

1993

Kelly Sorenson v. Kennecott-Utah Copper Corporation, A Delaware Corporation : Addendum to Brief of Appellee

Utah Court of Appeals

Follow this and additional works at: 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.

Reid C. Davis; Stephen W. Cook; Cook and Davis.

Barbara Polich; Kenneth R. Wallentine; Parsons Behle and Latimer.

Recommended Citation

Brief of Appellee, *Kelly Sorenson v. Kennecott-Utah Copper Corporation*, No. 930126 (Utah Court of Appeals, 1993).
https://digitalcommons.law.byu.edu/byu_ca1/3997

This Brief of Appellee 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. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

UTAH COURT OF APPEALS
BRIEF

UTAH
DOCUMENT
KFU

50

.A10

DOCKET NO. 930126

IN THE UTAH COURT OF APPEALS

KELLY SORENSON,	)	No. 930126
)	
Plaintiff/Appellant,	)	Priority No. 15
)	
vs.	)	Appeal from Order and
	)	Judgment of Dismissal of
KENNECOTT-UTAH COPPER	)	The Third Judicial
CORPORATION, a Delaware	)	District Court, Salt Lake
corporation,	)	County, State of Utah
)	
Defendant/Appellee.	)	Honorable Scott Daniels
)	

ADDENDUM TO BRIEF OF APPELLEE

REID C. DAVIS, USB #4475
STEPHEN W. COOK, USB #0720
COOK & DAVIS
Attorneys for Appellant
323 South 600 East
Suite 200
Salt Lake City, UT 84102
Telephone: (801) 595-8600

BARBARA POLICH, USB #2620
KENNETH R. WALLENTINE, USB #5817
PARSONS BEHLE & LATIMER
Attorneys for Appellee
201 South Main Street
Suite 1800
P.O. Box 11898
Salt Lake City, UT 84147-0898
Telephone: (801) 524-1234

FILED

Utah Court of Appeals

MAR 5 1993


Mary T. Noonan
Clerk of the Court

IN THE UTAH COURT OF APPEALS

KELLY SORENSON,	)	No. 930126
)	
Plaintiff/Appellant,	)	Priority No. 15
)	
vs.	)	Appeal from Order and
	)	Judgment of Dismissal of
KENNECOTT-UTAH COPPER	)	The Third Judicial
CORPORATION, a Delaware	)	District Court, Salt Lake
corporation,	)	County, State of Utah
)	
Defendant/Appellee.	)	Honorable Scott Daniels
)	

ADDENDUM TO BRIEF OF APPELLEE

REID C. DAVIS, USB #4475
STEPHEN W. COOK, USB #0720
COOK & DAVIS
Attorneys for Appellant
323 South 600 East
Suite 200
Salt Lake City, UT 84102
Telephone: (801) 595-8600

BARBARA POLICH, USB #2620
KENNETH R. WALLENTINE, USB #5817
PARSONS BEHLE & LATIMER
Attorneys for Appellee
201 South Main Street
Suite 1800
P.O. Box 11898
Salt Lake City, UT 84147-0898
Telephone: (801) 521-1234

Decision of the District Court

APR 2 1992

BARBARA K. POLICH (2620)
 T. PATRICK CASEY (0591)
 of and for
 PARSONS BEHLE & LATIMER
 Attorneys for Defendant
 201 South Main Street, Suite 1800
 P.O. Box 11898
 Salt Lake City, Utah 84147-0898
 Telephone: (801) 532-1234

SALT LAKE COUNTY
 By K. Polich
 Deputy Clerk

IN-THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

* * * * *

KELLY SORENSON,)	
	)	ORDER AND JUDGMENT OF
Plaintiff,	)	DISMISSAL.
)	
vs.)	
)	
KENNECOTT UTAH COPPER)	
CORPORATION, a Delaware	)	Civil No.} 890905608
corporation,	)	Judge Scott Daniels
)	
Defendant.)	

* * * * *

This matter came before the court on March 10, 1992, the Honorable Scott Daniels presiding, on defendant's Motion for Involuntary Dismissal dated and filed herein February 28, 1992. Plaintiff was represented by his counsel, Stephen W. Cook and Reid C. Davis of and for Cook & Davis, and defendant was represented by its counsel, Barbara K. Polich and T. Patrick Casey of and for Parsons Behle & Latimer. Plaintiff completed the presentation of his evidence at the trial herein on January 27 through 30, 1992, and defendant properly moved the Court for involuntary dismissal of this action pursuant to Rule 41(b) of the Utah Rules

of Civil Procedure. Having fully heard and considered the evidence presented to the Court and the arguments of counsel herein and being fully advised in this matter, the Court hereby enters the following:

FINDINGS OF FACT

1. Based upon the evidence presented thus far, the Court would find as follows:

(a) that at the time the plaintiff was hired by Kennecott, there was no particular discussion as to whether he would be an at-will employee or whether he could be terminated for cause only, whether he was employed for any particular term, or whether he was entitled to any kind of progressive discipline.

(b) that a policy of progressive discipline had been in place at the Kennecott plant for some time; it was required by contract for the union represented employees and it was applied in a much less formal manner to management employees, but for the most part, progressive discipline was practiced just as a matter of good management.

(c) that, although there is some evidence to the contrary, during the course of plaintiff's employment, his performance was good.

(d) that when plaintiff was assigned to the Bonneville Concentrator, there were significant maintenance problems there due to the fact that there had been a considerable amount of deferred maintenance as a result of shut-down, and it

was necessary to try to keep production levels up, and at the same time catch up on the deferred maintenance; that was a difficult thing to do and there were significant problems.

(e) that there were also problems with scheduled time off and a number of things which made plaintiff's success at the Bonneville Concentrator quite difficult.

(f) that, although plaintiff made sufficient or significant improvements in the condition of the Bonneville Concentrator ~~while he was there~~ and some of the maintenance was caught up and production levels were for the most part maintained, his performance was clearly ~~not~~ satisfactory to management for one reason or another, and he was terminated for that reason.

2. Based upon the evidence presented, the Court finds that plaintiff has failed to meet his burden of proof that there existed a contract between Kennecott and the plaintiff for either continued employment or for progressive discipline.

3. Based upon the evidence presented, the Court also finds that, although progressive discipline was being practiced, it was never part of a contract.

4. The Court does not find either Exhibit 1 (the General Rules of Conduct dated July 1, 1973), the seminars, or any of the subsequent documents to be sufficient evidence to convince the Court that there was ever an implied-in-fact contract between plaintiff and Kennecott.

CONCLUSIONS OF LAW:

1. The presumption is that plaintiff was an employee at-will and that presumption has not been rebutted.

2. Based upon that presumption and plaintiff's failure to prove the existence of an implied-in-fact contract of employment, Kennecott management had the right to terminate plaintiff at its discretion.


ORDER

Based upon the foregoing findings of fact and conclusion of law, and good cause appearing,


IT IS HEREBY ORDERED AND ADJUDGED that the above-entitled action be, and hereby is dismissed with prejudice and on the merits. Defendant is awarded its taxable costs incurred herein.

DATED this 2 day of April, 1992.

BY THE COURT


SCOTT DANIELS
District Judge

APPROVED AS TO FORM:


STEPHEN W. COOK
REID C. DAVIS
COOK & DAVIS
Attorneys for Plaintiff

TPC/031192C

Excerpts from the Trial Transcript

1 A Yes. I graduated from high school, Highland High
2 School in 1967. I graduated from the University of Utah
3 with a Bachelor's Degree in Metallurgical Engineering in
4 1974 and subsequently completed a Masters of Business
5 Administration through the University of Phoenix and
6 concluding in 1987.

7 Q Okay. Are you currently employed?

8 A Yes, I am.

9 Q With who?

10 A With Allstate Insurance.

11 Q And your position with Allstate?

12 A Accountant.

13 Q And how long have you been so employed?

14 A Since April of 1990.

15 Q You are a former employee of Kennecott Copper?

16 A That's correct.

17 Q How long were you employed with Kennecott?

18 A Almost 15 years.

19 Q And do you recall your date of hire?

20 A I began working with Kennecott on March 18th,
21 1974 and was terminated on January 31st of 1989.

22 Q How did you come to be employed with Kennecott?

23 A While at the University of Utah, there were
24 recruiters that came on campus and interviewed those
25 potential graduates and Kennecott was one of those. I was

1 Q Did you have any conversations with Mr. Bird
2 regarding the contents of this document at the time that
3 you signed it?

4 A As I recall, he expressed to me that these were
5 the reasons that a person could be fired or dismissed while
6 at Kennecott.

7 Q Okay. Did you discuss with Mr. Bird the
8 language, beginning, "I believe" at the fourth paragraph of
9 that document starting with "the violation of these rules
10 is cause for either 1) written warnings, or 2) suspension
11 subject to hearing for discipline purposes, et cetera.

12 A Only to the extent that this was the means by
13 which any violation would be recommended or be taken care
14 of.

15 Q Okay. Now, you indicated that you were provided
16 with some other documents at the time of hire?

17 A That's correct.

18 Q Do you recall what those other documents were?

19 A As I remember there were insurance forms, there
20 were confidentiality agreements, agreements about patent
21 rights that Kennecott held for any process developed on
22 Kennecott time, and those were all that I recall.

23 Q Did you sign any of those documents?

24 A Yes, I did.

25 Q Which ones do you recall signing?

1 Kennecott people at the time of your hiring?

2 A I met with personnel at the Smelter Plant on the
3 following day, at which time there were other forms that I
4 signed. Mr. Bryant--as I recall there were several clerks
5 that assisted in papers that I signed at that time.

6 Q Where--is it your testimony you met with a Mr.
7 Bryant?

8 A That's correct.

9 Q Do you recall Mr. Bryant's first name?

10 A Eugene is his proper name. He went by Gene
11 Bryant.

12 Q And do you know what Mr. Bryant's position was at
13 the time that you met with him?

14 A He was an employee relation rep at the smelter
15 working for Sid Hollinger who was the plant employee
16 relation director or some such title.

17 Q Did you have any understanding why you were
18 meeting with Mr. Bryant?

19 A Just to go over the document, what would be
20 expected of me at the smelter, what were some of the rules
21 and regulations and so forth at the smelter.

22 Q Do you recall where you met with Mr. Bryant?

23 A In his office.

24 Q Okay. Do you have any recollection of the events
25 that transpired at that meeting?

1 A I don't recall anything specific other than,
2 again, we went through several forms. It seemed like some
3 of them were duplicates of what I had previously taken care
4 of with Mr. Bird.

5 Q Did you sign any documents at that time?

6 A I recall signing several documents. The ones
7 that I recall specifically were, again, to deal with health
8 insurance, life insurance, who I wanted to designate as
9 beneficiaries and so forth.

10 Q Did you have any conversations with Mr. Bryant or
11 others at that time regarding your status at Kennecott?

12 A Only to the extent that I was a salaried employee
13 and was expected to follow the General Rules of Conduct and
14 that any breaches in those General Rules of Conduct would
15 bring about discipline or my possible termination.

16 Q Okay. Did you at this point, go with Mr. Bryant
17 at the smelter; did any one use the words at-will

18 A No.

19 Q --that you can recall?

20 A No. No one ever used those words.

21 Q Did you have any understanding at the time either
22 pursuant to the first meeting with Mr. Bird or the second
23 meeting with Mr. Bryant that you were--well, let me ask you
24 if--do you know what is meant by an at-will employee?

25 A I do now. The first time I ever recall hearing

1 the words was when I was taking a business law course while
2 I was doing my MBA.

3 Q Approximately when was that?

4 A That was in 86. 1986, 1987.

5 Q Okay. Did you have any understanding at the time
6 that you were hired with Kennecott that you were an at-will
7 employee?

8 A None whatsoever.

9 Q Let's generally discuss your work history with
10 Kennecott, Mr. Sorenson. After being hired, were you
11 assigned a position?

12 A Yes, I was. My initial assignment was a
13 metallurgical engineering B, assigned to the--at the time
14 the plants--the smelter and refinery shared an engineering
15 department and my initial assignments were to be at the
16 smelter.

17 Q And as a metallurgical engineer B, were you
18 assigned to a particular area of the smelter?

19 A Initially I was given several different projects
20 throughout the smelter. They were both in the
21 Reverb--Reverbatory Department, the Converter Department
22 and the anode--excuse me the Acid Plants.

23 Q Okay. Let's start with 1974 your date of hire as
24 engineer B. At that time were you expected to supervise
25 other Kennecott employees?

1 the operation superintendent; and Jerry Hansen, who was the
2 maintenance superintendent.

3 Q All right. Now, how long were you employed under
4 this status as a fire watch and environmental engineer?

5 A Until early 1986.

6 Q What happened at that point?

7 A In early 1986, Kennecott began putting together
8 plans for eventual start up of the entire division. They
9 wanted to know what would have to be done to bring each one
10 of the particular plants on line. At that time, I was
11 brought off of fire watch and working with the
12 Environmental Department to work full time at the smelter
13 inputting together the plans and the projects that would be
14 necessary and estimating the cost that would be required.

15 Q Okay. And how long were you employed in this
16 capacity?

17 A Actually until the actual startup of the smelter,
18 I worked in those duties--along with becoming project
19 manager type of position--over several of those projects.

20 Q Did you work in this capacity through 1986?

21 A Yes, I did.

22 Q In 1987?

23 A As I recall, it was sometime in mid year of 1987
24 when the smelter began operations.

25 Q Okay. I'd like to focus in just for a second on

1 Q What happened in the November or December time
2 frame?

3 A At that time the position of anode general
4 foreman was filled permanently by Mr. Ken Britton who was
5 hired from Inspiration at that time.

6 Q Excuse me, what is Inspiration?

7 A Oh, it is another copper company that has an
8 operation in Miami, Arizona.

9 Q Okay.

10 A At that time I moved back to the Metallurgy
11 Department directly reporting to Mr. David George and was
12 given the assignment of coordinating with the smelter with
13 the startup or the planned startup of the Filter Plant at
14 the Smelter Plant?

15 Q So you ended--or did you end up working in 1987
16 under the direct supervision of Mr. George?

17 A I did.

18 Q What's your recollection during 1987, from what
19 length of time did you directly report to Mr. George?

20 A As I recall, it was the last part of November,
21 first part of December. The reason--

22 Q Well, excuse me. What was the total length of
23 time you reported to Mr. George during 1987?

24 A Between possibly two to maybe three months.

25 Q Okay.

1 In connection--

2 THE COURT: Maybe this is an appropriate
3 place--let me ask Karen: Do we have a hearing at 4:30?

4 THE CLERK: No. That went off.

5 THE COURT: It's been called off?

6 THE CLERK: Yes, I called.

7 THE COURT: You can go to 5:00.

8 Q (By Mr. Davis) Let's digress for a moment and go
9 back to 1987. You were employed in connection with the
10 anode work, as I recall, and your testimony was that was
11 from June or July 1987 through early December time frame;
12 is that correct?

13 A That's correct.

14 Q Did you, as general foreman position, did you
15 complete that work in the Anode Plant?

16 A Yes. We were--the initial startup had gone along
17 very well. Of course, the Anode Plant continued to operate
18 after I left in November. But the work had gone forth very
19 well. The startup had been quite a success.

20 We initially had had refractory problems with
21 several of the crucibles of the pouring spouts that had
22 given us considerable problems when I, or Mr. George--while
23 he was in the position of general foreman, had at that time
24 attempted to just suffer different types of refractory
25 problems--refractories excuse me--and those had resulted in

1 numerous problems. When I assumed the responsibility of
2 general foreman we stabilized the refractories and began a
3 very consistent casting operation within the anode.

4 Q During the time that you were reporting directly
5 to Mr. George, did he ever criticize your performance?

6 A No, he did not.

7 Q Did you have any conversation with Mr. George
8 regarding your performance or the critical nature of your
9 performance from between June or July 1987 until
10 he--approximately a month later when he was moved out?

11 A None at all. In fact my shift had the highest
12 casting rates of any of the shifts, had been the most
13 successful in mastering the operation of this new equipment
14 and Mr. George was very complimentary of the work that I
15 had done.

16 Q In connection with the work that transpired after
17 Mr. George left, the work that you supervised as general
18 foreman, did anyone commend you on the work that you had
19 done during that period of time?

20 A Yes.

21 Q First of all who?

22 A Mr. George commended me on the work that I had
23 done as the frontline foreman working for him, and then Mr.
24 Hansen, as I began to assume the responsibilities as the
25 general foreman over the Anode Plant, was also very

1 MS. POLICH: Excuse me. Could we also know who
2 else may have been present?

3 Q Were there others present when you had this
4 conversation with Mr. Hansen?

5 A Not that I recall.

6 Q What did Mr. Hansen tell you at that time?

7 A Mr. Hansen told me that he was very pleased with
8 the initial startup. What he told me--that because of the
9 work that I had done I was going to be assuming the
10 responsibilities of the general foreman over the anode, and
11 we discussed the problems as I saw them; the problems that
12 we were having.

13 Q Okay.

14 A And essentially which direction we wanted to go
15 with the operation in the anode.

16 Q Do you have any other--were there any other
17 instances in which you were commended on the work in which
18 you did in the anode?

19 A As I recall one, where outside the Anode
20 Department, Stewart Smith talked with me. And again at
21 that time--

22 Q When was that?

23 A This was prior to my assuming the position as
24 acting general foreman over the anode.

25 Q It was in connection with your frontline foreman

1 duties?

2 A That's correct.

3 Q And what did Mr.--was it between June, July,
4 August time frame, 1988?

5 A That's correct.

6 Q And what did Mr. Smith tell you?

7 MS. POLICH: Excuse me.

8 THE WITNESS: He again--

9 MS. POLICH: Lack of foundation. If we could
10 establish who was present.

11 THE COURT: Sustained.

12 Q (By Mr. Davis) Were there other people present
13 during this conversation?

14 A Not that I recall.

15 Q What did Mr. Smith tell you?

16 A Mr. Smith told me that--again, he was
17 complimentary of the work that we had done; that I had done
18 a good job during the startup.

19 Q During either conversations that you've
20 described, the one with Mr. Hansen and the one with Mr.
21 Smith, did they make any complaint at all critical of your
22 performance?

23 A None whatsoever.

24 Q Now, following your completion of the work in
25 anode, were you commended on the work that you had done at

1 that time?

2 A I was.

3 Q By whom?

4 A By Mr. David George.

5 Q And when were you complimented?

6 A At the time that Mr. Britton assumed the
7 responsibilities over the anodes and converters as the
8 general foreman.

9 Q Can you give me a date?

10 A Last of November, early December.

11 Q Okay. Of '88?

12 A Yeah. '87, excuse me.

13 Q And you had a conversation--

14 MS. POLICH: Excuse me. I'm sorry, there was
15 some confusion in that last answer, your Honor, if I may
16 have clarification. Was it '87 or '88?

