you the accounting system at CAP, as it existed then?

A Yes, many individuals did.

Q Was there any one individual primarily responsible for that?

A No, not one individual.

Q Did Mr. Gilmore assist you in that?

A Yes, he did a little.

Q What did he do?

A The orientation, as far as the accounting system goes, lasted for quite a while.

Q Who conducted that?

A A number of people did.

Q Could you tell me their names?

A Just basically by investigation on my part and asking questions in the different areas. As I, you know, digested one part, I went to another part.

Q Did someone direct your inquiries?

A Yes, Hal Schultz did.

Q Now, did Mr. Schultz or Mr. Johnson have any background in accounting?

MR. COOK: If you know.

THE WITNESS: Not that I know of. I mean, I don't know.

Q (By Ms. Collard) Did they instruct you in accounting procedures or--

A No.

Q Who did that?

A They instructed me in the fiscal reporting requirements of the grantees. I didn't really obtain any accounting instructions. I felt that I was an accountant.

Q Did somebody show you how the books were set up?

A Yes, a number of people did.

Q Could you give me their names?

A Just by asking questions, probably Walt Gilmore,  
Dotty Jackson.

Q Who is Dotty Jackson?

A She is an accounting clerk.

Q An accounting clerk?

A Yes.

Q Anybody else?

A Not that I can remember. Nothing specific. I asked a number of program directors questions about their programs.

Q Yes.

A But as far as the books, how they were set up--I talked with the auditors that were there.

Q And who would that have been?

A Joe Pacheco.

Q And he was there on March 1st when you started?



A No, not on March 1st, but I met with him within the first month a number of times.

Q Was Mr. Gilmore present at any of those meetings?

A I can't remember.

Q All right. Were you familiar where Mr. Gilmore's desk was located in the CAP office when you came to work there?

A Yes.

Q Did you take over his desk when he left?

MR. COOK: What do you mean when he left? Left during the day or--

MS. COLLARD: When he was terminated.

THE WITNESS. Yes, I did. I was--we shared an office and I was sitting at a table in one room. It had a desk and a table.

(By Ms. Collard) When he left, you took over his desk?

Yes.

Were you ever given a written job description?

Yes, I was.

When was that?

When I first started.

Was that in the initial interview or the orientation or

I believe so. Not the initial one--not the initial

interview. It may have been in the orientation.

What was your job title?

1 A Accounting supervisor.

2 Q Who gave you the job description, if you recall?

3 A I can't remember but I just assumed it would be--

4 MR. COOK. Don't assume. If you can't recall, you can't

5 recall.

6 MS. COLLARD: Yes, if you can't recall, just so state.

7 THE WITNESS. I can't remember.

8 MR. COOK: Let's go off the record.

9 (Whereupon, an off-the-record discussion was held.)

10 Q (By Ms. Collard) Mr. Parara, at the time that you

11 were hired, you stated that Mr. Schultz told you there were

12 some problems in the accounting department, is that correct?

13 A Yes.

14 Q Then you say you kind of conducted your investigation

15 to see what shape the books were in and so forth, is that

16 right?

17 A Yes.

18 Q- Did you discover any problems?

19 A Yes.

20 Q Could you describe what you found?

21 A The books were set up with basically two ledgers. One

22 of the ledgers was out of balance. The accounts were not

23 reconciled.

24 Q Let me stop you there for just a second. I don't mean

25 to cut you off and you're entitled to go on. I just wanted

1 Q Did you have any assistance in locating those?

2 A Yes.

3 Q Who did you turn to for assistance?

4 A Well, the people mentioned before, Ekstrom, Gilmore,

5 Schultz. There were a number of other things. The

6 accounting system was cumbersome, just in general.

7 Q In comparison to what other kind of system?

8 A Just the flow of the entries, the entries that were

9 being made. There were obvious problems in preparing

10 balanced financial statements and some of the types of

11 entries that were being made, while not incorrect, did not

12 facilitate being easily understood.

13 In other words, it wasn't as simple as it could have

14 been and it may be--because it was complicated they have

15 caused some of the difficulties in balancing.

16 Q You're saying it wasn't as streamline as it might

17 have been?

18 A Right.

19 Q And there were procedures that could have been im-

20 plemented to make it more simple or understandable?

