

1990

# Brian L. Weese v. The Davis County Commission : Unknown

Utah Supreme Court

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## Recommended Citation

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BRIEF

900374

ET NO.

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FILED

AUG 24 1990

Clerk, Supreme Court, Utah

IN THE UTAH SUPREME COURT

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BRIAN L. WEESE, et al.,	:	
Plaintiffs,	:	
	:	
	:	DOCKETING STATEMENT
	:	
vs.	:	UTAH SUPREME COURT NO.
	:	900374
THE DAVIS COUNTY COMMISSION,	:	
Defendants.	:	CIVIL NO. 44148
	:	

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1. JUDGMENT OR ORDER APPEALED FROM; DATES AND TRIAL COURT.

Appeal is taken of a Summary Judgment entered on June 1, 1990 in the Second District Court in Davis County dismissing Plaintiffs'/Appellants' claims.

A Motion for Enlargement of Time to File Appeal was granted under Rule URCP and an Order entered on July 2, 1990. Notice of Appeal was filed on July 30, 1990.

2. JURISDICTION.

The Utah Supreme Court has jurisdiction in this matter pursuant to § 78-2-2(3)(i) of Utah Code Annotated 1953, as amended.

### 3. STATEMENT OF FACTS.

Plaintiffs were employees of Davis County during 1987 and 1988.

During 1987, Davis County maintained a policy of awarding a 3.45% merit pay increase to any employee who received a satisfactory rating on the prior year's performance.

Each employee had a separate employment year which began on the anniversary of his or her hiring date.

Beginning in January 1988, the County rescinded its merit increase offer and refused to grant merit increases at the completion of the 1987 employment years. All employees were paid a one-time bonus. Plaintiffs filed suit on September 8, 1988 claiming that 1) Plaintiffs' successful performance during their 1987 tax years was in acceptance of the County's offer for a merit increase made at the commencement of the 1987 tax years and created a binding contract, and 2) the County should be equitably estopped from denying the merit increases for the 1987 employment years.

On June 1, 1990, the court entered Summary Judgment dismissing Plaintiffs' claims. The court ruled that no contract existed between Plaintiffs and the County, that Plaintiffs had no vested rights in the salary increases and that Plaintiffs "could have no reasonable reliance" on the merit increase offer to support a claim of equitable estoppel.

The court based its ruling on a written provision in the County policies and procedures stating:

No contract exists between Davis county and its employees with respect to salary ranges, movement within salary ranges, or employee benefits or other aspects of employment. These may change as a result of Salary surveys, job analysis, availability of funds, job performance or changes in County policies and procedures.

4. ISSUES FOR REVIEW.

Appellants raise these issues:

A. Did Plaintiffs' commencement of work in 1987 under the promise of a 3.45% merit increase upon successful completion of the 1987 employment year render the promise irrevocable?

B. Did Plaintiffs' successful performance during 1987 entitle them to the 3.45% merit increase as a matter of contract?

C. Was Davis County equitably estopped from denying merit increases to employees who successfully completed the 1987 employment years?

D. Could Davis County avoid its promises of a merit increase for 1987 by invoking the language from its policies and procedures that no contract exists "with respect to salary ranges, movement within salary ranges, or employee benefits or other aspects of employment"?

5. STANDARD FOR REVIEW:

Appellants claim errors of law. Therefore, the appropriate standard is for reversal of the summary judgment upon a finding of any material error of law.

6. DETERMINATIVE LAW:

Appellants will rely on these legal authorities:

Thatcher v. Wasatch Chemical Company,  
507 P.2d 365 (Utah 1973);

Scoville v. Kellogg Sales Company,  
261 P.2d 933 (Utah 1953);

Berube v. Fashion Center, Ltd.,  
771 P.2d 1033 (Utah 1989);

Ellis v. Utah State Retirement Board,  
770 P.2d 93 (Utah App. 1988);

Newcomb v. Ogden City Public School Teachers' Retirement Commission,  
243 P.2d 941 (Utah 1952).

7. RELATED APPEALS:

There are no related or prior appeals.

8. ATTACHMENTS:

- A. Judgment
- B. Findings of Fact and Conclusions of Law
- C. Ex Parte Motion for Enlargement of Time to Appeal and Order
- D. Notice of Appeal

Respectfully submitted this 23<sup>rd</sup> day of August, 1990.