17 THE WITNESS: It was 1987, late '87.

18 Q (By Mr. Davis) And that was a conversation with
19 Mr. George?

20 A It was.

21 Q And where did you have the conversation with him?

22 A Outside of the anode in the area directly east of
23 the anode.

24 Q And were there other people present?

25 A There were none.

1 Q And as best you can recall, describe Mr. George's
2 comments to you?

3 A Mr. George commended me in saying that we had
4 done an excellent job in startup of the anode and because
5 of the work that I had done there I would be assuming the
6 responsibility of coordinating the startup of the Filter
7 Plant.

8 Q Did he say anything else that you can recall?

9 A Not that I can recall. We simply talked around
10 the time frame that I would be leaving there and beginning
11 operations or the work with the Filter Plant who I would be
12 working with--

13 Q Okay.

14 A --and so forth.

15 Q Was he in any way critical of your performance?

16 A Not at all.

17 Q Did you have any other conversation what anyone
18 else in which you were commended on your work in anode?

19 A I recall some discussions with Mr. Hansen in his
20 office.

21 Q When do you recall that taking place?

22 A They took place at approximately the same time.
23 The time that I left the anode.

24 Q That was in November, December 1987?

25 A '87, that's correct.

1 Q Were there other persons present at that time?

2 A None that I recall.

3 Q Okay. And what do you recall Mr. Hansen's
4 comments to have been at that time?

5 A Essentially that he had been very pleased with
6 the work that had been done there. Was essentially just as
7 much as giving me a pat on the back, saying thanks for the
8 work you did. Appreciate it, you did a good job, and so
9 forth.

10 Q Okay. Now, beginning in 1988, you were under the
11 direct supervision of Mr. George; is that correct?

12 A That's correct.

13 Q And I think your testimony was that you remained
14 under his direct supervision until approximately April or
15 so of 1988?

16 A Yes, approximately April.

17 Q During--between the 1st of January 1988 until you
18 left his immediate supervision were you ever criticized by
19 Mr. George with regard to your performance?

20 A There was one instance in late 1987, and that
21 was--we had gone to--Al Supulveda and myself had been sent
22 to Chile to look at the operation of the same filter
23 presses that Codelco, which is the Chilean Copper industry,
24 was operating in Chile to see the operating problems that
25 they were having and problems that were associated with

1 has cement corroding on both the inside and outside would
2 not hold up under the operation of the concentrate. That
3 within a short period of time the pipe was worn out and
4 they found that rubber lined pipe was very successful for
5 them.

6 In our design we had simply cement coated pipe.
7 So I talked with Mr. Supulveda to make sure that he would,
8 one, talk with Mr. George, as well as make sure that it
9 went on to the group that was building the Filter Plant
10 that they begin immediately to get after some rubber lined
11 pipe.

12 Upon my return from vacation, Mr. George was
13 critical of me for not immediately coming to the plant and
14 talking to him about that, of simply using Mr. Supulveda as
15 the means of communicating that problem to him. And
16 Mr. Supulveda, I may also mention, took my written notes of
17 problems, as I saw them, and what Mr. George would have to
18 do.

19 Q Prior to you leaving for Chile had you had any
20 conversation with Mr. George as to what he expected when
21 you got back?

22 A None. Other than, you know, we wanted to gather
23 all the information we could about the operation down there
24 and put that together so that we would have it, that would
25 assist us in our operation and any problems that we found.

1 what, nine or ten days after I returned to Salt Lake from
2 Chile.

3 Q And at that time did you meet with Mr. George?

4 A Yes.

5 Q And was he critical? Did he indicate he was?

6 MS. POLICH: Objection. Lack of foundation.

7 Q (By Mr. Davis) Did you have a conversation with
8 him at that time?

9 A Yes, I did.

10 Q And where did you have the conversation?

11 A In his office.

12 Q And were there other people present?

13 A I don't recall any at the time.

14 Q And he was critical of your performance in not
15 reporting back in--

16 MS. POLICH: Objection. Leading.

17 THE COURT: Well, it was leading.

18 MR. DAVIS: I am trying to save some time here,
19 your Honor. He is--

20 THE COURT: Yeah, I think we will do this
21 conversation first thing in the morning.

22 Do we have something at 8:30?

23 THE CLERK: Yes.

24 THE COURT: Okay. This case will be in recess
25 until 9:00. See you back here at 9:00 a.m.

1 Q Okay. Were these other policies that you've
2 described, were they policies that you were expected to
3 implement?
4 A Yes.
5 Q Did you receive any training as to how to
6 implement the general policies that you've described?
7 A Yes, we did.
8 Q Did Kennecott have a policy regarding the
9 discipline of hourly employees?
10 A Yes, they did.
11 MS. POLICH: Objection. Lack of foundation.
12 THE COURT: Overruled.
13 Q (By Mr. Davis) Were you given any training in
14 what this policy was?
15 A Yes.
16 Q Briefly, at what times were you given training in
17 materials of Kennecott's policy regarding discipline of
18 hourly employees?
19 A In the first record that I have, or recollection,
20 was the first seminar that I was part of in--well, within a
21 month or six weeks after I started at Kennecott.
22 Q You say you attended a seminar?
23 A Yes, I did.
24 Q And do you recall where that seminar was?
25 A As I recall, it took place at the Travelodge.

1 That's at the base of the offramp at Sixth South.

2 Q And at that time, discipline was discussed?

3 A Yes, it was.

4 Q Do you recall other training that you received
5 insofar as the discipline of hourly employees?

6 A Yes.

7 Q Briefly describe the types of training that you
8 received.

9 A There were several seminars that we had. There
10 were ones at various locations off the plant as well as on
11 the plant. There were two that I remember in '74. One in
12 approximately '76 that took place at Utah State. There was
13 another one at the smelter in the early 80s. There was
14 another one that took place at the Airport Hilton in
15 approximately '82 or '83. Then the one that took place in
16 '88 which also dealt with discipline of hourly employees.

17 Q Okay. Now, did you receive training regarding
18 the discipline of salaried people?

19 A Yes.

20 Q At what times did you receive training in this
21 regard?

22 A At essentially all the seminars that dealt with
23 the discipline of all employees, and how we were to
24 administer the discipline for all employees.

25 MS. POLICH: Objection. I think it is

1 irrelevant. It is a compound question. It talks about
2 eight or ten different seminars; foundation for his
3 knowledge in terms of each seminar.

4 THE COURT: Sustained.

5 Q (By Mr. Davis) The seminars and so forth that
6 you've described, was that formal training?

7 A Yes, it was.

8 Q Generally, was there a class room attendance
9 there or class room instructions?

10 A Yes there was at each one of those.

11 Q Were materials handed out to you and others in
12 attendance?

13 A Yes.

14 Q How did you come to attend the seminars that you
15 have described?

16 A My supervisors at the time scheduled me to go to
17 these seminars.

18 MS. POLICH: Objection, your Honor. I think this
19 isn't establishing sufficient foundation for specific
20 seminars. I think it is sort of a compound question. The
21 way it is being said it is being asked as a generic
22 questions to describe six different seminars.

23 THE COURT: As to that if you can question him,
24 which isn't all that critical, I am going to overrule the
25 objection.

1 MR. DAVIS: All right.

2 Just to inform the court, there will be testimony
3 on each of these seminars.

4 THE COURT: When you get down to what's in the
5 seminars I am going to require you to be more specific.

6 MR. DAVIS: Sure.

7 Q At any of these seminars, Mr. Sorenson, did you
8 discuss the topic of progressive or corrective discipline?

9 A Yes, at each one of those.

10 Q Was there a specific instruction that you
11 received in these topics?

12 A Yes, there was.

13 Q Okay. Let's start with the seminar that you have
14 referenced after your date of hire. What do you recall
15 about the training or I believe it was two seminars you
16 attended after your date of hire? First of all, let's
17 start with the first one, do you recall the time that you
18 attended this seminar?

19 A The first one was within a month to six weeks
20 after I started working with Kennecott in March of '74. So
21 it would have made it April, May, that time frame of 1974.

22 Q Do you recall where the seminar was held?

23 A This was the one that was held at the Travelodge
24 at the base of the Sixth South offramp.

25 Q Do you recall who taught the seminar?

1 A I don't recall the individual at this time who it
2 was.

3 Q Do you recall how long the seminar lasted?

4 A It lasted three to four days.

5 Q And did you attend all the entire seminar?

6 A Yes, I did.

7 Q Was corrective or progressive discipline taught
8 at this seminar?

9 A Yes, it was.

10 Q What do you recollect being taught?

11 MS. POLICH: Objection, your Honor. Without a
12 better foundation as to who taught this, I think it is
13 hearsay.

14 THE COURT: Overruled.

15 THE WITNESS: As I recall, we talked first about
16 the general types of discipline, what progressive
17 discipline was in terms of verbal warnings, written
18 warnings, suspension, hearings, and ultimate terminations.
19 This was in reference to all employees. And then we became
20 more specific in going into how that was incorporated into
21 the collective bargaining agreement for hourly employees.

22 Q Do you recall--just to regress slightly, do you
23 recall who sponsored this seminar?

24 A Kennecott did.

25 Q Is it your understanding that Kennecott employees

1 taught the seminar?

2 A Yes, they did.

3 Q Was there any distinction made at the seminar as
4 to that there were different ways to discipline hourly
5 employees as opposed to salaried employees?

6 A Not that progressive discipline or corrective
7 discipline existed for all employees. We did get into more
8 specifics as to the collective bargaining agreement and how
9 that dovetailed with the grievance procedure.

10 Q I will rephrase my question. Did anyone at this
11 seminar, do you recall, telling you that the policy, as
12 you've outlined it as progressive discipline, only applied
13 the hourly employees?

14 A No, at no time.

15 Q Did anyone mention, to your recollection, the
16 terms at-will employee at that seminar?

17 A Never.

18 Q Did anyone--do you recall anyone mentioning--
19 MS. POLICH: Objection. Leading.

20 THE COURT: Well, I am not sure. Let's hear what
21 the question is going to be.

22 Q (By Mr. Davis) Do you recall anyone stating to
23 you that this discipline was not to be applied to salaried
24 employees?

25 THE COURT: The objection is overruled. You can

1 answer.

2 THE WITNESS: No.

3 Q (By Mr. Davis) What was the next seminar that
4 you attended, Mr. Sorenson?

5 A There was another one later in the year of '74.

6 Q Do you recall where that was held?

7 A That one, as I recall, was held at the smelter.

8 Q And how did you come to attend that seminar?

9 A Again, I was directed by my immediate supervisor
10 at the time to attend that seminar.

11 Q Do you recall who sponsored the seminar?

12 A Kennecott did.

13 Q Do you recall who taught it?

14 A I remember Sid Hollinger and Gene Bryant being
15 involved in that one.

16 Q Was the topic of corrective or progressive
17 discipline discussed at this seminar?

18 A As I remember it was briefly touched on in terms
19 of, you know, again, the outline of how discipline should
20 proceed.

21 Q Did it in any way contradict what you had learned
22 at the previous seminar?

23 A No, it did not.

24 Q Do you recall anyone stating to you that you and
25 other salaried people were at-will employees?

1 A No, I do not.

2 Q Do you recall anyone at the seminar stating that
3 the topic of progressive discipline was only applicable to
4 hourly employees?

5 A No, that was never mentioned.

6 Q Okay. What was--I think you mentioned a Utah
7 State seminar?

8 A Yes.

9 Q Did you attend that?

10 A Yes, I did. That was in, as I recall, in 1976.

11 Q Okay. And how did you come to attend that
12 seminar?

13 A Again I was directed by my supervisors at the
14 time.

15 Q And do you know where that seminar was held?

16 A It was held at Utah State.

17 Q Was it sponsored by Kennecott?

18 A It was sponsored by the University of Utah--or
19 Utah State University and several Kennecott employees were
20 directed to attend it.

21 Q Do you know if it was taught by Kennecott
22 employees?

23 A No. It was taught by personnel from Utah State.

24 Q Was the topic of progressive discipline discussed
25 at that seminar?

1 MS. POLICH: Objection. I think the content of
2 that seminar is not relevant. It is hearsay.

3 THE COURT: It would seem to be hearsay.
4 Sustained. Well, it is not hearsay exactly. It is not
5 admitted for the truthfulness of it but it would seem to be
6 sort of irrelevant since it is not taught by Kennecott
7 employees.

8 What's your view on that, Mr. Davis?

9 MR. DAVIS: Well, I think if they were told to
10 attend I think the witness could testify as to any
11 understanding he had of the required attendance and what
12 the purpose of his attendance was going to be.

13 THE COURT: Sustained. The objection will be
14 sustained.

15 Q (By Mr. Davis) Let's go to--do you recall any
16 other seminars that you attended, Mr. Hansen?

17 A I--

18 Q Excuse me. Mr. Sorenson.

19 A Yes, there were--there was a seminar that was
20 taught at the smelter by Mr. Sid Hollinger and Jerry
21 Hansen.

22 Q And when was this seminar held?

23 A As I recall it was late 1970s, early 1980, '79,
24 '80, '81, somewhere in that time frame.

25 Q And who is Mr. Hansen that you referred to?

1 A Mr. Hansen at the time was the maintenance
2 superintendent at the smelter.

3 Q And is that Jerry Hansen?

4 A That's correct?

5 Q And who is Sid Hollinger?

6 A Sid Hollinger, at the time was the--if I recall
7 at the time, he was still the employee relations director
8 or supervisor at the smelter. He may have been--there was
9 a time shortly around there where he was transferred into
10 the Utah Copper Division hierarchy of employee relations.

11 Q And were you required to attend the seminar?

12 A I was.

13 Q At whose request?

14 A At my immediate supervisor's.

15 Q Do you--first of all, where was the seminar
16 taught?

17 A Again, it was taught at the smelter as I recall.

18 Q And do you recall the topic of progressive or
19 corrective discipline being discussed?

20 A Yes, I do.

21 Q What do you recall about that discussion?

22 A Again, it was the basic tenet of what progressive
23 discipline was, the procedures that should be implemented
24 in terms of verbal warnings, written warnings, progressing
25 into hearings, suspensions, eventual termination if

1 necessary.

2 Q Do you recall anyone stating at that seminar that
3 the policy of progressive discipline was solely confined to
4 hourly or union employees?

5 MS. POLICH: Objection. Leading.

6 THE COURT: Overruled.

7 THE WITNESS: No. At no time did anyone mention
8 that it was strictly for hourly employees.

9 Q (By Mr. Davis) Do you recall anyone at the
10 seminar stating that you and other salaried employees were
11 at-will employees?

12 A No. At no time.

13 Q Did any of the training and discussion that you
14 have alluded to at this seminar, did it at any time
15 contradict previous training you had had in this area?

16 A No. It only served to confirm the understanding
17 that I had for corrective discipline from the other
18 seminars, even back to the initial--my initial hiring.

19 Q What was--was there another seminar that you
20 attended after that one?

21 A Yes, there was a seminar that was held and the
22 next one, chronologically I believe, was the one that we
23 had in '82 and '83.

24 Q And do you recall where that was held?

25 A That was again held at the smelter.

1 Q And do you recall who taught that?

2 A Jack Haymond and Wayne Johnson taught that
3 seminar.

4 Q And who is Jack Haymond?

5 A Jack Haymond was one of the other operations
6 general foreman.

7 Q And the other person was Wayne?

8 A Wayne Johnson. He was one of the maintenance
9 superintendents--maintenance general foreman at the time,
10 excuse me.

11 Q And were you required to attend this seminar?

12 A Yes, I was.

13 Q Do you recall the topic of progressive or
14 corrective discipline being discussed?

15 A Yes. That was the seminar that took--it was
16 actually not a one-day seminar. We met on one day a week
17 for, as I recall, six to eight weeks at which time we went
18 through the Zenger-Miller course outlined that was prepared
19 by--it was a course that contained a lot of videos and was
20 something that Kennecott had bought--purchased from this
21 Zenger-Miller Corporation.

22 Q Were you shown videos?

23 A Yes, we were.

24 Q Do you recall what the videos portrayed?

25 A They portrayed leadership types, how to deal with

1 subordinates, both in terms of hourly employees as well as
2 supervisors.

3 Q Did any of the materials in the videotapes
4 address supervisors interacting with other supervisors?

5 A Yes, they did.

6 Q In what way?

7 A In terms of correcting behavioral problems, how
8 to address those with supervisors, how to address those
9 with hourly employees.

10 Q Okay. Did you arrive at any conclusions after
11 viewing the videotapes in regards to the material that was
12 portrayed?

13 A Again it was only--it seem to reinforce the
14 understanding I already had about progressive discipline
15 and how it would be used to discipline or correct
16 behavioral problems for all our employees.

17 Q At this particular seminar at which the
18 Zenger-Miller materials were presented, did anyone tell you
19 that the topic of progressive or constructive corrective
20 discipline was only to be applied to hourly employees?

21 A No. At no time.

22 I'm sorry. I didn't--progressive or what
23 discipline, Reid?

24 Q Corrective.

25 A Thank you.

1 Q Did anyone at this seminar tell you, you were an
2 at-will employee?

3 A No.

4 Q Were there other seminars that you attended
5 during your employment?

6 A Yes, there was another one that was taught in the
7 '73, '74 time frame as I recall.

8 Q Excuse me. '73, '74?

9 A Excuse me. '83, '84.

10 Q Where was that one held?

11 A That was taught at the Airport Hilton.

12 Q And were you required to attend?

13 A Yes, I was.

14 Q Do you know who sponsored this seminar?

15 A Kennecott did.

16 Q Do you recall who taught it?

17 A As I recall, Gene Bryant, Wayne Johnson, Jack
18 Haymond were all part of the supervisors that taught that
19 course.

20 Q Was the topic of corrective or progressive
21 discipline discussed at this seminar?

22 A Yes, it was.

23 Q Did it in any way contradict your previous
24 understanding as to how this policy operated?

25 A None whatsoever.

1 MS. POLICH: Objection. Leading.

2 THE COURT: Sustained.

3 Q (By Mr. Davis) Tell me what, in terms of
4 progressive discipline, what was discussed?

5 A Again, the terms of progressive discipline,
6 how--what the procedures were, in terms of, again, verbal
7 warnings, written warnings, suspension, hearings,
8 termination.

9 Q Does it differ in any way from your previous
10 training in this area?

11 A No. In fact it was--

12 MS. POLICH: Objection. Leading. I don't think
13 we got a sufficient--

14 THE COURT: Well--

15 MS. POLICH: Sufficiently complete answer. He
16 testified as to what he recalled and I think this is now
17 leading based on the last testimony.

18 THE COURT: Overruled.

19 The problem is, it is going to take a long time
20 to get through this if we go through everything that was
21 said. I think on that particular question I am going to
22 overrule the objection.

23 MS. POLICH: Your Honor, if I could just
24 indicate, I am not doing this to be difficult but this is a
25 testimony I am sure they are going to rely on. I think it

1 is extremely important--

2 THE COURT: It is?

3 MS. POLICH: --we establish the plaintiff's
4 recollection, so it is only because I am very concerned
5 about the need to know exactly what the basis of his
6 statements are that I am raising these objections and would
7 like the court to understand that. Not to be difficult or
8 disruptive.