21 A Yes.

22 Q Was the general ledger on the computer at the time,

23 March 1 of 1977?

24 A No. There was a Burroughs accounting machine, which is

25 a large mechanical accounting machine, rather than an

1 A Yes

2 Q All right Did you make monthly financial reports  
3 to the board of directors after you were employed on  
4 March 1, 1977?

5 A Yes

6 Q When did you begin making those reports?

7 A I can't remember when.

8 Q Did you make a report the first month you got there?

9 A The first month I got there I was involved in the  
10 preparation, just the adding up of the report for the month  
11 of February, which I did under Mr. Gilmore's instruction  
12 and assistance.

13 Q Was that report provided to the board, as far as you  
14 know?

15 A Was that report provided to the board?

16 Q Yes.

17 A Yes, it was. I believe it was.

18 Q Were you responsible totally for the preparation of  
19 that report?

20 A No, not at all. The first report--I was just learning  
21 and I--

22 Q And you were under Mr. Gilmore's supervision at that  
23 time?

24 A The first report, if I remember right, all I did,  
25 basically, was just add up and balance.

1 assuming as a result of the termination of Mr. Gilmore's  
2 employment?

3 MR. COOK: If any.

4 THE WITNESS: I wouldn't be assuming any more than the  
5 accounting supervisor position. We talked about that.

6 Q (By Ms. Collard) After Mr. Gilmore's employment was  
7 terminated and he left CAP, were you responsible for  
8 organizing and supervising the work of other accounts or  
9 accounting clerks in the department?

10 A Yes.

11 MR. COOK: Excuse me, I'm going to have to object to  
12 the form of the question. I mean, you're talking about the  
13 time from when Mr. Gilmore left up to the present. That's  
14 a pretty substantial period of time. Which period of time  
15 are you talking about?

16 MS. COLLARD: I'm just talking about, after Mr. Gilmore  
17 left, did he have that responsibility?

18 MR. COOK: Yes, but when?

19 MS. COLLARD: From then to the present.

20 MR. COOK: Are you saying then, from March 17, to the  
21 present time?

22 MS. COLLARD: I'm not going to pin it down to a  
23 specific date. I'm just saying, after he didn't show up for  
24 work anymore and his employment was terminated, was that a  
25 responsibility that you assumed?

1 MR. COOK: Before you answer, Gary, I want to know  
2 whether she is talking about at or near the time of his  
3 termination or anytime up to the present?

4 MS. COLLARD: From the time of Mr. Gilmore's termination  
5 to the present, yes.

6 MR. COOK: Well, I will have to object to the form of  
7 the question, then.

8 MS. COLLARD: Well, I want to know what responsibilities  
9 he has assumed.

10 MR. COOK: Well, I think you can inquire into that in  
11 a proper way.

12 MS. COLLARD: That is what I'm inquiring into.

13 Well, your objection will be noted. What is your  
14 answer?

15 THE WITNESS: On what? What my responsibilities--

16 Q (By Ms. Collard) I asked you, since Mr. Gilmore's  
17 termination, have you assumed responsibility to organize and  
18 supervise the work of other accounts or accounting clerks  
19 in the department?

20 A Yes. I was supervising the other people in the  
21 accounting department after Mr. Gilmore left.

22 Q Right. And have you also had the responsibility of  
23 evaluating their performance?

24 A Yes.

25 Q Have you been responsible for preparing annual

1 evaluations of their work?

2 A Yes.

3 Q Have you done that?

4 A Yes.

5 Q Since Mr. Gilmore's employment was terminated until  
6 the present, have you been responsible for the preparation  
7 and analysis and reconciliation of the agencies' financial  
8 statements?

9 A Other than the outside audits? Preparation,  
10 reconciliation--analysis is a very general term, and  
11 reconciliation is a form of analysis.

12 Q Since Mr. Gilmore's employment was terminated, from  
13 that time to the present day, have you been responsible for  
14 preparing monthly financial reports or statements to the  
15 board of trustees?

16 A I'm sorry, could you ask that again?

17 Q Sure. I said, after Mr. Gilmore's employment was  
18 terminated, from that point until the present, have you been  
19 responsible for preparing monthly financial reports or  
20 statements to the board of trustees when such reports have  
21 been required?