  
\_\_\_\_\_  
JACK C. HELGENSEN  
Attorney for Appellants

FILED IN CLERK'S OFFICE  
DAVIS COUNTY UTAH

JUN 1 3 47 PM '90

CLERK DISTRICT COURT

BY \_\_\_\_\_

MELVIN C. WILSON - 3513  
Davis County Attorney  
GERALD E. HESS - 1475  
Chief Civil Deputy  
Davis County Attorney's Office  
P.O. Box 618  
Farmington UT 84025  
Tel: 451-3227

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IN THE SECOND JUDICIAL DISTRICT COURT OF DAVIS COUNTY  
STATE OF UTAH

---

BRIAN L. WEESE, et al., :  
Plaintiffs, : JUDGMENT  
vs. :  
THE DAVIS COUNTY COMMISSION, : Civil No. 44148  
Defendant(s). :

---

Plaintiffs and Defendants each having filed a Motion for Summary Judgment together with supporting memoranda of Points and Authorities pursuant to Rule 56 of the Utah Rules of Civil Procedure and in accordance with Rule 4-501 of the Rules of Judicial Administration and the Court having made and entered its Findings of Fact and Conclusions of Law;

NOW, THEREFORE, it is hereby ordered, adjudged and decreed as follows:

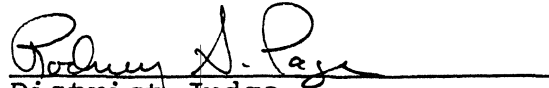
1. Plaintiffs' Complaint in its entirety is hereby dismissed with prejudice.
2. Each of the parties hereto is to bear its or their

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own attorney's fees and court costs.

DATED this 30<sup>th</sup> day of May, 1990.

BY THE COURT:


  
District Judge

**CERTIFICATE OF MAILING**

I hereby certify that I mailed a true and correct copy of the foregoing Judgment to:

Jack C. Helgesen  
Attorney for Plaintiffs  
American First Building  
4768 Harrison Boulevard  
Ogden UT 84403

with postage prepaid, this 18 day of May, 1990.

  
Secretary

MELVIN C. WILSON - 3513  
Davis County Attorney  
GERALD E. HESS - 1475  
Chief Civil Deputy  
Davis County Attorney's Office  
P.O. Box 618  
Farmington UT 84025  
Tel: 451-3227

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IN THE SECOND JUDICIAL DISTRICT COURT OF DAVIS COUNTY  
STATE OF UTAH

---

BRIAN L. WEESE, et al., :  
Plaintiffs, : FINDINGS OF FACT AND  
vs. : CONCLUSIONS OF LAW  
THE DAVIS COUNTY COMMISSION, : Civil No. 44148  
Defendant(s). :

---

Plaintiffs and Defendants each having filed a Motion for Summary Judgment together with supporting memoranda of Points and Authorities pursuant to Rule 56 of the Utah Rules of Civil Procedure and in accordance with Rule 4-501 of the Rules of Judicial Administration and the Court being fully advised in the premises now makes and enters the following:

**FINDINGS OF FACT:**

1. Davis County Policies and Procedure No. 050 states in part the following:

No contract exists between Davis County and its employees with respect to salary ranges, movement within salary ranges, or employee

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benefits or any other aspects of employment. These may change as a result of salary surveys, job analysis, availability of funds, job performance or changes in County Policies and Procedures.

The foregoing has also appeared on any job announcements issued by Davis County for several years.

2. Only Plaintiffs Weese and Bremer actually signed a written appraisal plan on or near their employment anniversary dates in 1987. All other Plaintiffs signed the Davis County Employee Performance Appraisal Plan in 1988 after the County Commission had adopted the 1988 compensation plan and at the end of the performance appraisal period.

3. In December of each year, the Davis County Commission, as the legislative body of the County, adopts its annual budget for the next following calendar year which includes the compensation package for all County employees. While the County Commission receives input from employees, it does not bargain with nor negotiate a compensation package with employees but simply adopts it as a part of the annual budget.

4. The compensation plan adopted by the Davis County Commission for 1987 applied to all Davis County employees, including Plaintiffs, and was accepted by all County employees, including Plaintiffs. It consisted of a 2% cost of living increase effective 12-28-86 and a 3.45% merit increase on the anniversary date of hire for those who qualified, which merit increase was effective at the beginning of the pay period in which it occurs, rather than the pay period following the occurrence of the merit

increase.

5. In January 1988, the Davis County Commission implemented the 1988 budget which included a freezing of all merit increases and payment of a one-time lump sum amount to all employees paid on the anniversary date of hire of each employee and also based upon the number of hours per week each employee worked. All employees, including Plaintiffs, accepted the compensation package adopted by the County Commission.

6. In January 1989, the Davis County Commission implemented the 1989 program for all Davis County employees which includes an automatic 1.5% cost of living increase, together with a 1.5% increase based on merit which becomes effective on the anniversary date of each employee, including the Plaintiffs. In addition, the payment plan adopted consists of an additional 1.5% - 3% lump sum payment based upon the performance appraisal achieved by employees, including Plaintiffs. Also, the payment plan adopted by Davis County pays 85% of all health and dental insurance.

7. Plaintiffs have accepted each of the payment plans adopted by the Davis County Commission for each year they have been employed by Davis County.

#### CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Court now makes and enters its Conclusions of Law:

1. No contract existed between Davis County and Plaintiffs.

2. Plaintiffs had no vested rights to salary increases

and the Davis County Commission, acting in its legislative capacity, had the power to freeze all merit increases during 1988, treating all employees, including Plaintiffs, alike.

3. Plaintiffs could have no reasonable reliance on continued payments so as to create an estoppel of Defendants from modifying said pay increases.

DATED this 30<sup>th</sup> day of May, 1990.

BY THE COURT:

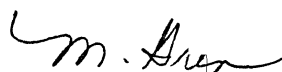
  
\_\_\_\_\_  
District Judge

**CERTIFICATE OF MAILING**

I hereby certify that I mailed a true and correct copy of the foregoing Findings of Fact and Conclusions of Law to:

Jack C. Helgesen  
Attorney for Plaintiffs  
American First Building  
4768 Harrison Boulevard  
Ogden UT 84403

with postage prepaid, this 18 day of May, 1990.

  
\_\_\_\_\_  
Secretary

JACK C. HELGESEN, #1451  
LYON, HELGESEN, WATERFALL & JONES, P.C.  
Attorney for Plaintiffs  
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Telephone: (801) 479-4777

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DAVIS COUNTY, UTAH  
JUL 2 4 29 PM '90  
CLERK, DISTRICT COURT  
BY     No    

IN THE SECOND JUDICIAL DISTRICT COURT OF DAVIS COUNTY  
STATE OF UTAH

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BRIAN L. WEESE, et al.,	:	
	:	
Plaintiffs,	:	EX PARTE MOTION FOR EXTENTION
	:	OF TIME TO APPEAL,
vs.	:	MEMORANDUM AND ORDER
	:	
THE DAVIS COUNTY COMMISSION,	:	CIVIL NO. 44148
	:	
Defendants.	:	

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MOTION

Plaintiffs hereby move this court for an order allowing an extension of thirty (30) days to appeal the Summary Judgment entered on June 1, 1990.

Plaintiffs need more time to simplify or resolve the matter with the Defendants. Defendants' attorney, Gerald Hess, is out of town until July 7, 1990.

MEMORANDUM

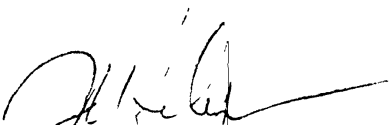
Rule 4(e) of the Utah Rules of Appellate Procedure allows the trial court, for good cause, to order a thirty (30) day extension of time to appeal. This may be on an ex-parte

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motion if filed before the expiration or original thirty (30) day period for appeals.

Summary Judgment was docketed in this court on June 1, 1990.

Respectfully submitted this 2<sup>nd</sup>  
day of ~~June~~<sup>July</sup>, 1990.

  
\_\_\_\_\_  
JACK C. HELGESEN  
Attorney for Plaintiffs

ORDER

Plaintiffs' Ex-Parte Motion is granted and Plaintiffs' time for appeal is extended thirty days in accordance with Rule 4 of the Utah Rules of Appellate Procedure.

DATED this 2<sup>nd</sup> day of ~~June~~<sup>July</sup>, 1990.

  
\_\_\_\_\_  
DISTRICT JUDGE

JACK C. HELGESEN, #1451  
LYON, HELGESEN, WATERFALL & JONES, P.C.  
Attorney for Plaintiffs  
4768 Harrison Boulevard  
Ogden, Utah 84403  
Telephone: (801) 479-4777

IN THE SECOND JUDICIAL DISTRICT COURT OF DAVIS COUNTY  
STATE OF UTAH

---

BRIAN L. WEESE, et al.,	:	
	:	
Plaintiffs,	:	NOTICE OF APPEAL
	:	
vs.	:	
	:	
THE DAVIS COUNTY COMMISSION,	:	CIVIL NO. 44148
	:	
Defendants.	:	

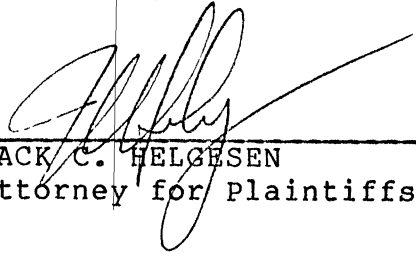
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NOTICE IS HEREBY GIVEN that Plaintiffs appeal to the Utah Supreme Court the entire Summary Judgment entered in this court on June 1, 1990.

This appeal is taken from the entire judgment. A thirty-day enlargement of time to appeal was previously granted in accordance with Rule 4(e) of the Utah Rules of Appellate Procedure.

DATED this 30<sup>th</sup> day of July, 1990.

LYON, HELGESEN, WATERFALL & JONES




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JACK C. HELGESEN  
Attorney for Plaintiffs