9 MR. DAVIS: May I respond?

10 THE COURT: Yeah. Well, no. The objection is
11 overruled at this point, so you can ask the question.

12 Q (By Mr. Davis) Did the training that you
13 received in regard to the corrective discipline at the
14 Airport Hilton, did it differ in any way from the
15 previous training you had in this area?

16 A No. In fact it was a long--almost identical to
17 the seminar that was conducted by Jerry Hansen and Sid
18 Hollinger. It was--this one was almost identical to the
19 seminar that was taught three to four years prior to that.

20 Q Did anyone at the seminar tell you, you were an
21 at-will employee?

22 A No. At no time.

23 Q Did anyone at the seminar tell you that the
24 policies of progressive or corrective discipline were
25 strictly limited to hourly employees?

1 A No.

2 MS. POLICH: Objection. Compound to the extent
3 they are using progressive discipline or corrective. I
4 don't believe there's been any testimony by the witness
5 those were synonymous terms.

6 THE COURT: Overruled.

7 Q (By Mr. Davis) Were there other seminars that
8 you attended, Mr. Sorenson?

9 A The next seminars that I recall are the Fresh
10 Start Program that I myself was part of, one of the
11 facilitator or teachers of.

12 Q How did you become a facilitator of Fresh Start
13 Program?

14 A I was contacted by the plant manager, Stewart
15 Smith and told that I had been selected to be one of the
16 facilitators, is the term they used. Was the person who
17 led the discussions at these Fresh Start Programs.

18 Q And when were you contacted by Mr. Smith?

19 A That was in early 1987.

20 Q Okay. And what was the Fresh Start Program?

21 A The Fresh Start Program was a one-day seminar
22 that all employees as they were returning to work at
23 Kennecott were to go through. These were aimed at
24 developing a team spirit within Kennecott, a greater unity
25 among all the employees. It was taught to bring us all

1 A As I recall it was early to mid 1987.

2 Q Okay.

3 A No. I'm sorry. Yes. '87.

4 Q And how often were you teaching this class?

5 A There were eight of us that acted as facilitators
6 for the course. We broke up into teams of four people.
7 The course was taught two days a week and we essentially
8 taught one of those two days. Now, because of vacations
9 and things, you know, we traded off but as an average I
10 would have taught the course at least once a week for
11 almost a year.

12 Q Describe briefly just what a typical course
13 consisted of that you taught?

14 A Well, generally it started off by having the
15 general manager at the time, Burgess Winter, come down to
16 talk to us, talk to the entire group. Sometimes that was
17 handled by one of the plant managers. It was to give an
18 overview, kind of an opening statement.

19 We then talked about communications, we talked
20 about team spirit. We had videos, the Tom Peters' Pursuit
21 of Excellence was part that we used. We also showed videos
22 of when the U.S. Olympic team won the gold medal at the
23 thing--at the Winter Olympics. We talked about
24 communications. We talked about--if I remember right we
25 talked about equal employment opportunities. Not all

1 employees were going to--you know, how essentially all
2 employees were going to be treated.

3 At the end Mr. Winters would come down and again,
4 if he was unavailable, it would have been one of the plant
5 managers that took his position. But he came down and at
6 that time reiterated that all employees were going to be
7 told of their performance, if it was good or if it was bad.
8 People were going to be let know what was expected of them
9 and how they were--how they were doing, along with those
10 expectations, and at that time, after those brief kinds of
11 comments, he typically opened it up to a discussions for
12 anybody to ask whatever questions they wanted.

13 Q Okay. Did you have any understanding that you
14 would receive certain types of notice in the event your
15 performance was inappropriate?

16 MS. POLICH: Objection. Vague and ambiguous.
17 There is no time frame work, no foundation.

18 MR. DAVIS: Based on comments that Mr. Winter
19 made at these Fresh Start seminars, did you have any
20 understanding that you would be provided notice of
21 inappropriate performance?

22 MS. POLICH: Objection. Irrelevant. Objection.
23 Understanding.

24 THE COURT: Overruled.

25 You can answer.

1 THE WITNESS: That's what Mr. Winter said. He
2 said all employees are going to be notified when their
3 performance was not up to par. They were going to be
4 notified of their good when they did things well, and also
5 when they were doing things poorly, poor performance.

6 Q (By Mr. Davis) Did he say that was only going to
7 be done with regards to hourly employees?

8 A No. He emphasized all employees. Because all
9 employees were called to these seminars from smelter
10 managers, superintendents, general foreman, front line
11 supervisors, as well as all hourly employees. All
12 employees were at these seminars.

13 Q Now, did you receive informal types of management
14 training?

15 A Yes, we did.

16 Q What types of informal management training did
17 you receive during your employment?

18 A Well, there were numerous times where a question
19 might arise as to how we were going to handle a particular
20 situation. At these times they would be addressed by
21 either your immediate supervisor or discussion with the
22 employee relations department so there was always an
23 updated communication when performance problems typically
24 took place.

25 Q While you were employed at the smelter, did you

1 Q And when was that information given you?

2 A In 1987.

3 Q And where was it given you?

4 A In Mr. Hansen's office.

5 Q Okay. Who else was present?

6 A As I recall, the other operating general foremen,
7 Dallas Mikich and Jack Haymond and myself.

8 Q What do you recall Mr. Hansen telling you in that
9 regard?

10 A Again, that certain offenses, those considered
11 capital offenses under the general rules of conduct would
12 necessitate myself suspending either an hourly employee or
13 a salaried employee.

14 Q Were you aware of a salaried individual being
15 given progressive discipline?

16 A Yes, I am.

17 Q What are the names of the employees that you
18 recall that were given one or more forms of progressive
19 discipline?

20 A Mr. Stireman, Bob Chesley, Reggie Corona, Glenn
21 Whitehouse, Stan Salazar, Ted Callahan, Don Cottrell, those
22 I believe.

23 Q With respect to Mr. Stireman, what type of
24 progressive discipline was he given?

25 A He was given a verbal warning as well as written

1 during that time.

2 Q Anything else?

3 A Comments from my immediate supervisors.

4 Q What, in your opinion, how would you characterize
5 your performance during this period?

6 A I had always been rated--

7 MS. POLICH: Objection. Lack of foundation. It
8 is conclusion.

9 MR. DAVIS: I think--

10 THE COURT: Lack of foundation.

11 MR. DAVIS: I think he is entitled a conclusion.

12 THE COURT: I suppose there is foundation for his
13 own opinion. Overruled.

14 THE WITNESS: During the time frame that I worked
15 at the smelter, I had consistently received above average
16 performance appraisals. I had been complimented by my
17 immediate supervisors. I was one of the few that were kept
18 during the shutdown. I was given other opportunities
19 expressly to teach the Fresh Start Program. All of these
20 served to reinforce the feeling that my performance had
21 been very good, that I was well thought of.

22 Q Have you ever been criticized for your
23 performance at the smelter?

24 A No, I had not.

25 Q Have you ever been given a verbal warning at the

1 SALT LAKE CITY, UTAH; JANUARY 29, 1992; A.M. SESSION

2 THE COURT: We are proceeding in the matter of
3 Kelly Sorenson versus Kennecott Copper Corporation.

4 You can proceed, Mr. Davis.

5 MR. DAVIS: Thank you.

6 KELLY M. SORENSON,
7 resumed the witness stand and testified further as follows:

8 THE COURT: Mr. Sorenson, you understand you are
9 still under oath?

10 THE WITNESS: Yes, I do.

11 THE COURT: Thank you.

12 DIRECT EXAMINATION (continued)

13 BY MR. DAVIS:

14 Q Mr. Sorenson, do you recall a visit or a tour of
15 the concentrator in the early morning of December by Mr.
16 Davis and Mr. Strickland?

17 A Yes, I do.

18 Q Do you know when that took place?

19 A My recollection was it was the 6th or 7th of
20 December.

21 Q Did you participate in that tour with those two
22 men?

23 A Yes, I did.

24 Q Did you meet them in any part of the plant during
25 that tour?

1 A Yes. I met them in the secondary crushing area.

2 Q Okay. What did you do on that tour with Mr.
3 Davis and Mr. Strickland?

4 A When they wanted to--I was--they told me to view
5 the secondary crushing area. We entered the building
6 through the large door, took the elevator to the top floor
7 that led into the 2015 conveyor.

8 THE COURT: Is it Mr. Davey or Mr. Davies? Is
9 that spelled right or is it with a "y"?

10 MR. DAVIS: I assumed it was with an "i." It may
11 be with a "y."

12 MS. POLICH: It is actually D. A. V. E. Y.
13 Davey.

14 THE COURT: Davey. Thank you.

15 Q (By Mr. Davis) And the 2015 conveyor goes from
16 where?

17 A It goes from the top of the number 1 standard
18 crusher back to the fine ore--the coarse ore pile, coarse
19 ore feeders.

20 Q Describe fairly specifically where you went with
21 Mr. Davey and Mr. Strickland on this tour that you have
22 referred to.

23 A We went to the top of the 2015 conveyor. At that
24 time--do you want me to explain any of the conditions that
25 we found then?

1 MR. DAVIS: Yes. Go through those while you are
2 at it.

3 A At that time--shortly prior to that, we had had a
4 plug-up, a spill from the number 1 standard crusher. The
5 crusher had plugged and there had been a spill over the
6 top, up through the top of the head pulley there, and there
7 was a pile that approached the bottom of the--at least to
8 the sides, was up as high as the rush part of the belt.
9 These were large rocks and so the pile was four to five
10 feet high, probably, on either side of the conveyor.

11 We then proceeded down the 2015 conveyor, looking
12 at the problems with the maintenance, as well as the
13 cleanup that existed along there. Actually, at that time
14 the spills underneath the conveyor was actually less than
15 what we saw Monday when we were out there.

16 When we got to the coarse ore feeders, down in
17 the bottom area down there, one of the coarse ore feeders
18 had broken down the day before. So there had been a spill
19 out into that very bottom area where we stood.

20 Q Are you talking about the area at the bottom of
21 that long ramp?

22 A Right. Near the tail end of that conveyor.

23 THE COURT: What do you mean? Do you have to
24 shovel that up with shovels, is that how the cleanup is
25 done?

1 THE WITNESS: The cleanup in that area is really
2 difficult. Most of the material--the smaller, you can wash
3 down to the bottom when the weather permits, but most of it
4 has to be shoveled up with a uni-loader, taken up, loaded
5 in a bucket and lifted out with a crane.

6 THE COURT: The uni-loader is the same as a
7 Bobcat?

8 THE WITNESS: Yes.

9 THE COURT: There is enough room you can drive
10 around in there?

11 THE WITNESS: Yes, in the bottom lower area.
12 There was a spill associated with that one. There were
13 some spills underneath the belt. But the spills underneath
14 the belt were actually less than what we saw Monday. I
15 don't know if you noticed underneath and over to the back
16 sides, there were several pretty good spills. None of
17 which were actually up to the belt, nor were they at the
18 time of this tour in December.

19 We then walked up to the 2020 conveyor up to the
20 head end of the number 2 standard crusher. Again, looking
21 at the spills and whatever--you know, the maintenance part
22 that had been left there, as I recalled there were one or
23 two idlers that had been changed and the broken ones had
24 been left there along the conveyor gallery.

25 Q (By Mr. Davis) Were there any spills along the

1 2020 converter or conveyor?

2 A Very few. Actually, there were more spills
3 underneath the conveyor on our tour Monday than there were
4 at this time. But there were the two major spills. The
5 one at the head end of the 2015 and one associated with the
6 broken feeder down at the tail end.

7 We then proceeded down essentially the same
8 direction that we went Monday, down past the tail end of
9 the feeder belts for the tertiary crushers.

10 At that time there were no functioning scrapers
11 on those long feeder belts, so there were piles of fine
12 material that had been pulled out. If you recall, the belt
13 in the floor only had a three or four inch maybe six inch
14 gap in there, and so it was necessary to come up on a
15 fairly routine basis and pull the material out of there so
16 that it didn't cause problems with the belts. So as I
17 recall there were three, maybe four piles of material
18 probably 18 inches high at the tail end of those feeders.

19 We walked down in front of all of the tertiary
20 crushers and standard crushers. The floor itself looked
21 about like it did Monday, around the pedestals, the cement
22 supports for those crushers. We did have material, rocks
23 sitting on those that weren't seen during this tour that we
24 went on Monday. So it looked better Monday than it did,
25 but there were, as in terms of safety or any damage to

1 equipment, it was as clean on the floor as what we saw at
2 that time.

3 We then walked down in back of the crushers along
4 the back area. We had some spills as I recall around each
5 one of the screens. The very back floor that we walked on
6 as I recall was about the same as it was during our tour.
7 We did have some mud associated back where the number 4 air
8 wash was, which was the west one. Because of that air
9 wash, the housing was deteriorated, but to eliminate as
10 much dust as we could, we were running it, allowing some of
11 the water and the mud to fall down on the floor back there.

12 Q One second, Kelly. I think--does the court have
13 the photographs that the defendant provided?

14 THE COURT: The ones that we had on the tour?

15 MR. DAVIS: Yeah.

16 THE COURT: Defendant's Exhibit 167.

17 Q (By Mr. Davis) Kelly--I'm sorry. I'd like you
18 to back up and, maybe with the court's permission, come
19 down and just describe certain areas that you are talking
20 about as you have explained where these were located so
21 that we are--

22 A Again, this is the head end of the 2020 conveyor.
23 The 2015 is just off the picture here. But as we left
24 there, we came down behind the walkway back here and down
25 another flight of stairs and crossed the back of these

1 feeders. This is where those piles of material were from
2 the belts that we had to shovel out because we had no
3 operating scrapers.

4 Q Let the record reflect that the plaintiff is
5 referring to Defendant's 167.

6 A As we went down the back walkway on the far side
7 here, we then walked behind each one of the crushers here.
8 As I recall, around the crushers the floor was fairly
9 clean, however, we did have some piles of rocks sitting on
10 this area that had accumulated around all five of the
11 crushers. As I recall, we walked down this walkway, across
12 in front and then down behind, which is, as you walk back
13 here, you ended up back behind the conveyors and/or the
14 crushers on the very back bottom floor. Picture number 9
15 is defendant's 169.

16 THE COURT: That is the basement gallery in the
17 Symons Building, is how that's captioned?

18 THE WITNESS: Yes.

19 MR. DAVIS: Let the record reflect now plaintiff
20 is now pointing to the Defendant's Exhibit 169.

21 MS. POLICH: If we are going to use these photos,
22 can we have them all admitted for illustrative purposes?

23 MR. DAVIS: I think so. They are essentially the
24 same as what we have got in your booklet.

25 MS. POLICH: They are identical. I think that's

1 exhibit--do you have the numbers?

2 THE COURT: 149 and 162 through 173.

3 MS. POLICH: Thank you.

4 THE COURT: 149 is the schematic. Do you want it
5 in too? All right. That will be received.

6 THE WITNESS: This was the back walkway that we
7 walked down. This was the area where the number 4 air wash
8 was dropping some mud and water on the walkway. This area
9 we did look down into; I don't recall that we walked down
10 in there but we had had--this area had been a major problem
11 for us.

12 This is the conveyor that we stuck several times
13 around that area, down in this area where the screens
14 deposit onto this conveyor and we had had to pull the
15 idlers out and shovel material back onto the floor to get
16 the conveyor running again. Then you had to put the idlers
17 back in and then it was cleaning up this material. So the
18 floor along this was in relatively poor condition. There
19 was several, you know, quite a few piles of material along
20 here from this walk but on this bottom floor. This was the
21 area where we stopped and talked with Terry Mayo for a
22 while. We were looking at some of the piles between the
23 idlers at that time.

24 At that time, we left the Symons area, the
25 secondary crushing and walked out to their vehicles and

1 they left.

2 Q (By Mr. Davis) Okay. Did you have any
3 conversations with either Mr. Strickland or Mr. Davey
4 during this tour?

5 A I talked with Mr. Strickland briefly. He wanted
6 to know why the piles, especially the one at the head end
7 of 2015 was there, and I explained to him that we had had a
8 malfunction, from a probe that's located in that housing,
9 to tell us if we were beginning to plug up. And it had
10 malfunctioned so that it allowed the material to spill
11 right up over the top, from a plug or bridge above the
12 crusher where the operator, normally down in the control
13 room, would have seen the light come on, indicating that
14 the chute was plugged.

15 The light had not come on or he had certainly not
16 seen it or heard any siren. It was only when he heard the
17 material dropping on the walkway above that he was able to
18 shut the belt down. That's where the one spill had come
19 from.

20 The other spill he asked me about down at the
21 feeder, I explained to him it had broken down the day
22 before and he--I believe I did talk to him briefly about
23 the reasons we had some of the spills behind each one of
24 the tertiary crushers, the fact that we had no functioning
25 scrapers on either one of those three belts.

1 In order to keep running, we were pulling the
2 material out of there and then as we got a chance as it
3 got--we got a chance to get rid of it, we were able to put
4 it in a wheelbarrow and dump it back into one of the
5 crushers.

6 Q Do you recall any other conversations you had
7 with either Mr. Ramsey or Mr. Strickland during this tour?

8 A As we left the area we walked out by the
9 bulldozers and I remember Mr. Davey talking about making
10 sure the operator was cleaning out around the idlers in the
11 traction in one of the dozers. One dozer sitting there had
12 some material buildup in and around the idlers that the
13 track travels on a bulldozer, and telling me to make sure
14 that the operator cleaned those out and kept those clean,
15 that those could cause wear on those idlers if he wasn't
16 doing that.

17 Q Did you detect any visible reaction by either Mr.
18 Strickland or Mr. Davey during this tour?

19 A Mr. Davey spoke very little. Mr. Strickland and
20 I carried on conversations. He was more interested in why
21 the material was there, any explanations as to what was
22 going on. Mr. Davey had very little to say. They were
23 both very quiet. It appeared to me that they were not
24 pleased with the condition of the plant but I had no
25 feedback as to that, other than from their appearance and

1 Q During this conversation that you had with Mr.
2 Robison, did he convey to you that anyone was unhappy with
3 your performance?

4 A At that time he said--I asked him what was going
5 on with the plant. What was going on with this. And he
6 made the comment that, you know, they were not happy with
7 what was going on and at that time he said some people
8 could lose their jobs over this. And I remember being
9 quite surprised and asking him at that time to whom he was
10 referring? You know, is my job on the line? And he
11 said--he told me at that time, he says, "I don't think your
12 job is in any jeopardy. I think they are after the Dea
13 boys, the Dea brothers."

14 Q And who are the Dea brothers?

15 A Dave Dea, who was the maintenance general foreman
16 at that time, and his brother, Larry Dea, who was a
17 maintenance foreman.

18 Q Was there any further discussion in this area?

19 A No. Well, again, he said I think they are
20 looking to fire somebody over that, over the conditions of
21 the plant. But again, you know, according to him, my job
22 was not in jeopardy. He thought they were looking at the
23 Dea boys.