22 A Yes, that is a long period of time. Again, I prepared  
23 them for Mr. Schultz.

24 Q Yes, and these were the reports that were submitted to  
25 the board of trustees also?

1 A Yes.

2 Q And these were monthly reports?

3 A Yes.

4 Q Have you also been responsible for the ~~appropriation~~ *preparation*  
5 of financial reports, when required, to the Community  
6 Services Administration and HEW?

7 A Yes.

8 Q All right. Since the time of Mr. Gilmore's termination  
9 and from that time until the present day, have you been  
10 responsible for overseeing the internal audit of delegate  
11 agencies?

12 A We really don't have internal audits of delegate  
13 agencies to a very large degree.

14 Q When you put together a general audit of all the  
15 various neighborhood centers that make up the Community  
16 Action Program, do you supervise kind of their auditing  
17 procedures for the neighborhood centers and so forth?

18 A There may be a misunderstanding of the term delegate.  
19 The neighborhoods are not delegates. Neighborhoods are  
20 CAP. I mean, CAP pays all their bills, all their payroll.  
21 That is not a delegate situation.

22 A delegate situation is a subcontracting situation  
23 where you actually subcontract funds to another agency and  
24 they do their own paying of bills and payroll.

25 So, when you asked the first question about the



1 delegates, there could be a misunderstanding.

2 Q I appreciate that clarification. I understand what

3 you mean now. With respect to agencies or organizations

4 at CAP, subcontracts where they provide an accounting to

5 you, do you review that? Is that your responsibility?

6 If CAP is paying them money under contract, do you review

7 the audits that they submit to you?

8 A The audits that they submit are prepared by

9 Certified Public Accountants and I do review those audit

10 reports. But they are prepared by a C.P.A. and so pro-

11 fessional standards assume that those are proper statements.

12 Q You rely on their statements?

13 A Yes, that's right.

14 Q What about with respect to the neighborhood centers?

15 Do you review their accounting procedures?

16 A Again, neighborhood centers don't have accounting

17 procedures as neighborhood centers. They are CAP. CAP has

18 accounting procedures.

19 Q But they're sub parts of CAP, right?

20 A Not really. Not the way that I look at them. I mean,


21 they are separate budget centers.

22 Q All right, that's fine.

23 A That's the only distinction. They are ~~responsible~~

24 centers.

25 Q Do you have overall responsibility to review and see

*responsibility* 

1 that their budgets are kept in a certain way?

2 A As far as the budgets go, yes. I receive the budget  
3 documentation from the funding sources and set those up  
4 in the chart of accounts and then money for expenses against--  
5 actually, I don't really monitor, I just match the expenses  
6 to the budget and prepare financial statements that show  
7 budget--

8 Q Since the time of the termination of Mr. Gilmore's  
9 employment until the present, have you been responsible for  
10 supervising the receipts and processing of financial records  
11 and documents?

12 A Would you please state that again?

13 Q Since the time of the termination of Mr. Gilmore's  
14 employment to the present time, have you been responsible  
15 for supervising the receipt and processing of financial  
16 records and documents for the agency?

17 A I still don't understand the question.

18 Q Well, what I'm asking you is, when financial information  
19 comes into the agency in terms of either contracts--I mean,  
20 what I'm asking you, do you have overall responsibility for  
21 the financial--at least in terms of the accounting for  
22 financial matters?

23 A Financial reporting, yes.

24 Q Do you have responsibility for setting up procedures  
25 on new accounts?

1 A Yes.

2 Q Is that a responsibility you have assumed since the  
3 termination of Mr. Gilmore's employment? Have you done  
4 that on a regular basis?

5 MR. COOK: That's a compound question.

6 MS. COLLARD: All right, just answer the first part.

7 MR. COOK: Let's make sure what the first part is.

8 MS. COLLARD: I asked him if he had any responsibility  
9 for setting up new accounts and I think he stated he did.  
10 All I'm asking is if that is a responsibility he has  
11 engaged in on a regular basis since the termination of  
12 Mr. Gilmore's employment.

13 THE WITNESS: For the first six months or so, after  
14 my hearing, I was involved in most of these areas that you  
15 have asked me about, but I was under the direction of  
16 Mr. Schultz. I was new and I was learning. I deferred all  
17 those questions to him for his approval, suggestions.