24 Because of that I became concerned. I didn't
25 want to see anyone fired. So I, at that time, took the

1 A After that time, I assumed the jobs of fire watch
2 at the smelter on 50 percent of the time and the other 50
3 percent of the time I was working for the environmental
4 group.

5 Q What was your title at that point in time?

6 A As I understood it, it didn't change. There were
7 no title changes as I understood it.

8 Q And your direct supervisor at that time was whom?

9 A Beings that we were very loose in organization,
10 Dallas Mikich was there, certainly, but he was also
11 performing the same duties I was. The only one that wasn't
12 was Bob Anderson who was the plant manager, so most of our
13 reporting was directly to Bob Anderson.

14 Q Do you recall if Bob Anderson was performing your
15 performance reviews at that time?

16 A The ones that were done during the shutdown is my
17 understanding Bob Anderson did those.

18 Q As I understand during the shutdown approximately
19 six out of eight of the foremen had been retained during
20 the shutdown in order to keep the plant running; isn't that
21 correct?

22 A That's correct.

23 Q And basically those general foremen did whatever
24 needed to be done, including fire watch, correct?

25 A That's correct.

1 Q But the idea of retaining six of the general
2 foremen was that there would be some basic knowledge still
3 available for start-up if in fact Kennecott ever stated up
4 again, correct?

5 A Yes.

6 Q So you performed that position for how long?

7 A Until early in 1986. If I recall it was around
8 April, March or April of '86.

9 Q Now, when you were working for the environmental
10 group, was that part of the smelter group?

11 A No, it was not.

12 Q And who was that with?

13 A I reported or worked closely with McGee was his
14 last name, and I can't recall his first name. Steve. I
15 can't recall his first name--was his immediate supervisor
16 was over the environmental group.

17 Q Going on, after--we are down to early 1986,
18 so--but you considered Bob Anderson the person you directly
19 reported to?

20 A Yes.

21 Q At least for the position of fire watch foreman,
22 and you would have reported to Mr. McGee on the
23 environmental engineering issues; is that correct?

24 A That's correct.

25 Q Early '86, then what happened?

1 A We had--at that time Jerry Hansen was the acting
2 manager or smelter manager, and we had gotten word to start
3 putting plans together for a possible start-up of the
4 smelter, what would be needed, what monies would be
5 required to start that up, and I was transferred back
6 working full time at the smelter under Mr. Hansen.

7 Q Did you have a title then?

8 A As far as I know I was still officially listed as
9 material handling general foreman.

10 Q Do you recall your grade?

11 A No. It changed. It was either 17 or 18.

12 Q Do you have it on your sheet there?

13 A 17 or 18.

14 Q You were a grade 19, in fact, were you not?

15 A It's very possible.

16 Q And as general foreman you would have been
17 reporting to the plant manager, correct?

18 A Yes.

19 Q And you indicated Jerry Hansen was acting plant
20 manager?

21 A That's correct.

22 Q So you worked under Mr. Hansen from beginning of
23 '86 doing these projects for start-up, correct?

24 A That's correct.

25 Q And when did you quit doing these start-up

1 projects?

2 A At the time we resumed operations, which was, as
3 I recall, around June of '87.

4 Q And shortly after June of '87, Mr. Sorenson, your
5 title actually became that of metallurgical engineer; did
6 it not?

7 A Yes, it did.

8 Q Do you recall when that was? Fall of '87?

9 A No. It was prior to that. Stewart Smith put
10 together his group or his organization prior to our
11 start-up. At that time he had three superintendents
12 reporting to him.

13 Q Okay. So as part of that start-up plan, you were
14 given the title of metallurgical engineer; isn't that
15 correct?

16 A When Stewart Smith made those changes, yes.

17 Q And in fact, when you were given the title of
18 metallurgical engineer your grade also went to a grade 17;
19 did it not?

20 A As I recall.

21 Q And when you were metallurgical engineer you then
22 became assigned to the technical group at the smelter;
23 isn't that correct?

24 A That was the position. The position that
25 reported to that.

1 Q The position reported to the technical group,
2 correct?

3 A Yes. I actually still reported to Jerry Hansen.

4 Q Metallurgical engineer is, in fact, a position in
5 the technical group; is it not?

6 A That's where the position lies.

7 Q And in fact, you were a metallurgical engineer in
8 the technical group; were you not?

9 A I was placed in that position. They had to have
10 a slot for my name. It was a metallurgical engineer
11 because Dallas Mikich was made a material handling general
12 foreman at that time. I still reported to Mr. Hansen on
13 the books.

14 Q Mr. Sorenson, the question is, you were a
15 metallurgical engineer in the technical department--

16 A That's correct.

17 Q --were you not?

18 Thank you. And the technical department was one
19 of four departments at the smelter, correct? Is that
20 correct at that time?

21 A It is part of three departments.

22 Q Weren't there four departments: Operation,
23 maintenance, by-production and technical?

24 A I'm sorry, you're right. There were four.

25 Q And technical was a separate group?

1 A That's correct.

2 Q With its own superintendent; isn't that correct?

3 A That's correct.

4 Q And at the time when you were changed from a

5 grade 19, material handling general foreman down to a grade

6 17, metallurgical engineer, the four departments were

7 technical, headed by David George, correct?

8 A That's correct.

9 Q As superintendent. Jerry Hansen was operations,

10 correct?

11 A Yes, he was.

12 Q Dallas Mikich was maintenance; is that correct?

13 A No.

14 Q Who was?

15 A Al Supulveda came in.

16 Q Al Supulveda?

17 A As maintenance superintendent.

18 Q Excuse me. And Thomas Beyersdorf was by-product?

19 A That is correct.

20 Q Correct. And were you in fact in the technical

21 group of which David George was superintendent, correct?

22 A That's where my position was.

23 Q And in fact, the technical group was intimately

24 involved in the start-up of the smelter; isn't that

25 correct?

1 Q And it subsequently included the Filter Plant; is
2 that correct?

3 A After June of--when the smelter started operation
4 in June of '87 was when I started working in the Anode
5 Plant, yes.

6 Q The technical services provided by the technical
7 group continued after the start-up, didn't it?

8 A Certainly.

9 Q Because new projects had been developed and the
10 engineering technical assistance was important to the
11 start-up of those projects; isn't that correct?

12 A Certainly.

13 Q Now, you became a metallurgical engineer at grade
14 17. Now, while you were--and in fact, that was your title
15 until you moved to the concentrator in summer of '88, isn't
16 that correct?

17 A That's correct.

18 Q Now, as a metallurgical engineer, you were first
19 assigned to what project?

20 A Are you talking after June of '87 when the plant
21 started?

22 Q Yes. So--well, the first was general plant
23 start-up, right?

24 A Yes, it was.

25 Q And that was from--you said about 6-87; is that

1 on line and have it function appropriately; is that
2 correct?

3 A It was more than technical. It was actually
4 operational help.

5 Q But you were also providing--were you in that
6 position to help provide technical services, correct?

7 A Certainly.

8 Q And you had very specific responsibility in that
9 regard; did you not?

10 A Yes, I did.

11 Q Now, was the Anode Plant a new project at that
12 time?

13 A Yes, it was.

14 Q And so because it was a new project it needed
15 procedural manuals written but there was a lot of start-up,
16 correct?

17 A That's correct.

18 Q Now, at the time that you were the frontline
19 foreman, David George was actually performing operationally
20 the function of general foreman for the Anode Plant
21 correct?

22 A That's correct.

23 Q But in fact, David George was still the
24 superintendent of the technical group, correct?

25 A That was his title.

1 that has sort of overall supervisory functions for a
2 particular plant, correct, such as the Anode Plant?

3 A That's correct.

4 Q And at that time, however, you were still a grade
5 17 metallurgical engineer, correct?

6 A That's correct.

7 Q And they did not give you the title of general
8 foreman?

9 A No.

10 Q And at that time you still were part of the
11 technical group?

12 A That's correct.

13 Q And David George was still superintendent of the
14 technical group, correct?

15 A That's correct.

16 Q However, at that point, operationally you
17 reported to Jerry Hansen, correct?

18 A That's correct.

19 Q And that was because Jerry Hansen was
20 superintendent of operations, correct?

21 A That's correct.

22 Q And as superintendent of operations he had
23 responsibility for the Anode Plant as well as other plants
24 in the smelter, correct?

25 A Yes, that's correct.

1 correct?

2 A When Stewart Smith put together his organization
3 he put everybody's name in their particular places where
4 they would be when we began operations. However, I worked
5 for Jerry Hansen on the projects during all of that time.
6 He was the one I immediately reported to.

7 Q And also during the same period of time you
8 were--David George was technical superintendent, correct?

9 A He was technical superintendent, yes.

10 Q Now, going on, you took over the Smelter Plant in
11 the fall of '87, right?

12 A Yes.

13 Q You didn't know the exact date, you thought it
14 might be as late as November?

15 A November, was when I thought it was.

16 Q Okay. Let's put November, then. And you were
17 put in the Filter Plant as metallurgical engineer because
18 the plant was just coming up on line; was it not, Mr.
19 Sorenson?

20 A It was under construction at the time.

21 Q And you were assigned to the Filter Plant to
22 coordinate the start-up; isn't that correct?

23 A Coordinate between the operations of the smelter
24 and the contractors that were working on this.

25 Q But you were assigned--your responsibility was to

1 is that correct?

2 A Approximately.

3 Q Actually before we get there, let me just back
4 track for a minute. When you were hired you indicated that
5 you had signed some General Rules of Conduct, correct?

6 A Yes.

7 Q And you also testified that you subsequently saw
8 General Rules of Conduct that they were issued by each new
9 manager that came in, correct?

10 A That's correct.

11 Q And General Rules of Conduct were also issued
12 when there were changes in the actual rules, correct?

13 A That's correct.

14 MS. POLICH: Your Honor, if I may approach the
15 witness.

16 THE COURT: Yes.

17 Q (By Ms. Polich) Mr. Sorenson, I'd like to direct
18 your attention to Exhibit 154. Have you found it, Mr.
19 Sorenson?

20 A Yes, I have.

21 Q Have you had a chance to review it?

22 A Yes.

23 Q Now, that is a copy of some General Rules of
24 Conduct that were issued when B. B. Smith became manager,
25 correct?

1 A Correct.

2 Q And you've seen those rules before, correct?

3 A Yes, I have.

4 Q And they're dated April 4, 1974, correct?

5 A That's correct.

6 MS. POLICH: I'd move for admission, your Honor,

7 of Exhibit 154.

8 THE COURT: Any objection?

9 MR. DAVIS: No objection.

10 THE COURT: They will be received.

11 (Defendant's Exhibit No. 154 was

12 received in evidence.)

13 Q (By Ms. Polich) And turning to the next exhibit,

14 Exhibit 155, that is a copy of General Rules of Conduct

15 issued when R. N. Pratt, general manager, correct?

16 A Correct.

17 Q Dated April 5, 1977, correct?

18 A Yes.

19 Q And you've seen a copy of that, correct?

20 A Yes.

21 MS. POLICH: I'd move for admission of Exhibit

22 155.

23 THE COURT: Any objection?

24 MR. DAVIS: No objection.

25 THE COURT: It will be received.

1 (Defendant's Exhibit No. 155 was
2 received in evidence.)

3 Q (By Ms. Polich) Directing your attention to the
4 next exhibit, Defendant's Exhibit 156?

5 A Yes.

6 Q That's what, a copy of the General Rules of
7 Conduct issued on October 9, 1980 after Wally Jensen became
8 general manager; is that correct?

9 A That's correct.

10 Q And you've seen those; is that correct?

11 A Yes, I have.

12 MS. POLICH: I'd move for admission of
13 Defendant's Exhibit 156.

14 THE COURT: Any objection?

15 MR. DAVIS: No objection.

16 THE COURT: It will be received.

17 (Defendant's Exhibit No. 156 was
18 received in evidence.)

19 Q (By Ms. Polich) And directing your attention to
20 the next exhibit, Exhibit 157, it is a copy of General Code
21 of Conduct issued by C. K. Vance as general manager; isn't
22 that correct?

23 A Yes, it is.

24 Q And it is dated September 20, 1984?

25 A Yes, it is.

1 Q And you've seen a copy of that before, Mr.
2 Sorenson?

3 A I have. I might mention on each one of the ones
4 that I have here, there is an employee signature.

5 Q I am asking if you have seen the Rules of
6 Conduct?

7 A Yes.

8 Q Thank you.

9 MS. POLICH: I'd move for admission of
10 Defendant's Exhibit 157.

11 THE COURT: Any objection?

12 MR. DAVIS: No objection.

13 THE COURT: It will be received.

14 (Defendant's Exhibit No. 157 was
15 received in evidence.)

16 Q (By Ms. Polich) And directing your attention to
17 the next one, 158?

18 A Yes.

19 Q It is a copy of General Code of Conduct issued by
20 J. Burgess Winter; is that correct?

21 A That's correct.

22 Q When he was general manager?

23 A Yes.

24 Q And it is dated October 27, 1986?

25 A That's correct.

1 Q And you've seen a copy of that, Mr. Sorenson?

2 A Yes, I have.

3 MS. POLICH: I'd move for admission of 158, your
4 Honor.

5 THE COURT: Any objection?

6 MR. DAVIS: No objection.

7 THE COURT: It will be received.

8 (Defendant's Exhibit No. 158 was
9 received in evidence.)

10 Q (By Ms. Polich) And directing your attention to
11 the language of Plaintiff's Exhibit Number 3, Mr. Sorenson
12 Your Honor, if I may approach.

13 THE COURT: Yes--I'm sorry it is Plaintiff's
14 Exhibit Number 1. Is this a copy of the General Rules of
15 Conduct you executed, Mr. Sorenson?

16 A Yes, it is.

17 Q And as I understand your testimony, that the
18 language you are relying on for giving you a right to
19 progressive discipline is the language embodied in the
20 fourth paragraph; is that correct?

21 A Part--yes.

22 Q And that paragraph reads, "Violation of these
23 rules is cause for either (1) written warning, or (2)
24 suspension subject to hearing for discipline purposes.
25 Such a hearing can result in penalty layoff or discharge,

1 depending upon the seriousness of the offense."

2 A That's correct.

3 Q Now, Mr. Sorenson, I'd like you to look at

4 Exhibits 154, 155, 156, 157, and Plaintiff's Exhibit Number

5 2, which should be a package of all the Codes of Conduct

6 which we have now looked at.

7 A Yes.

8 Q That language does not appear again in any of

9 those other codes of conduct, does it, Mr. Sorenson?

10 A No, it does not.

11 Q And I would also--is there anything else in this

12 Code of Conduct upon which you rely, Mr. Sorenson, for your

13 position that you were entitled to progressive discipline?

14 A I'm sorry, could you repeat that?

15 Q Is there anything and, I apologize, in Exhibit

16 Number 1, other than the language I just read, upon which

17 you rely for your position that you are entitled to--you

18 were entitled to progressive discipline of a salaried

19 employee?

20 A As that is the major point, yes.

21 Q Is there anything else?

22 A I believe that's all there is.

23 Q Okay. Now, directing your attention to Exhibit

24 154, the second paragraph, that second paragraph reads,

25 "These rules supersede those in effect prior to this date,"

1 written warning, and then suspension; is that your
2 testimony?

3 A The video did not state that. That was the
4 discussion.

5 Q Now, did the video state that a salaried employee
6 was entitled to a hearing?

7 MR. DAVIS: Objection, your Honor. This has been
8 asked and answered.

9 THE COURT: Sustained.

10 Q (By Ms. Polich) Mr. Sorenson, you further
11 testified that you attended a seminar in 1983 and '84 at
12 the Airport Hilton, correct?

13 A That's correct.

14 Q Taught by Gene Bryant among others, correct?

15 A Yes.

16 Q And I think you then went on to testify about a
17 Fresh Start Program, correct?

18 A That's correct.

19 Q In fact you taught that Fresh Start Program; is
20 that correct?

21 A Yes, I did.

22 Q Is it your testimony, Mr. Sorenson--excuse me.
23 Is it your testimony, Mr. Sorenson, that the Fresh Start
24 Program taught that salaried employees were entitled to a
25 progression of discipline which would be in the order I

1 previously articulated, verbal, written warning, suspension
2 prior to termination?

3 A Excuse me. Is the question did it articulate or
4 did he specifically mention?

5 Q Was that said in the Fresh Start Program?

6 A No.

7 Q And at no time was it articulated in the Fresh
8 Start Program that salaried people were entitled a hearing,
9 correct?

10 A No. It is stated--it stated that all employees
11 would be notified of their performance whether good or bad.

12 Q Excuse me one moment, your Honor.

13 Now, you then talked about a management training
14 seminar held in May of 1988, did you not?

15 A Yes, I did.

16 Q And your testimony was that when you first--when
17 it was first discussed you thought you had attended it but
18 then you decided you hadn't, correct?

19 A That's correct.

20 Q You were referencing your deposition testimony,
21 were you not?

22 A That's correct.

23 Q And you were referencing the fact that when your
24 deposition was taken on October 31st, 1989, you were asked
25 if, in fact, you had attended that management training

1 program, correct?

2 A That's correct.

3 Q And at that time you had indicated that you had
4 attended; is that correct?

5 A That I thought I had, yes.

6 Q Isn't it correct, Mr. Sorenson, that you
7 indicated that you had been in attendance?

8 A As I recall, I used the word I thought I had.

9 MS. POLICH: Your Honor, if we may publish Mr.
10 Sorenson's deposition?

11 THE COURT: Any objection?

12 MR. DAVIS: No objection.

13 MS. POLICH: There are three volumes if I may
14 have the first volume. I'd like to publish all three
15 volumes.

16 THE COURT: You--

17 MS. POLICH: Now, Mr. Sorenson--excuse me.

18 THE COURT: You can proceed.

19 Q (By Ms. Polich) Mr. Sorenson, you in fact not
20 only testified at your deposition that you had attended it,
21 but in fact you gave very lengthy testimony on the details
22 of your attendance at that seminar; isn't that correct?

23 A As I recalled, we talked about some of the items
24 that were discussed in there and I did talk about those,
25 yes.

1 Q This first came up because in paragraph 6 of
2 your--or in your complaint one of the things that you
3 specifically relied on for your entitlement to progressive
4 discipline was the management training program manual; is
5 it not?

6 A Yes.

7 Q And that's the manual you have in front of you;
8 is that correct?

9 A Yes.

10 Q And it is marked Exhibit Number 5 is that--?

11 A Yes, it is.

12 Q In fact, I asked you at that time how you were
13 familiar with the manual; isn't that correct?

14 A Yes.

15 Q And in fact, you answered that there had been a
16 training course on it in early 1988; isn't that correct?

17 A Yes.

18 Q That specifically, if you look at page 31 what I
19 said is: "QUESTION: How did you become familiar with it?"

20 You answered, "We had a training course on it in
21 early '88, if I remember right."

22 It is the bottom of 31.

23 A Okay. Yes.

24 Q And the next question was: "Can you be more
25 specific than that as to when you would have attended this

1 training course?"

2 And your answer was what, Mr. Sorenson?

3 A "I don't remember the month. I know it was
4 before I went to Bonneville concentrator It was during the
5 time that I was at the Filter Plant at the smelter."

6 Q The next went on, "So you would have--" excuse
7 me. "So that would have planned--" there's some mistake--
8 "during what month, December '87?" And your answer was?

9 A "Between November '87 and July of '88."

10 Q And then I go on and ask you if you, "Can you
11 place it better than that?" And your answer is?

12 A Let's see. "Other than it was in 1988, it was
13 after we had started the operation, if I can remember
14 right, at Copperton so that would have been February
15 and--February of '88 and July, early, first of July."

16 Q And then I went on, going down I asked you if you
17 remembered who taught the seminar; isn't that correct?

18 A Yes.

19 MR. DAVIS: Where are you referring to, counsel?

20 MS. POLICH: 32, line 20.

21 MR. DAVIS: Okay.

22 THE WITNESS: Yes

23 Q (By Ms. Polich) In fact, in response to
24 questions about who taught it you answered that Drew Hunter
25 did; isn't that correct?

1 A Yes.

2 Q And then I went on and asked you a series of
3 questions about the purpose of the training seminar,
4 correct?

5 A Yes.

6 Q Which you answered, correct?

7 A Yes, I did.

8 Q And essentially your answers were it dealt with
9 such matters as EEOC leadership styles. Essentially you
10 identified the four types in the training manual; isn't
11 that correct?

12 A That's correct.

13 Q You said at line 12 page 33 of your deposition,
14 your answer was: "We dealt with the discipline, handling
15 of that. That was what a lot of case studies were about,
16 what we felt were the correct discipline and incorrect."
17 That's your answer, isn't that correct?

18 A Yes, that's correct.

19 Q So at that time you were testifying as to the
20 content as to what was taught, and on discipline, correct?

21 A Yes.

22 Q And I went on and specifically asked you whether
23 or not discipline--the discipline section related with
24 hourly or union representative employees, correct?

25 A Yes.

1 Q And you answered me on that, correct?

2 A Yes, I did.

3 Q And then I went on and asked you very specific
4 questions about the format of that seminar, did I not? I
5 direct your attention to page 34 line 7--excuse me, line
6 16.

7 A Yes.

8 Q And I said: "QUESTION: Tell me the format of
9 the training session."

10 Your answer was: "Well, there were discussions
11 and then you would break up into smaller groups, talk about
12 the particular case study, make recommendations, and then
13 as a larger group discuss your finding from the small
14 groups." That was your answer, correct?

15 A Yes, that was my answer.

16 Q And we went on and discussed how the break up of
17 the small groups into large groups worked; isn't that
18 correct? What was done in the small groups versus the
19 large groups?

20 A Yes.

21 Q And then directing your attention to page 35, I
22 specifically asked you who was in attendance at your small
23 group; isn't that correct?

24 A That's correct.

25 Q And your answer at line 15 was: "I don't

1 remember that--well, there weren't any that I was working
2 with at the smelter, so almost everybody was new to me.
3 And so I can't give you--I really don't have a--"
4 I interrupt and said, "No names at all?"
5 Your answer was "No"; is that correct?
6 A That's correct.
7 Q Then I asked you if you remember where the people
8 predominantly came from, either the mine or concentrator,
9 correct?
10 A Yes.
11 Q And in response was that as you read, you were
12 the single person from the smelter, correct?
13 A Yes.
14 Q And we went back and again talked about the
15 topics that were discussed, and at the bottom of 35 I asked
16 the specific question: "What was the first topic that was
17 discussed."
18 And your answer at the top of page 36, Mr.
19 Sorenson, was that, "I believe we talked about leadership
20 styles, leadership, what makes a good leader, the,
21 attributes," correct?
22 A Yes.
23 Q Then I asked you a series of questions about that
24 presentation, did I not, starting with who presented the
25 program?

1 A Yes.

2 Q And then on page 36, I asked the question at line
3 5, "Tell me in as much detail as you can what was presented
4 in that session, if there were case studies what the case
5 studies were about, whatever you can remember about the
6 topic." And you answered what, Mr. Sorenson, at line 9?

7 A We talked about dealing with problem employees,
8 with the management style--

9 Q Excuse me, if you could slow down a little, Mr.
10 Sorenson.

11 A I'm sorry. "We talked about dealing with problem
12 employees, the management style in terms of the autocrat or
13 the democrat, X and Y type leaders, the different
14 management styles and how with some groups one style may
15 work but with other types of employees another style is
16 more appropriate."

17 Q And the next question I asked was, "Do you recall
18 any case studies in connection with that topic?" And you
19 answered that you recalled one about an electrical foreman,
20 correct?

21 A Yes.

22 Q I asked if any other case studies were presented,
23 and your answer on page 37 was "Not really," correct?

24 A I'm sorry?

25 Q Line 4 page 37.

1 A Yes.

2 Q And you went on in that answer with an
3 explanation as to why you didn't remember the rest of the
4 discussion; did you not?

5 A Yes.

6 Q And your answer was, "Because of what was going
7 on at the Filter Plant a lot of this is looking back at the
8 book that was given us, so a lot of it was more refreshing
9 for me." Correct?

10 A That's correct.

11 Q Then you went on to answer to continue to say
12 that it was a hectic time at the Filter Plant, correct?

13 A That's correct.

14 Q And at which time, on page 38 line 3 we talk some
15 more about your duties at the Filter Plant and how it
16 disrupted your ability to attend or to recall all of what
17 was going on at the seminar; isn't that correct?

18 A That's correct.

19 Q And at that time you said, "You know, I was
20 working 16, 18 hours a day out there, and it was as much as
21 I remember at the time, that I got or went to the meeting
22 as a chance to really get away from the Filter Plant. It
23 was more enjoyable being away from the Filter Plant as much
24 as being at the meeting." Correct?

25 A That's correct.

1 Q And I followed up with the next question: "Did
2 you get to the meeting, to the training section when it
3 first started or did you miss any portion of it?"

4 And what did you answer at line 10, Mr. Sorenson?

5 A "I believe I was there at the beginning. I'm not
6 sure. I don't remember coming late."

7 Q And my next question was, "Did you stay through
8 the whole session, the whole training program?" To which
9 you answered?

10 A "Yes."

11 Q Next question posed by me: "Do you recall being
12 gone for any part of the session at all?"

13 And you answered directing your attention to line
14 17, "I could have been out to make a phone call or two.
15 There were numerous phone calls." Do you recall making
16 that answer, Mr. Sorenson?

17 A "I could have been out to take a phone call or
18 two."

19 Q Excuse me. "Could have been out to take a phone
20 call or two. There were numerous phone calls."

21 A That's correct.

22 Q And I followed up at 18, were there numerous
23 phone calls for you or people in general? And you
24 basically said, your answer was at line 20.

25 A "For me."

1 Q Following question was, "When you say
2 numerous--2, 10, 20?" And at line 22 you answered what?
3 A "A couple."
4 Q Excuse me. That's--there's more to that answer
5 at line 22.
6 A "A couple. In Fresh Start I was always being
7 called out for the phone--for a phone, phone call, some
8 problem."
9 Q And going to the top of 39, I essentially ask you
10 if you have a specific recollection of that, and you said,
11 no, it may have happened. In essence, you are just
12 guessing. Excuse me.
13 I asked you, "Do you have a specific recollection
14 of being called out to take a phone call during this
15 training session?"
16 And you answered at line 3, "No, not in
17 particular." Is that correct?
18 A That is correct.
19 Q Then I went on at line 6, still on page 39, and I
20 pose the following question, "Do you recall how long the
21 training session was, essentially, the time frame of the
22 training session, 8:00 to 5:00, 10:00 to 4:00?"
23 And you answered at line 9, "Seemed like it was
24 8:00 to 4:00 or 3:30 or 3:00, something like that," was
25 your answer, was it not--

1 A Yes, it was.

2 Q --was it not, Mr. Sorenson?

3 A Yes.

4 Q I asked you if you considered the training
5 session to be relevant to what you were doing at the Filter
6 Plant, and you answered, "It talked about management styles
7 and what was necessary to be a good manager and more of a
8 refresher course than the details." And you went on to
9 say, "And the details associated with the discipline, and I
10 believe we talked a little bit about EEOC." We went on and
11 had some discussion about the content of the program,
12 correct?

13 A Yes.

14 Q Page 83, Mr. Sorenson?

15 A 83?

16 Q Uh-huh. My recollection is we diverted there and
17 asked about other topics, but we come back to it again at
18 page 83. In fact I start the question, "Mr. Sorenson,
19 going back to the training session you attended, where was
20 that training session held?"

21 And you answered it was held at Copperton in the
22 basement, correct?

23 A Yes.

24 Q And I asked you whether or not a sign-up sheet
25 was passed around. You responded, not that you remembered.

1 And we go back again and start talking specifically about
2 discussions on various topics beginning with the leadership
3 topic, correct?

4 A Yes.

5 Q Which is, in fact, the first tab in the book,
6 correct?

7 A Yes.

8 Q And I asked a series of very specific questions
9 including such as the one at line 20. We are talking
10 about, again, individuals. "Do you recall if it was just
11 one or more who ran the session on leadership styles." At
12 that point in time you said, "I don't remember."

13 A That's correct.

14 Q Point is, during your deposition, Mr. Sorenson, I
15 asked you very specific questions on that training seminar;
16 did I not?

17 A Yes, you did.

18 Q Numerous ones?

19 A That is correct.

20 Q And you answered each one from the perspective
21 that you had been in attendance, correct?

22 A As I was trying to remember, yes.

23 Q Now, we took your deposition the following day,
24 November 1st, 1989, correct?

25 A That's correct.

1 Q And then we reconvened for a third session on
2 February 8, 1990, correct?

3 A That's correct.

4 Q And in response to a question posed by Mr. Casey
5 if there was anything I wanted to correct.

6 MR. DAVIS: Can you identify where you are
7 referring to, Barbara?

8 MS. POLICH: I'm sorry. Volume III. Do we have
9 the original of Volume III, your Honor? It was one of the
10 ones that you opened.

11 Q Directing your attention to 388, Mr. Sorenson, do
12 you recall your deposition being taken that day?
13 Mr. Casey took it.

14 A Yes, I do.

15 Q And at line 14, Mr. Casey asked you if there was
16 anything, referring to reviewing your deposition, that
17 jumped out at--he is responding actually to a question by
18 Mr. Davis--but in essence, the question is if anything
19 jumped out at you that you wanted to talk about; any
20 problems with the prior deposition, correct?

21 A Yes.

22 Q And you responded yes, there was, correct?

23 A Yes, I did.

24 Q And at page 389--no let's read the whole answer
25 beginning a 388 line 22.

1 "In the first several--or the first two days we
2 talked somewhat about the management training seminar that
3 had taken place in late '88 where we had a manual plus the
4 seminar and on the record I had stated that I had thought I
5 was in that meeting or the seminar. But there was a lot of
6 questions that surrounded that as to whether--who was in
7 the meeting. And the second day, when you mentioned some
8 of the names I know had taught the course, I had no
9 recollection of being in the meeting with them and I felt
10 was probably best or necessary for me to change that at
11 least to state that I don't believe I was in the seminar."

12 A That's correct.

13 Q "And those meetings that I had been in I think I
14 had confused with that one. There had been so many
15 meetings teaching that program it was better that I state
16 that I was not in that one."

17 A That's correct.

18 Q And in fact, you were not in that seminar, were
19 you?

20 A That's what I stated here in court also.

21 Q And thus you did not get a copy of what has been
22 marked as Exhibit 5 at that seminar, did you?

23 A As I recalled, later I got the copy through Jerry
24 Hansen.

25 Q And do you recall specifically when you received

1 a copy of that from Jerry Hansen?

2 A The way I remembered it was that I was not able
3 to go to the meeting, the first scheduled class. When I
4 was not able to go to that one, Jerry gave me his manual to
5 go through it. It was subsequent to that I thought I had
6 attended the course and had confused it most likely with
7 one of the Fresh Start courses.

8 Q You confused it with the Fresh Start course of
9 which you were facilitator, correct?

10 A I believe so.

11 Q And if you will direct your attention at that
12 manual among the topics that were taught at that Fresh
13 Start Program was a section on EEOC, correct?

14 A Yes.

15 Q Excuse me, at the management training seminar,
16 correct?

17 A Yes.

18 Q You didn't have a whole section on EEOC at Fresh
19 Start, did you?

20 A No, we did not.

21 Q And also I direct your attention to the pocket of
22 that manual, there is a copy of the collective bargaining
23 agreement, correct?

24 A Yes, there is.

25 Q And in fact, there is also a section entitled

1 Discipline and Counseling, correct?

2 A Yes, there is.

3 Q And if you turn to that section, you will note

4 that there is considerable discussion of the collective

5 bargaining agreement, correct?

6 A (No audible response.)

7 Q Specifically directing your attention to page

8 833--yours may not be marked the same way.

9 Your Honor. May I approach the witness?

10 THE COURT: Yes.

11 MS. POLICH: Because I believe this is

12 unpaginated.

13 Q Actually it is paginated page 7 and it is

14 entitled contractual check list for discipline, article 51,

15 do you see that, Mr. Sorenson?

16 A Yes.

17 Q And there are a number of pages in that section.

18 Well, that page discusses article 5.1 of the collective

19 bargaining agreement; does it not?

20 A That's correct.

21 Q And article 5 of the 1986 collective bargaining

22 agreement contained a Justice and Dignity provision,

23 correct?

24 A That's correct.

25 Q And as part of that Justice and Dignity provision

1 there were very specific requirements being imposed
2 including the right to hearing; isn't that correct?

3 A That's correct.

4 Q And as part of article 5 Justice and Dignity
5 provision that it provided essentially grievance procedure;
6 isn't that correct?

7 A That's correct.

8 Q And the grievance procedure was a very stepped
9 process; isn't that correct?

10 A That's correct.

11 Q And in fact, if the grievant--ultimately the
12 grievance eroded, assured the ability to go to a formal
13 arbitration; isn't that correct?

14 A Yes, it did.

15 Q Now, in your Fresh Start program, you did not
16 have a detailed discussion of article 5 of the collective
17 bargaining agreement, did you?

18 A That's correct.

19 Q But you believed you were confused about the
20 Fresh Start Program which you taught innumerable times,
21 correct?

22 A The timing of the program. What I was basing
23 most of the answers that we talked about in there in
24 specific was from my recollection from reading and going
25 through the material. The material I had seen and the

1 would have been smelter manager, correct?

2 A Yes, plant manager.

3 Q And do you recall, Mr. Sorenson, when that

4 conversation--when that meeting took place?

5 A As my recollection was, the time frame was before

6 I assumed the duties of anode general foreman. I believe

7 earlier I had talked prior to '81, but as we had this one

8 document, I wasn't actually transferred until '83. So it

9 was prior to--just prior to my transfer to the anode

10 general foreman's position.

11 Q So you think it was sometime before '83?

12 A Yes.

13 Q Can you be more specific than that?

14 A As I recall, it was just, you know, within six

15 months of that transfer because the individual that we were

16 talking about, Mr. Stireman, was let go in the reduction of

17 force that took place at that time when I was transferred

18 to the Anode Department.

19 Q Now, as I understand it from your testimony, you

20 viewed that meeting as one in which was articulated that

21 salaried individuals were entitled to a progression of

22 discipline which included in the first instance verbal

23 warning, next instance written warning, the next instance

24 suspension, correct?

25 A Yes, that's correct.

1 Q And you also, as I understand your testimony,
2 understood that meeting to clearly convey the concept that
3 a salaried employee was entitled to a hearing; is that
4 correct?

5 A That's correct.

6 Q I understand you testified yesterday that meeting
7 was called for other purposes, was not a regular meeting;
8 is that correct?

9 A It was--this was an unscheduled meeting. We did
10 have regular staff meetings, but as I recall this was a
11 special one.

12 Q In fact, I believe yesterday you specifically
13 testified that you were talking about the EEOC policy; is
14 that correct?

15 A Yes, as I recall.

16 Q And the meeting then evolved into a conversation
17 about Stireman and perhaps Chesley; is that correct?

18 A As I recall, that was brought up after we had
19 discussed this EEOC document or changes that had come out.
20 As I recall, Mr. Bryant had presented that part.

21 Q And the discussion involved because Mr. Coon, who
22 was a general foreman, was having difficulty with Mr.
23 Stireman, correct? And perhaps Mr. Chesley?

24 A Yes.

25 Q And they were foremen who reported to him as

1 termination. That was something in between that we were
2 working at.

3 "QUESTION: What you were trying to do was find
4 solutions short of termination; is that correct?

5 "ANSWER: That's correct." That's your
6 testimony; is it not, Mr. Sorenson?

7 A Yes, it.

8 Q And I go on and I say: "QUESTION: Did you
9 recall him saying, what can I do after I had put a letter
10 in the file? Is that what you recall Mr. Coon saying?

11 "ANSWER: No. The specifics are there. Other
12 than the fact that we started talking about in the sense we
13 had more of a specific plan for hourly employees and that
14 we had set regimen of written warning for the first
15 offense, three days off for the second offense, five days
16 off, 10 days off, termination was a typical program we
17 followed with hourly employees."

18 And then we go on and we lapse in at page 46, we
19 go into a discussion about the collective bargaining again;
20 isn't that correct?

21 A Yes?

22 Q Looks like at 47 line 18 we return to the
23 discussion of your conversation about Mr. Coon's
24 employment; is that correct?

25 A That's correct.

1 Q "QUESTION: Do you recall who he had disciplined
2 and was the subject of this discussion?

3 "ANSWER: If I remember right, it was Ray
4 Stireman was the foreman that they were talking about."

5 MR. DAVIS: Excuse me. Where are you at,
6 Counsel?

7 MS. POLICH: I'm sorry. 47 line 22.

8 Q "QUESTION: Is he the only one?

9 "ANSWER: At that particular meeting, it could
10 have been either Ray Stireman or Bob Chesley.

11 "QUESTION: So it was one of those two persons?

12 "ANSWER: As I remember right, those were the
13 ones he was having problems with."

14 And then we divert again and we pick up the
15 conversation on page 50 and at 23--line 23 page 50, Mr.
16 Sorenson, are you there?

17 A Yes.

18 Q "So then what was said in the meeting about--

19 "ANSWER: It was then what is our next step. If
20 it doesn't, if this doesn't work, if he doesn't change,
21 what's our next step. And at that time we discussed time
22 off, how we would administer that."

23 That was your answer; was it not?

24 A That's correct.

25 Q I went on and said at line 3: "QUESTION: Tell

1 me exactly what you recall about the discussion in terms of
2 using time off as a way to get Mr. Stireman to shape up."