18 Q (By Ms. Collard) Do you do that now?

19 A Not in all cases. The reports speak for themselves.

20 Q This would be sort of during the period you were  
21 breaking into the job, is that right?

22 MR. COOK: I will object to the form of the question.

23 MS. COLLARD: You can answer.

24 MR. COOK: You may answer.

25 THE WITNESS: Answer what?

1 MR. COOK: You can answer the question.

2 THE WITNESS: I just didn't have total responsibility  
3 at the beginning. I was, you know, more directly res-  
4 ponsible to Hal Schultz for guidance in that area.

5 Q (By Ms. Collard) But now you have learned how to do  
6 those procedures. I assume?

7 A Yes, and I also ~~have~~ <sup>have</sup> been given more responsibilities  
8 in that area.

9 Q So now you have assumed primary responsibility for  
10 those, is that correct?

11 A Yes.

12 Q Since the time that Mr. Gilmore's employment was  
13 terminated, from that time until the present date, have you  
14 had responsibility for preparing budget and cost analyses?

15 A Reports, yes.

16 Q Are you responsible for maintaining the general ledger  
17 and subsidiary ledgers?

18 A Yes.

19 Q Is that a responsibility that you have assumed since  
20 the termination of Mr. Gilmore's employment?

21 A Yes.

22 Q Do you have responsibility to approve and control  
23 journal entries?

24 A Yes.

25 Q Is that a responsibility that you have assumed since

1 the termination of Mr. Gilmore's employment?

2 A Again, just about everything I did in the beginning,  
3 the first six months, I referred and sought approval of  
4 Mr. Schultz.

5 Q I understand that. That is now something you're  
6 primarily responsible for?

7 A Yes, right.

8 Q Are you responsible for maintaining special fund  
9 records?

10 A Yes.

11 Q When called upon, are you responsible to interpret  
12 financial and budgetary information for the agency?

13 A Yes.

14 Q Do you have a responsibility to consult with and give  
15 advice to management and to neighborhood components  
16 regarding accounting procedures and so forth?

17 A Yes.

18 Q Do you have any other responsibilities that I have not  
19 enumerated?

20 MR. COOK: Today? You're speaking of today?

21 MS. COLLARD: Yes.

22 THE WITNESS: No, not that I can think of. You have  
23 named so many. It seems like you have covered them.

24 Q (By Ms. Collard) Have you had occasion to prepare or  
25 at least do the preparatory work on annual audits for the

1 Q Has it been a percentage rate?

2 A Yes.

3 Q Can you tell me what the percentage was?

4 A Overall, I couldn't.

5 Q Has it been on a yearly basis, anniversary-type raise?

6 A I was on a six-month probation at the beginning and I  
7 received a ten percent raise at the end of that six months.

8 Q Have you received any raises since that time?

9 A Yes, and then a year later I received five percent.

10 Q Have you received any raises since that time?

11 A Let's see--

12 Q There was a general cost-of-living increase three  
13 months after that for five percent in addition to the other  
14 five percent?

15 A No, that was three months later. So, I mean, it would  
16 be five percent on top of--

17 Q Let me just see if I understand what you said. First  
18 you were making--when you started, you were making \$1,018.

19 A Yes.

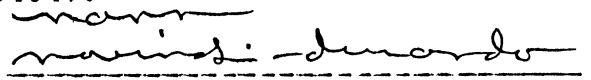
20 Q Then you were on probation for six months and at the  
21 end of that six months you received a ten-percent increase  
22 over what you originally received.

23 A Right.

24 Q And then after a year had gone by after that, you  
25 received another five-percent increase, and then three months

CERTIFICATE OF SERVICE

I hereby certify that on November 16, 1987, I mailed by first class mail, postage prepaid, four copies of the Brief of Plaintiff/Appellant together with this Certificate to John K. Rice and Stephen W. Cook, Cook & Wilde, P.C., Attorneys for Defendants, at Suite 490, 6925 Union Park Center, Salt Lake City, Utah 84047.

  
\_\_\_\_\_

Nann Novinski-Durando  
Attorney for Plaintiff/Appellant