3 And your answer at line 6 was as follows:

4 ANSWER: Simply that we were talking about three days off,
5 how we would do that. Is there a problem in docking
6 somebody's pay three days, requiring them to work and not
7 paying them, is that an option, or do you cut their salary
8 the equivalent of three days pay and essentially give them
9 three days off, would that be the way to go. It was more
10 how to administer, what would be the options. I don't
11 remember it was ever taking place that he was ever given
12 three days off. But we had hit upon the idea that what we
13 would do was essentially give them three days off and have
14 payroll deduct three days pay." Is that correct?

15 A That's correct.

16 Q And at that time you were having that discussion,
17 Mr. Sorenson, you were not aware that salaried employee had
18 ever received time off, correct?

19 A That's correct.

20 Q And in fact, no one in the room at that time at
21 that meeting indicating they were aware of anyone where
22 that procedure had been used; is that correct?

23 A That's correct.

24 Q And at that time, in fact, I asked you that
25 question: "Did anyone in that room indicate that he was

1 aware that such had ever been done with a salaried
2 employee, essentially a salaried employee had been given
3 time off or suspended." And your answer at line 23 was as
4 follows?

5 "I don't recall anyone ever saying we had done it
6 at the smelter. We were more or less exploring what we
7 would do in that instance." Correct reading of your
8 testimony?

9 A Yes, it is.

10 Q That was the testimony you gave on that date,
11 correct?

12 A Yes. May I say one thing?

13 Q I'd like to finish, please. Question--going on
14 top of page 52.

15 A Okay.

16 Q "You were looking for a new creative way to
17 handle the problem; is that correct?"

18 A Yes.

19 Q "ANSWER: Right."

20 THE COURT: Are you aware of an instance when a
21 salary employee has been given some type of hearing before
22 termination?

23 THE WITNESS: Yes.

24 THE COURT: Who did they use for the hearing
25 officer? Is it a representative employee that the contract

1 response to yours. The problem with it, I guess, you
2 wanted to know who the employee was?

3 MS. POLICH: He had already answered about
4 Cottrell. Now, he is--he will be reading, giving a
5 different--

6 THE COURT: That's true.

7 MS. POLICH: Giving someone else and new
8 information. I'm not sure we can keep track of our record
9 with the spontaneous--

10 THE COURT: It will be stricken.

11 Q (By Ms. Polich) You had testified, as I
12 understood it, that it was only a single conversation. It
13 is your testimony here at trial that Bob Anderson was
14 present; isn't that correct?

15 A No. I testified earlier that there was a meeting
16 earlier in Dallas Mikich's office with Bob Anderson, Dallas
17 Mikich, Jack Haymond, J. T. Coon and myself, and then there
18 was a second meeting later on where we also discussed
19 essentially the same problem only it was with the larger
20 smelter staff. And in one of the books here was that we
21 were reading was the initial meeting.

22 Q But they were close in time, correct?

23 A Yes, they were.

24 Q And as of the time of either one of these
25 meetings, you were aware at no time salaried employee had

1 about that time you had been at Kennecott nine years,
2 correct, approximately?

3 A That's correct.

4 Q And in those nine years you were unaware of
5 anybody who had ever been suspended, correct?

6 A That's correct.

7 Q Now, following up on the Judge's question about a
8 hearing, salaried--excuse me. You understood that there
9 was no grievance procedure for salaried employees; isn't
10 that correct?

11 A That's correct.

12 Q And in fact, weren't you, Mr. Sorenson, really
13 aware of the fact that there was no mechanism at all for
14 salaried employees to challenge a decision--discipline
15 decision?

16 MR. DAVIS: Objection. Asked and answered. It's
17 been asked in connection with the grievance arbitration.
18 It is also asking in connection with whether or not they
19 were entitled a hearing. He has testified on that.

20 THE COURT: I think it is a slightly different
21 question. Overruled.

22 THE WITNESS: The question again? I'm sorry.

23 (Record read.)

24 Q (By Ms. Polich) Now, you, yourself never had
25 given written warnings, is that correct, Mr. Sorenson, to

1 any of his--I said supervisors, it should be supervisor who
2 reported to you?

3 A As I recall, no.

4 Q You certainly never utilized suspension?

5 A No.

6 Q Is that correct you never conducted anything in
7 the nature of a hearing; is that correct? That's what you
8 call a hearing, that is a--

9 A A formal hearing. I did have those, one-on-one
10 with my foremen, in terms of verbal warnings that I had
11 given them.

12 Q So what you are saying is that formal hearings,
13 basically one-on-one discussions with the person whose
14 being disciplined, correct?

15 A It is a formal nature in that it needs to be
16 taken out of the ordinary and set in specific details and a
17 specific meeting, yes.

18 Q So as I understand your testimony, when you were
19 saying that you were entitled to Kennecott's policy to a
20 formal hearing, what you were saying is you were entitled
21 to a one-on-one discussion; is that correct, with general
22 foremen?

23 A At least, yes.

24 Q But that is what you were saying you were
25 required to have, correct?

1 transfer; is that correct?

2 A Initially.

3 Q And is it your testimony that you also had a
4 conversation with Mr. Smith, correct?

5 A Yes.

6 Q And do you recall in that conversation with Mr.
7 Smith that he told you this was essentially a last chance
8 for you; this was a transfer in which you needed to prove
9 yourself?

10 A No, he did not say that.

11 Q Prior to that time, Mr. Sorenson, you had
12 received a performance review from Mr. George; isn't that
13 correct?

14 A That's correct.

15 Q And that performance review was given to you in
16 February of 1988; isn't that correct?

17 A Yes.

18 Q And when you received it--and it was a G- rating,
19 correct?

20 A That's correct

21 Q And when you received that G- rating, you in
22 fact, wrote a memo to Mr. George; isn't that correct?

23 A That's correct.

24 Q Let me direct your attention to Defendant's
25 Exhibit 131; do recognize that document, Mr. Sorenson?

1 A Yes, I do.

2 Q In fact it is a copy of a letter you wrote to Mr.

3 George--

4 A Yes, I did.

5 Q Discussing--excuse me. It is discussing the

6 management performance appraisal; isn't that correct?

7 A That's correct.

8 MS. POLICH: I'd move for admission of

9 Defendant's Exhibit 131.

10 THE COURT: Any objection?

11 MR. DAVIS: No objection.

12 THE COURT: It will be received.

13 (Defendant's Exhibit No. 131 was

14 received in evidence.)

15 MS. POLICH: Now, at or about this same time, Mr.

16 Sorenson, Mr. George had also written you a letter

17 discussing your performance; had he not?

18 A The only letter I remember receiving was the one

19 talking about communications after my return from Chile.

20 Q So he had in fact written you a letter discussing

21 some problems he perceived, correct?

22 A Yes.

23 Q And as I recall in your testimony of Chile, you

24 had gone to Chile early in December; is that correct?

25 A Correct.

1 Q When was that?

2 A That was in 1989 in September 17th--September
3 15th of 1989.

4 MS. POLICH: I'm sorry, your Honor. The
5 witness's voice is dropping a bit.

6 THE COURT: If you would try to keep your voice
7 up it would be helpful.

8 THE WITNESS: I can, yes.

9 MR. DAVIS: If you would like to pull the mike
10 up.

11 MS. POLICH: I can hear now.

12 Q If you would summarize your employment. I don't
13 want a great deal during this period of time. Just from
14 1970 to September 1989 what positions you held and where
15 you worked?

16 A I began at the Smelter Plant with full time
17 employment in January of 1970. I worked there for about
18 ten months and I became shop support foreman, which had the
19 responsibility for the shop areas on the afternoon shift
20 where I had two supervisors and a dozen or so craftsmen who
21 reported to me.

22 I was subsequently promoted to shop support
23 general foreman and that responsibility I had approximately
24 nine supervisors and about 150 total employees.

25 Q When were you promoted to the shop support

1 general foreman position?

2 A I believe it was '70, would be, but I'd have to
3 check my records on that.

4 Q Okay.

5 A I served in that position for about three years.
6 Then I was transferred to field repair general foreman,
7 which was a peer position and had responsibility for the
8 field areas, the operations areas, those maintenance
9 responsibilities.

10 In December of 1976, it was actually effective
11 1st of January of 1977, I was promoted to maintenance
12 superintendent. I served in that position for
13 approximately ten years and then when it came operation
14 superintendent, during that interim period between
15 maintenance superintendent and operation superintendent, I
16 was acting plant manager for about a six month period from
17 January of '87 through June into June of '87. I served as
18 operations superintendent from June of '87 through August
19 of '88 and I went--became manager of engineering projects
20 which I was in that responsibility until I left the company
21 in 1989.

22 Q Now, in connection with the employment that
23 you've described, did you attend--first of all, did
24 Kennecott offer management training to you and other
25 supervisors?

1 content applying to discipline?

2 A We had some forms that we used. We also had some
3 grievances that we took to use as examples of what
4 discipline would be, and there was a policy that was--well,
5 there was a letter written by the general manager at the
6 time, explaining--

7 Q Who was the general manager at the time; do you
8 recall?

9 A B. B. Smith.

10 Q All right.

11 A --explaining the company's position on discipline
12 and discharge and their support of the frontline supervisor
13 in those responsibilities.

14 Q Okay. Again what--explain for me if you would
15 what you did in the development of the content pertaining
16 to discipline at the seminar.

17 A Well, specifically we had a training program
18 designed to communicate certain procedures that we should
19 use. We use what is called, the hot stove rule. We wanted
20 people to have an imagine of this hot stove. That was how
21 discipline should work. That it was impartial, that anyone
22 who touched it would be burned. Didn't matter who it was.
23 That you could see it was going to happen because it was
24 shot and so you would be forewarned, knowing if you did
25 touch it, you were going to be burned. That it was

1 immediate. Anyone who touched it, immediately suffered the
2 consequences of that act. And that was what we were trying
3 to teach the people about.

4 We were trying to communicate to them that there
5 was a need to be consistent in how discipline was applied
6 throughout the company. That, and for those reasons, we
7 took grievances and--of actual cases, and would tell them
8 the facts of those cases. But the decision, we would leave
9 blank, would give them time to go in and fill in what their
10 decision would be.

11 Then we'd go through a series--the group,
12 particularly 25 supervisors--ask them what you did. You'd
13 get a whole array of decisions that were there. Then we'd
14 come back, say what the decision we had actually reached
15 and why, so they would start to understand and be
16 consistent. We wanted discipline to be consistent.

17 We assured them they had the right to discipline
18 people, that their rights would not be overturned except
19 within the grievance procedure. Then if it was within the
20 grievance procedure they would have to right to attend the
21 meetings and see the final outcome of the grievance.

22 Q Did--was part of the content of the discipline
23 portion of the seminar, did it address progressive
24 discipline?

25 A Yes. It did.

1 attempt to be more consistent in how we managed our people.

2 Q Was communication discussed in the Fresh Start
3 Program that you attended.

4 A Yes, it was.

5 Q In what way?

6 A Communication skills, how it was an important
7 tool of management, what some of the techniques in
8 communications are, how to be a good listener, how we need
9 to communicate openly and forthright.

10 Q in relationship to who?

11 A In relation to all the dealings with management,
12 all levels of the organization.

13 Q Did the general manager attend any part of your
14 Fresh Start Program?

15 A Yes.

16 MS. POLICH: Objection. Relevance.

17 THE COURT: Overruled. You can answer.

18 THE WITNESS: Yes. He actually made a
19 presentations there.

20 Q (By Mr. Davis) And who was that?

21 A At that time it was Burgess Winter.

22 Q Do you recall the remarks that Mr. Winter made at
23 your seminar or instructions?

24 A Just in a general area, that it was an
25 opportunity for us to start anew, to go forward.

1 establish maintenance priorities for the coming week, and
2 also discuss what the production goals were and then to
3 have general communications of what was happening around
4 the plant.

5 In those times we would talk about the
6 disciplinary action that was going on: The grievance
7 procedures, the dealings with the unions were discussed in
8 those meetings.

9 Q Did you discuss the disciplinary matters as they
10 applied to supervisory or salaried personnel?

11 A Yes, we did.

12 Q Can you give us any examples and again, subject
13 to trying to place them at some point in time and so forth.
14 Can you give us any specific examples of discussions that
15 you had which Mr. Sorenson was present?

16 A There were discussions in the seminars that we
17 taught, the training sessions that we taught about how--

18 Q No, I'm talking about these weekly meetings that
19 you have described.

20 A Specifically, we would talk about when employees
21 would be terminated. All employees, whether they be hourly
22 employees or supervisors. It was a matter of, termination
23 was a fairly rare event. We considered it to be capital
24 punishment and used it very seldom. So for those reasons,
25 when an individual was terminated, it was a great interest

1 to the supervisors and all members of the organization.

2 We wanted to make sure there was consistency for
3 our people, everyone considered what was happening, we
4 could employ consistency throughout the Smelter Plant and
5 throughout the division. We would go through and review
6 the cases that included supervisory personnel.

7 One that I do recall was Mr. Lindsey that was
8 terminated was a supervisor.

9 MS. POLICH: Objection. May we have some
10 foundation?

11 THE COURT: Sustained.

12 MR. DAVIS: Again, you need to know that when you
13 do reference a conversation or a discussion, that it is
14 important that we get the time, place, persons present in
15 order to preserve the record on the conversation. So do
16 the best you can to try to identify those aspects.

17 A I understand. But I was 22 years at the smelter
18 and we were meeting every Thursday. For me to specifically
19 tell you what day and who attended, I cannot do that. I
20 can tell you the meetings were held, and they were held
21 routinely on a weekly basis, and what was discussed in
22 those meetings. I can tell you a specific meeting but I
23 can't tell you all the people who were in attendance at the
24 specific meeting.

25 Q Okay. With reference to Mr. Lindsey, do you have

1 any understanding as to when the meeting in which he was
2 discussed occurred?

3 A The closest I could come would be to give you a
4 year.

5 Q Okay.

6 A I couldn't give a month or a day. And it was in
7 the '87, '88 window. From probably October of '87 through
8 April of '88.

9 Q Okay. And do you recall where this discussion
10 took place?

11 A It took place in the conference room, in the
12 smelter conference room.

13 Q Do you recall any specific individuals being
14 present?

15 A I can't give you specific names, no.

16 Q Do you know if Mr. Sorenson was present?

17 A I did not know.

18 Q Go ahead and describe what was said during that
19 meeting?

20 A The discussion was why Mr. Lindsey was
21 terminated. He was terminated at the Smelter Plant and he
22 was a supervisor. And what he was accused of was stealing
23 scaffolding, and that he had used a company vehicle to take
24 the material out, stored it off site the company property
25 and later came back and picked it up.

1 Q Okay. And was it merely a discussion as to the
2 facts of what Mr. Lindsey had done?

3 A It was discussion of the facts.

4 MS. POLICH: Objection, your Honor. Leading.

5 THE COURT: Sustained.

6 Q (By Mr. Davis) Was there any other discussion
7 regarding Mr. Lindsey besides that which you have
8 described?

9 A There was an attempt to inform the supervisors of
10 what happened in that case. Why he was discharged and what
11 the facts were.

12 Q Do you ever recall any specific discussions in
13 these weekly meetings in which you told your supervisors
14 that they were entitled to the element of progressive
15 discipline?

16 A Yes.

17 MS. POLICH: Objection. Leading.

18 THE COURT: Overruled.

19 Q (By Mr. Davis) Do you recall--and again, we are
20 looking at foundation questions here. Do you recall
21 specific instances?

22 A I can't give you the date of a particular
23 meeting. It was a matter of course of things that we did
24 all the time.

25 Q Okay. Do you recall this information being

1 communicated in connection with any specific case that you
2 were addressing?

3 A I'd have to go to my files. There are numerous
4 cases where we discussed the termination of employees. The
5 Glenn Whitehouse termination was discussed.

6 Q I'm talking about written--about written
7 warnings, or verbal warnings or any aspect of progressive
8 discipline, not just termination.

9 A That was a discussion--nearly weekly we would
10 discuss discipline that happened at the plant. We would
11 review in those meetings the grievance rules. The
12 grievance had a series of steps that it was taken through
13 until ultimately there was a disposition before it went to
14 arbitration. Most cases would not go to arbitration and so
15 we would take those cases, explain the facts and tell the
16 supervisors what happened. That would have to do with
17 discipline, with all sorts of other issues as well.

18 Q With respect just to discipline as applied to
19 salaried people, do you remember specific cases in which
20 you informed your subordinates they were entitled
21 progressive discipline if they erred in their behavior?

22 A Yes.

23 Q When?

24 A Once again, I have a difficult time nailing the
25 time down. It was something that I talked about on a

1 routine basis.

2 Q Okay.

3 A It was the same question as when did you tell the
4 people to do their best. It was something that we did all
5 the time.

6 Q Okay.

7 MS. POLICH: Objection, your Honor. I think
8 that's nonresponsive and it is a conclusion without
9 foundation.

10 THE COURT: Overruled.

11 Q (By Mr. Davis) Do you recall being in any
12 meetings in which progressive discipline was discussed with
13 regard to a Mr. Stireman?

14 A I did not participate in that one. As far as
15 discipline, I was involved in what happened in the case and
16 his discipline, yes.

17 Q What way were you involved?

18 A Just in the same way that I communicated the
19 discipline I was involved with. I was also communicated--I
20 was aware of the Stireman case.

21 Q And who made you aware of that?

22 A I believe it was Bob Anderson who was the plant
23 manager at the time.

24 Q Do you recall having any specific discussions on
25 progressive discipline as applied to Mr. Chesley?

1 A I remember Chesley discuss, but I don't remember
2 the issues, no.

3 MS. POLICH: Objection. Assumes facts not
4 necessarily in evidence, your Honor. Leading.

5 THE COURT: Overruled.

6 Q (By Mr. Davis) Do you remember being in any
7 discussions wherein progressive discipline was discussed in
8 connection with a Mr. Cottrell?

9 A Yes.

10 Q Do you remember when those discussions took
11 place?

12 A Mr. Cottrell would be '87. Late '87 I believe.

13 Q Who was Mr. Cottrell?

14 A He was maintenance supervisor in the material
15 handling area.

16 Q And do you recall where you had discussions
17 regarding Mr. Cottrell?

18 A In the smelter conference room in the main
19 Administration Building.

20 Q Do you recall who was present?

21 A Stewart Smith, Al Supulveda. Beyond that I
22 believe Tom Beyersdorf was there, but I know Stewart and Al
23 were there.

24 Q Do you know if Mr. Sorenson was there?

25 A I do not know.

1 Q What do you recall being discussed at that
2 meeting?

3 A I was not with Mr. Cottrell, the person who made
4 the decision, the recommendation on his termination. So
5 once again, I was--there was discussions about what they
6 were going to do to Don as far as the corrective
7 discipline. He had been involved in what was considered to
8 be an unsafe act, what would be the appropriate discipline
9 for that particular case.

10 Q Okay. Were there any discussions that addressed
11 what had been the practice at the smelter?

12 A Yes, there was.

13 Q Who do you recall was engaged in that discussion?

14 A I participated in that discussion with Al
15 Supulveda.

16 Q Do you recall what you said in connection with
17 that discussion?

18 A We talked about progressive discipline and what
19 needed to be done. We also talked about the problem of how
20 you treated an unsafe act, whether or not a person getting
21 injured was sufficient discipline or there had to be
22 something else, and what would be appropriate.

23 Q Do you recall Mr. Smith making any comments
24 during this meeting?

25 A I know he participated but I could not give you

1 any specific comments that he made.

2 Q Do you recall him making any statements that this
3 practice was not to be used in connection with salaried
4 people?

5 MS. POLICH: Objection. Leading. The witness
6 has already answered that he doesn't recall any specific
7 comments, and to ask specific follow-up questions to lead
8 this witness. It has already been asked and answered.

9 THE COURT: Overruled. He can answer.

10 THE WITNESS: We talked with Stewart about
11 corrective discipline.

12 Q (By Mr. Davis) Now, is this a meeting that you
13 are--we are talking about?

14 A There were a number of meetings with regard to
15 Mr. Cottrell. There was the first meeting that we were
16 involved in making determination of what to do. And then
17 there was a subsequent meeting where this was communicated
18 to the members of management. The meeting I am talking
19 about now was the one where the determination was made and
20 what should be done with Mr. Cottrell.

21 Q And do you recall who was present at this
22 meeting?

23 A At that meetings, that's one I referred to
24 already where Stewart Smith was there, where Al Supulveda
25 and myself was there.

1 Q And do you recall when that meeting was held,
2 approximately?

3 A It was approximately the time I gave you, which
4 was in the latter part of '87, early part of '88.

5 Q My question was, do you recall Mr. Smith ever
6 telling you that progressive discipline should not be
7 applied to salaried people in these meetings?

8 A No.

9 Q Now, with regard to, I think you have stated
10 there were two meetings regarding Mr. Cottrell; is that
11 correct?

12 A Yes.

13 Q You've testified to one?

14 A Yes.

15 Q Was there another one?

16 A Yes.

17 Q And where did that take place?

18 A In the smelter conference room again.

19 Q Do you recall who was in attendance at that
20 meeting?

21 A All the general foremen were in attendance at
22 that meeting.

23 Q Was that after the first one?

24 A Yes, it was.

25 Q Do you recall how long after the first one?

1 A I would guess two weeks.

2 Q Okay.

3 A That's an estimate.

4 Q And you were present at that meeting?

5 A Yes, I was.

6 Q Do you recall what was discussed at that meeting?

7 A It was discussed what the case was and what the
8 discipline that was handed out to Mr. Cottrell was given.

9 Q Did you lead this discussion?

10 A I participated. Stewart Smith led the
11 discussion.

12 Q Describe as best you can recall who said what
13 during that meeting?

14 A There was discussions about the need to take
15 action in this case because of what was considered to be an
16 unsafe act by Mr. Cottrell. That he was a supervisor, that
17 he had to set the example of performing acts in a safe way.
18 And that in spite of the fact that he was seriously hurt,
19 that discipline was also necessary so we could establish a
20 record on him if it continued.

21 That it was important for the safety of all that
22 we draw the line, if you will, that we not allow the unsafe
23 acts for years, we'd somewhat--if a person had been injured
24 and committed something that was unsafe, we'd turned the
25 other way assuming that the injury was sufficient

1 punishment. But that we had felt that in this particular
2 case, that discipline, progressive discipline was important
3 here that he know and be given time off for that particular
4 instance so he recognized the severity of what had
5 happened.

6 Q So what type of progressive discipline was being
7 contemplated?

8 A Days off.

9 Q Is that called suspension?

10 A Yes, it is. Well, suspension is a term that we
11 used from the time a person has an incident occur until we
12 had a chance to make a decision. So I guess we used that
13 term in other phrases, but particularly a person would be
14 suspended pending a determination of what to do. Then
15 after that, he would receive the punishment for whatever
16 the act was.

17 Q Do you know if Mr. Cottrell had received other
18 types of progressive discipline prior to the days off that
19 you described?

20 A Not that I am aware.

21 Q Do you have any knowledge of him receiving a
22 verbal warning or written warning.

23 MS. POLICH: Objection. Asked and answered.

24 THE COURT: Well, I don't think I heard the
25 answer to it. Overruled

1 THE WITNESS: Mr. Cottrell had been in trouble
2 before but not for this type of incident and I believe that
3 he had been counseled earlier.

4 Q (By Mr. Davis) During the time--first of all,
5 were there times when you directly supervised Mr. Sorenson?

6 A Yes.

7 Q During those times, was he required to implement
8 this policy of progressive discipline in connection with
9 his supervisory subordinates?

10 A Yes, he was.

11 MS. POLICH: Objection, your Honor. Lack of
12 foundation in terms of the basis for that statement and
13 when the supervisory capacity existed, relationship
14 existed.

15 THE COURT: You can ask him when.

16 MR. DAVIS: You have answered yes. During--

17 MS. POLICH: Move that last answer be stricken
18 until the appropriate foundation is established.

19 THE COURT: Overruled.

20 Q (By Mr. Davis) During what periods did you
21 directly supervise Mr. Sorenson?

22 A 1986. January of 1986, I was appointed to be
23 acting plant manager and I carried that responsibility
24 until June of that year. And then when we started up
25 that--I said '86. I believe that would be '87. That would

1 be January of '87 through June of '87.

2 And then I became operations superintendent and
3 Kelly worked for me and took direct assignment from me for
4 that period of time. On the organization chart there was a
5 period of time that he reported to another individual but,
6 he took directions directly from me and worked for me.

7 Q Were there other times when he was somewhere in
8 the chain of command the people that you supervised?

9 A Only from the period--

10 MS. POLICH: I'm sorry, could I hear that
11 question again?

12 Q (By Mr. Davis) Would you like to read it back?

13 (Record read.)

14 THE WITNESS: Not in the direct chain of command.
15 He was in the operations group and I was supervising the
16 maintenance group until '87.

17 Q (By Mr. Davis) Who was superintendent in
18 operations during the time that you were superintendent in
19 maintenance?

20 A Dallas Mikich for the most part of that time.

21 Q Do you know whether Mr. Mikich required his
22 supervisory subordinates to apply progressive discipline to
23 other supervisors?

24 MS. POLICH: Objection. Foundation.

25 Q (By Mr. Davis) Answer yes or no.

1 A Yes.

2 Q How do you know that?

3 A Because I was in the meetings. We met

4 collectively together.

5 Q Do you recall which meetings you attended with

6 Mr. Mikich?

7 A These were the 30 day meetings I have talked

8 about earlier.

9 Q During the time that Mr. Sorenson was in under

10 your direct supervision, was he required to implement

11 progressive discipline to other supervisory employees?

12 A Yes, he was.

13 Q And was that policy discretionary? Could he use

14 it or not use it as his choice?

15 A Is it was not discretionary.

16 Q Why was it not discretionary?

17 A Because we wanted uniformity in how discipline

18 was applied throughout the organization.

19 Q Assuming Mr. Sorenson, while he was under your

20 supervision, assuming he did not use or utilize that

21 policy, could there have been any consequences?

22 A Yes.

23 Q For instance?

24 A Well, he would be counseled on where he was going

25 wrong and what he needed to do to correct that. If that

1 continued then corrective discipline would ultimately be
2 used upon him.

3 Q Do you know if this practice was used elsewhere
4 within Kennecott's division?

5 A Yes, I do.

6 Q Where else was it used?

7 MS. POLICH: Objection. Lack of foundation.

8 THE COURT: Sustained.

9 Q (By Mr. Davis) How do you know it was used in
10 other parts of the division?

11 A Because we would receive correspondence on how
12 people--what was--how people were disciplined. I told you
13 there was a desire of the division to have consistency in
14 discipline and discharge. For that purpose during the
15 training seminars which I instructed, we taught that
16 uniformity of discipline. We took actual cases and let
17 people make determinations on what would be done.

18 Q Let me stop you right there. Do you know whether
19 the policy was used elsewhere in the division, as applied
20 to salaried individuals?

21 MS. POLICH: Objection. Mischaracterization of
22 the evidence.

23 THE COURT: Overruled. He can answer yes or no.

24 A Yes.

25 Q (By Mr. Davis) How do you know that?

1 A Because we would get back information on what
2 happened in disciplinary cases and so we would get a frame
3 of reference to make our own disciplinary decision.

4 Q Do you have any understanding that progressive
5 discipline was applied to salaried personnel in other
6 divisions within Kennecott?

7 A I don't have any knowledge of that.

8 Q As a point of clarification, in regards to the
9 question as to whether or not progressive discipline was
10 applied to other salaried individuals within the division,
11 was it the same form of progressive discipline that you've
12 outlined as being used at the smelter?

13 A Yes.

14 MS. POLICH: Objection. I think it is a
15 conclusion.

16 THE COURT: Overruled.

17 MS. POLICH: Foundation. We have had specific
18 testimony on specific instances and I think this is at this
19 point a conclusion.

20 THE COURT: Well, without further foundation,
21 probably right. Sustained.

22 Q (By Mr. Davis) You can answer--excuse me, was
23 that sustained?

24 THE COURT: Sustained. Right.

25 Q (By Mr. Davis) With regards to--I believe your

1 testimony was you said that progressive discipline was
2 applied to other salaried personnel in other parts of the
3 Utah Copper Division; is that correct?

4 A Yes.

5 Q How do you know that?

6 A Because, as I have mentioned, we would get
7 reports from the other plants on the discipline that people
8 received and we were able to see that.

9 Q Did the reports describe the type of practice
10 that was being applied to salaried people?

11 A It gave the type of discipline that was handed
12 out, yes.

13 Q Do you recall specific types of discipline that
14 was being handed out to salaried individuals?

15 A Yes, I know that written warnings were used for
16 salaried individuals. I know that time off was given to
17 salaried individuals at the smelter and elsewhere.

18 Q Do you have any specific recollection of
19 somewhere else in the division that salaried individuals
20 were provided with progressive discipline?

21 A I recall those cases being discussed but I cannot
22 give you particular times and dates.

23 Q Do you know if the practice that was being
24 utilized in other parts of the division, do you know
25 whether this was the same as the practice you were

1 utilizing in the smelter?

2 MS. POLICH: Objection. Lack of foundation, your
3 Honor.

4 THE COURT: He can answer yes or no.

5 THE WITNESS: Yes

6 Q (By Mr. Davis) How do you know that?

7 A I think I have answered that question already. I
8 have answered in that we were informed about what the
9 disciplinary procedures were at other locations. So we
10 could remain consistent at the Smelter Plant and in that I
11 knew that they were doing progressive discipline.

12 Q Do you recall any conversations you had with
13 anyone in other parts of the division in which you
14 discussed this concept?

15 A Nothing--I can't give you a particular instances
16 right now. I'd have to think about that.

17 Q Do you recall any discussion with anyone in
18 personnel wherein this concept was discussed as applied to
19 salaried individuals?

20 A Yes.

21 Q Who?

22 A Gene Bryant.

23 Q Okay. Let's look at that conversation. Do you
24 recall when that occurred?

25 A Approximately 1985.

1 Q Okay. And where were you when you had that
2 discussion?

3 A It had to do with disciplinary procedure of a
4 general foreman who worked for me whose name was Glenn
5 Whitehouse.

6 Q And again, where did you have that discussion; do
7 you recall?

8 A In my office in the Smelter Administration
9 Building in the smelter superintendent's office.

10 Q I'm sorry. Go ahead.

11 A Smelter maintenance superintendent's office.

12 Q Were there other persons present besides you and
13 Mr. Bryant?

14 A There were a series of meetings that were
15 discussed. The meeting I am thinking about now was just
16 Gene Bryant and I.

17 Q What do you recall being discussed?

18 A We discussed about the need for discipline for
19 Mr. Whitehouse in the first steps. He was given a
20 counseling by me, just he and I together.

21 MS. POLICH: Objection. I think this is
22 nonresponsive. I think it was what was said in the
23 conversation.

24 THE COURT: Is that what was said in the
25 conversation?

1 THE WITNESS: In that conversation we discussed
2 what could be appropriate discipline for Mr. Whitehouse.

3 Q Was Mr. Whitehouse an employee that was working
4 at the smelter?

5 A Yes, he was.

6 Q Did you have any conversation with Mr. Bryant to
7 the effect that progressive discipline was being used
8 elsewhere in the division?

9 A Objection. Leading.

10 THE COURT: Overruled. He can answer.

11 THE WITNESS: Not that I recall.

12 Q (By Mr. Davis) Do you know if the policy of
13 progressive discipline is allowed to salaried individuals
14 at the smelter? Did that policy or practice ever cease to
15 exist during the time that you worked there?

16 A No.

17 Q Have you been involved in the termination process
18 of any Kennecott employees?

19 A Yes.

20 Q Were you involved in any kind of disciplinary
21 process as it applied to Mr. Whitehouse?

22 A Yes.

23 Q In what way were you involved in that process?

24 A He reported directly to me. I made
25 recommendations for the discipline that he would receive

1 and carried those out.

2 Q What was Mr. Whitehouse's position?

3 A General foreman of electrical.

4 Q And when were you involved in his disciplinary
5 process?

6 A Approximately 1985.

7 Q Describe as best you can recollect what that
8 disciplinary process consisted of.

9 A With Mr. Whitehouse, the first thing was given as
10 I gave him a verbal warning for his performance.
11 Subsequent to that--

12 Q What did that verbal warning consist of?

13 A It consisted of what I would consider a
14 counseling session where I sat down with him and told him
15 what was unacceptable about his performance and that it
16 needed to be corrected, what he needed to do to accomplish
17 that. But it is an informal nature, nothing was written,
18 nothing was reported.

19 Q Was he asked to correct his performance within a
20 certain period of time?

21 A Yes, he was.

22 Q Do you recall the period of time that was
23 provided?

24 A Six months.

25 Q Okay. What was the--do you recall the specific

1 nature of the performance problem Mr. Whitehouse was
2 having?

3 A His problems were absenteeism, being tardy for
4 work, just not being on the job as routinely as he should
5 be.

6 Q All right. Go ahead and continue.

7 A After that, his performance didn't improve and so
8 during performance evaluations, which was about eight or
9 ten months after that, I rated him down on his, what we
10 called goal accomplishments review, in that it contained
11 statements that he had to improve his performance in order
12 to retain his current position.

13 Subsequent to that he continued to have problems.
14 I gave him a written warning where he received a formal
15 letter from me that said if your performance does not
16 improve you're going to be terminated.

17 Q Was there some place that letter was sent?

18 A It was given to him. It was hand carried and
19 given to him. It was done with me and Gene Bryant in
20 attendance. A copy of that went to his personal file and
21 to the plant manager who was Bob Anderson at the time.

22 Q All right.

23 A After that we gave him time off for performance
24 and ultimately he was terminated.

25 Q After he was given time off, was there any

1 improvement in his performance?

2 A Briefly, at least it appeared his performance had
3 improved briefly for a few weeks, but it really hadn't.

4 Q Were those steps appropriate to performance
5 problems?

6 A Yes.

7 Q In what way?

8 A That it gave him the opportunity to correct his
9 performance, that we felt strong that the individual was
10 important. The company had a lot invested in the employees
11 and that we only wanted to use termination as the absolute
12 last course if we were unable to correct the employee. And
13 in his case we were unable to correct him so he was
14 terminated.

15 Q Was discipline of salary employees publicized?

16 A No, it was not.

17 Q Was there a reason for that?

18 A Yes. In order to keep the ability of the
19 supervisor to be able to lead, and that's part of being
20 able to be led, is respect; is that with an hourly
21 employee, we would give him a notice of a hearing or
22 written warning that was public and most of the plant would
23 know about that. But supervisors was done very quietly in
24 the same way we communicated what had happened to
25 supervisors and discipline was done by word of mouth. It

1 was not formal communication that it was going on.

2 Q Were you involved in other disciplinary processes
3 involving supervisors that ultimately led to termination?

4 A Yes, I was involved in one with Mr. Jack Allen.

5 Q Who is Mr. Allen?

6 A He was a maintenance foremen.

7 Q And do you recall the type of problem that Mr.
8 Allen was having?

9 A Yes. He was missing a lot of work as well. And
10 it turned out that he was working at another place at that
11 time. He was missing work so he could work a second job.

12 Q During what period of time were you involved in
13 this disciplinary process?

14 A 1971, '72.

15 Q Do you recall in what capacity you were involved?

16 A Shop support general foreman.

17 Q Okay. Did you have supervisory authority over
18 Mr. Allen?

19 A Yes, I did.

20 MS. POLICH: Objection, your Honor. This
21 occurred before Kelly Sorenson was at employed by
22 Kennecott. I fail to see the relevance of this.

23 THE COURT: What year was it, again?

24 THE WITNESS: '71, '72.

25 MS. POLICH: Mr. Sorenson was employed in 1974.

1 THE COURT: It does seem a little far from the
2 mark. Sustained.

3 MR. DAVIS: Your Honor, if I could be heard on
4 that. It seems to me it goes to the--at least the
5 historical period of time in which this type of policy was
6 involved in the smelter, and it also goes to the form that
7 it was in during this period of time.

8 THE COURT: I think what happened in an
9 individual case two or three years before the plaintiff was
10 hired couldn't possibly form a basis for the contract. I
11 think I will sustain the objection.

12 MR. DAVIS: Very well.

13 Q Do you recall salaried individuals at the smelter
14 after 1974 being given verbal warnings?

15 A Yes.

16 Q Are there names that immediately come to mind of
17 people that received verbal warnings?

18 A Bryan Booth, Steve Poulsen.

19 MS. POLICH: Objection, your Honor. I think
20 there's been no foundation for this testimony. I think the
21 question calls for a yes or no answer. Was he aware, if
22 so, appropriate foundation can be established.

23 THE COURT: Well, I will let him get the names in
24 provisionally. If you want to go beyond that you will need
25 some more foundation.

1 MR. DAVIS: Sure. I will try to provide that,
2 your Honor.

3 Q Mr. Booth, Mr. Poulsen.

4 A Mr. Belka.

5 MS. POLICH: I'm sorry, the last name was?

6 THE WITNESS: Belka.

7 Q (By Mr. Davis) Do you know if Mr. Cottrell was
8 given a verbal warning?

9 A Yes, Mr. Cottrell. Mr. Carlson, Mr. Ron Carlson,
10 Mr. Clyde Andrus.

11 MS. POLICH: I'm sorry, Clyde?

12 THE WITNESS: Andrus.

13 MS. POLICH: Andrus?

14 THE WITNESS: Yes.

15 Those are the ones that come to mind just off the
16 top of my head. I am sure if I searched my memory I could
17 find more.

18 Q Do you recall the position Mr. Booth held at the
19 time he was given a verbal warning?

20 A He was a maintenance foreman.

21 Q Do you recall the position Poulsen held when he
22 was given a written warning?

23 A He was a service foreman.

24 Q Mr. Belka?

25 A He was an anode foreman.

1 Q Mr. Cottrell?

2 A Maintenance foreman.

3 Q Mr. Carlson?

4 A He was maintenance foreman.

5 Q And Mr. Andrus?

6 A He was a maintenance foreman.

7 Q With regard to Mr. Booth, do you recall

8 approximately when that verbal warning was given?

9 A '81, '82.

10 Q Do you recall who gave it to him?

11 A His--Bob Hauser, who was the general foremen over

12 Mr. Booth.

13 Q Did Mr. Hauser report to you?

14 A Yes, he did.

15 Q How do you know that Mr. Hauser gave Mr. Booth a

16 verbal warning?

17 A Because ultimately Mr. Booth was terminated and

18 as part of that determination for termination, reviewed the

19 case, Bob Hauser told me.

20 Q With regard to Mr. Poulsen, do you know when he

21 was given a verbal warning?

22 A He was a foreman. I was the superintendent. The

23 general foreman give him that one, and it was '87.

24 Q Okay. Do you recall why he was given a verbal

25 warning?

1 A It is was for poor performance on the job,
2 inability of his crews to accomplish the work.

3 Q How do you know he was given a verbal warning?

4 A Once again, I was involved in that decision,
5 discussed it with the general foreman.

6 Q Mr. Belka, do you recall when he was given a
7 verbal warning?

8 A He was given both verbal and written warnings as
9 well as Steve Poulson was too, and they were given--in
10 Belka's case, he was given in the Anode Plant and it was in
11 the '87, '88 period. He was given verbal warning and then
12 written warning for his performance.

13 Q And how do you know he was given verbal and
14 written warnings?

15 A Because I participated in those.

16 Q Did you supervise his supervisor?

17 A I did, yes.

18 Q Did you have any conversations with him to that
19 effect?

20 A Yes, I did.

21 Q Were you told that he was given a verbal warning
22 and written warning?

23 A Yes.

24 Q And his supervisor was?

25 A Ken Britton.

1 Q Okay. With regard to Mr. Cottrell, do you know
2 why Mr. Cottrell was given a verbal warning?
3 A Yes, I do.
4 Q Why was that?
5 A For taking chances and being, I guess, reckless
6 would be a good term.
7 Q Do you know when that occurred?
8 A It was prior to when he got hurt so that would be
9 in '87.
10 Q Do you know who gave him the verbal warning?
11 A At that time, it was--Wayne Johnson. No, pardon
12 me. It was not Wayne in that area. I don't recall
13 specifically.
14 Q Do you know how--how do you know he was given a
15 verbal warning?
16 A Because when we reviewed his case, when we gave
17 him time off, we talked about him receiving a written
18 warning and I was there when that discussion took place.
19 Q Where do you recall that discussion having taken
20 place?
21 A That was the one I have already testified to that
22 took place in the smelter conference room.
23 Q And did you review Mr. Cottrell's file at that
24 time?
25 A It was discussed--as I had mentioned the decision

1 was to discipline. The recommendation was not mine. I was
2 there in attendance as a member of senior management.

3 Q Mr. Carlson?

4 A I gave that personally.

5 Q Do you recall when you gave it?

6 A I would guess it would be 1974, '75.

7 Q And do you recall why Mr. Carlson was given a
8 verbal warning?

9 A Yes, it was given for poor performance that he
10 was not controlling his crews. They were not performing
11 well.

12 Q Mr. Andrus?

13 A Mr. Andrus was given one because--

14 Q First of all, do you know when he was given a
15 verbal warning?

16 A I'm going to have to be approximate again on this.
17 You're going back a lot of years. But it would be in the
18 '82, '83 time period.

19 Q Okay. Do you know who gave Mr. Andrus a verbal
20 warning?

21 A I did.

22 Q And what was the reason for that?

23 A He had an alcohol problem that was causing
24 him--that he couldn't come to work on a regular basis, and
25 I counseled him on that.

1 Q You have stated Mr. Poulsen and Mr. Belka
2 received written warnings. Do you recall other supervisory
3 personnel besides those two that received written warnings?
4 A Yes. I mentioned earlier Glenn Whitehouse.
5 Q And how do you know Mr. Whitehouse received a
6 written warning?
7 A I wrote it.
8 Q Do you recall when that happened?
9 A Well, I have testified to that. It was during
10 the time that he was terminated, but it was in the '85
11 period.
12 Q Is there anyone else that you recall?
13 A Yes. I can see his face and I recall the
14 incident but I can't recall his name right now. So I will
15 have to pass on that one.
16 Q With regards to suspension, do you recall any
17 salaried or supervisory personnel receiving suspension?
18 A Glenn Whitehouse, Don Cottrell.
19 Q And how do you know Mr. Whitehouse received a
20 suspension?
21 A I gave it to him.
22 Q And was that during the same time frame as you
23 have just testified to?
24 A Yes.
25 Q And Mr. Cottrell?

1 A I was there when the decision was made and I knew
2 he was gone from the plant.

3 Q Do you recall who made the decision to suspend
4 Mr. Cottrell?

5 A Al Supulveda.

6 Q And Mr. Supulveda was in what position at the
7 time?

8 A Maintenance superintendent.

9 Q Now, in connection with the practice of
10 progressive discipline as you have described it, were there
11 hearings available to salaried individuals?

12 A Yes. I guess--yes, there were. Depends on how
13 you design hearing. Yes. We bring them in, determine the
14 fact, make a decision after those facts were out.

15 Q Were there hearings provided at each stage of
16 progressive discipline?

17 A Yes.

18 Q Were the hearings the same at each stage?

19 A The format was the same.

20 Q Were there different people in attendance at
21 various stages?

22 A Yes, there was.

23 Q In what way?

24 A In the counseling it was typically only the
25 supervisor and the general foreman or the general foreman

1 and the superintendent. His immediate superior would be
2 typically in those cases. It was done informally. It was
3 done typically so only those two individuals and the plant
4 manager would have information about it.

5 As steps progressed, we would bring in the
6 employee relation supervisor, typically, to have another
7 set of ears.

8 Q Okay. Did you have any understanding as to why
9 you needed another set of ears?

10 A Yes.

11 Q Okay. What do you base that understanding on?

12 A I base it on my experience.

13 Q Which consists of what, specifically?

14 A Well, how I applied discipline and what we did.
15 What I was instructed to do. This was an instruction I
16 received from my boss.

17 Q Who was?

18 A Bob Anderson.

19 Q Do you recall the time and place when you
20 received this instruction?

21 A I do not.

22 Q Do you recall where you were at the time you
23 received the instructions?

24 A I don't.

25 Q What do you recall about the instructions?

1 A I was instructed on the specific cases that I'm
2 talking about, Glenn Whitehouse for example, to be sure
3 that I had an employee relations personnel there so that
4 the information would not be my testimony against his.

5 Q Okay. Did Mr. Anderson tell you why that was
6 necessary?

7 A Other than just that should we be challenged, we
8 wanted to make sure that there was no question about the
9 facts.

10 Q You've testified that you directly supervised Mr.
11 Sorenson at certain periods of your employment at the
12 smelter?

13 A Yes.

14 Q And that period was during?

15 A '87 through '88, July of '88.

16 Q Do you recall what periods of time during 1987
17 and 1988 you directly supervised Mr. Sorenson?

18 A January of '87 through June of '87 I was acting
19 Smelter Plant manager and Mr. Sorenson was sharing his time
20 between the smelter and the environmental group, and so
21 he'd take direction from me. Then we brought him over to
22 work full time for me, to help in the start-up plan for the
23 plant.

24 Q When was that?

25 A That would be in the spring of '87.

1 Q Spring of '87 or '88?

2 A Spring of '87.

3 Q Okay. You said he reported directly to you

4 between January and June of '87; is that correct?

5 A Right.

6 Q What happened after June of '87?

7 A Stewart Smith came in and was the plant manager

8 and I was assigned to be operation superintendent.

9 Q And was Mr. Sorenson then directly supervised by

10 someone else?

11 A For a period of time in '87--well my years are

12 wrong. Let me correct that. That had to be '86. That had

13 to be '86 that happened. Let me refresh my memory here.

14 In January of '86, Bob Anderson left and I took

15 over the responsibility for the Smelter Plant until Stewart

16 Smith came in '86. We started the plant in '87, in June of

17 '87 and so Kelly Sorenson worked for me then while I was

18 acting plant manager. And then when Stewart Smith came,

19 Kelly continued to work on the development plan of starting

20 the plant up. When the plant was started up he also worked

21 for me.

22 Q Did he work for David George during 1987?

23 A He did, yes.

24 Q During what period?

25 A For about a--well, on the organization chart when

1 I became operations superintendent, Kelly was assigned as a
2 metallurgist. But the metallurgists were used by the
3 operating group to provide extra technical assistance. So
4 quite often they'd receive direction from me.

5 David George had responsibility for a portion of
6 the operation for a six week period in August of 1987 and
7 at that time Kelly worked for him. Then I took over that
8 responsibility and Kelly reported directly to me at that
9 time.

10 Q So what is your recollection as to the period of
11 time during 1987 that Mr. Sorenson reported to you
12 directly?

13 A Mr. Sorenson reported to me in two
14 responsibilities.

15 Q No, just during what period of time. That's all.
16 I am trying to establish a summary of 1987 during which he
17 reported to you directly. You said between January and
18 June. At that point?

19 A That was '86 January and June of '87 through the
20 fall of '86 as well he reported to me in '87 when the plant
21 started up I used Kelly in the Anode Department and then in
22 '88 I used him--well my years are confused here a minute.

23 Q Maybe I can try to clarify this for you a little
24 bit. Did you, during the year 1987, did you perform any or
25 conduct a performance evaluation on Mr. Sorenson?

1 A I did not.

2 Q Do you know who did?

3 A David George did.

4 Q Do you recall why Mr. George conducted a
5 performance evaluation on Mr. Sorenson?

6 A Because on the organization chart it showed that
7 Kelly worked for David, when in fact he worked for me.

8 Q Did you have any recollection, based on what
9 you've just said, as to what period of time during 1987 Mr.
10 Sorenson worked directly for you?

11 A Yes. I testified to that earlier. During '87.
12 We started the plant up in June of '87, and he was involved
13 in that plant start-up.

14 Q Starting with January of '87, give me a time
15 frame, if you can recollect, as to when he reported to you
16 directly. I am not so concerned with what was going on in
17 the plant. Just your best recollection.

18 A I apologize for that. The only way I can get a
19 reference of time is referring back to what happened at the
20 plant.

21 Q Okay.

22 A During the start-up period which was January of
23 '87 through June of '87 we were preparing to start the
24 plant up, bring the plant back together. Kelly reported to
25 me. Then he also reported to me during the start-up period

1 of the anode casting facility, which was September--well,
2 it was August, September, October of '87 that he reported
3 to me. And then subsequently also reported to me in '88.

4 Q Okay. Do you have any recollection, out of the
5 12 month calendar period in 1987, how many months he
6 reported to you directly?

7 A I would say seven or eight.

8 Q Okay. And it is your recollection that Mr.
9 George performed--conducted his performance evaluation?

10 A Yes.

11 Q Do you know why he did that?

12 A Because on the organization charted Kelly
13 reporting in the Metallurgy Department, and we received
14 performance evaluations that we were given to the general
15 foremen consistent with the organization chart.

16 Q Was there any reason why you didn't perform
17 that--conduct that performance evaluation?

18 A I didn't know that Dave had performed it. The
19 responsibilities to fill out performance evaluations was
20 something that one didn't look forward to do, something
21 you'd like to pass on to others. It was a chore. It
22 wasn't an opportunity. So what would typically happen is
23 that if you had a supervisor who reported elsewhere in the
24 organization but that you gave instructions--that you
25 directed, the two of you would get together and do his

1 evaluation together.

2 Q Did you ever get together with Mr. George for the
3 creation of Mr. Sorenson's 1987 performance evaluation?

4 A No, I did not.

5 Q Was there a reason for that?

6 A David George was new to the smelter and was not
7 familiar with that practice.

8 MS. POLICH: Objection, your Honor. He has no
9 knowledge about David George. He is speculating.

10 THE COURT: Well, sustained, without further
11 foundation.

12 MR. DAVIS: Do you know Mr. George?

13 A Yes.

14 Q Had Mr. George worked at Kennecott prior to the
15 time you worked in the smelter?

16 A Yes.

17 Q Do you know where he worked in the research area.

18 A (No audible response.)

19 Q How long have you known--when did you first meet
20 Mr. George?

21 A I've known him for about ten years.

22 Q Okay. Did you meet him in approximately 1982?

23 A About that, yes.

24 Q And do you recall whether he was working at that
25 time in the research department?

1 A (No audible response.)

2 Q And where was that?

3 A Located on the University of Utah campus.

4 Q When did he begin working at the smelter?

5 A He physically began working at the smelter in

6 1987 as technical superintendent. But prior to that, he

7 had responsibility--had technical responsibility for the

8 plant and was a consultant to us; was there all the time.

9 Q Did Mr. George report to you?

10 A He did not.

11 Q Do you recall who he reported to?

12 A Stewart Smith.

13 Q Do you recall what Mr. George's position was at

14 the time that he was at the smelter?

15 A Technical superintendent.

16 Q Do you know if Mr. George had any experience in

17 conducting performance evaluations?

18 MS. POLICH: Objection, your Honor. Lack of

19 foundation.

20 THE COURT: He can answer yes or no.

21 THE WITNESS: I do not know

22 Q (By Mr. Davis) Did you have any discussions with

23 Mr. George at the time that he performed Mr. Sorenson's

24 performance evaluation that he needed to review that with

25 anyone?

1 A Only after the fact.

2 Q Okay. And what caused that, first of all?

3 A I had found out how he had evaluated Mr. Sorenson

4 and I took exception with it.

5 Q Did he provide you with a copy of the evaluation?

6 A Yes, he did.

7 Q Do you recall when he gave that to you?

8 A I believe it was in November of '87 or near that

9 time period.

10 Q And do you know why he gave you a copy of that?

11 A I asked for it.

12 Q Okay. And did you have a conversation with Mr.

13 George regarding that evaluation?

14 A Yes, I did.

15 Q Where did that take place?

16 A In his office.

17 Q And again, do you recall the approximate time

18 period that you had the conversation?

19 A In that same time period, in the fall of '87.

20 Q Do you recall anyone else being present during

21 that time?

22 A Stewart Smith.

23 Q And to the best of your recollection what was

24 said during that meeting?

25 A I told him that I took exception with the

1 evaluation that he had given Mr. Sorenson; that Kelly had
2 worked directly for me and had done an outstanding job in
3 the Anode Plant in turning the facility around, the plant
4 that was trying to start up, and that his evaluation was
5 inappropriate and also that he had not come to me for my
6 recommendations or thoughts on his evaluation.

7 Q Do you recall the rating that Mr. Sorenson was
8 given in this evaluation?

9 A I believe it was a C-.

10 Q And did you have any discussion with Mr. George
11 as to why that rating was given Mr. Sorenson?

12 A I did have a conversation.

13 MS. POLICH: Objection, your Honor. I think this
14 is leading. I think the better thing is there are several
15 people in this conversation, to ask what was said by each
16 of them and report what the conversation was about the
17 particular subject matter.

18 THE COURT: Well, he was telling us the
19 conversation. I think that's essentially what he was going
20 to do. Overruled.

21 You can answer.

22 Q (By Mr. Davis) Before you get to the subsequent
23 conversation with Mr. George, did Mr. Smith say anything
24 during the conversation that you have alluded to?

25 A Yes.

1 Q What did Mr. Smith say?

2 A He said that determination was the
3 responsibilities of Mr. George.

4 Q Now, you've referenced a substance. Do you
5 recall anything else being said during that meeting or
6 conversation?

7 A I was trying to pin down Mr. George, the reason
8 for his C- rating, and I never got an answer that was
9 acceptable to me.

10 Q And you talked to Mr. George later; is that
11 correct?

12 A Yes.

13 Q When did that happen?

14 A Within a few weeks of that earlier meeting.

15 Q And do you recall where that conversation took
16 place?

17 A I do not.

18 Q Was there anyone else present besides you and Mr.
19 George?

20 A Not that I recall.

21 Q What do you recall being said during that
22 conversation?

23 A Just--I expressed, again, my concern about the
24 inappropriate writing that Mr. Sorenson had received, that
25 his performance for me had been excellent and that I, in

1 fact, had promoted him from one of the supervisors in the
2 Anode Department to be the general foreman because of his
3 performance, and that Mr. George was well aware of the
4 dramatic turn around the Anode Plant had seen once
5 Mr. Sorenson took control of that department, and that he
6 should receive some comment for the rating in his writings
7 for that accomplishment.

8 Q Did Mr. George respond to that?

9 A He did.

10 Q And in what way?

11 A He acknowledged that had happened and he didn't
12 disagree with me, but he never changed the rating either.

13 Q Did he ever tell you why he gave Mr. Sorenson a
14 C- for the G- rating?

15 A He never--

16 MS. POLICH: Objection. Assumes facts this
17 witness has not testified to.

18 THE COURT: Overruled.

19 THE WITNESS: He did not give me an answer that I
20 thought was acceptable, no.

21 Q (By Mr. Davis) Did he give you any answer?

22 A He did. He told me he didn't think Kelly's
23 communication skills were good enough. That Kelly was just
24 doing--was not keeping David George informed.

25 Q Did he say in what way?

1 A It had to do--I felt--

2 MS. POLICH: Objection, your Honor. Calls for
3 speculation.

4 THE COURT: Sustained.

5 Q (By Mr. Davis) Not what you felt, but did he
6 specifically state to you any communication problems that
7 Mr. Sorenson was having?

8 A He did not.

9 Q Did you have any further discussion with anyone
10 regarding Mr. Sorenson's performance evaluation in 1987?

11 A No.

12 Q Now, you are aware that Mr. Sorenson was
13 transferred to the Bonneville Concentrator?

14 A Yes.

15 Q And that occurred in approximately July of 1988?

16 A Yes.

17 THE COURT: This would probably be a good time to
18 take a recess. We will be in recess for ten minutes.

19 (Recess taken.)

20 THE COURT: You can proceed, Mr. Davis.

21 MR. DAVIS: Before we go any further, your Honor,
22 we would move for admission of Plaintiff's Exhibit 21,
23 which was the newsletter.

24 MS. POLICH: No objection.

25 THE COURT: It will be received.

1 (Plaintiff's Exhibit No. 21 was
2 received in evidence.)

3 Q (By Mr. Davis) Mr. Hansen, going back to the
4 time that Mr. Sorenson transferred from the smelter, do you
5 recall having any conversations with anyone regarding that
6 transfer?

7 A Yes.

8 Q Who did you have conversation with?

9 A Stewart Smith and Kelly Sorenson.

10 Q How many conversations did you have with Mr.
11 Smith?

12 A Two.

13 Q Okay. Start with the first one, chronologically?
14 When do you recall that conversation taking place?

15 A July of '88.

16 Q And do you recall where you were at the time you
17 had this conversation with Stewart Smith?

18 A In the smelter office building.

19 Q Was there anyone else present besides you and Mr.
20 Smith?

21 A Not that I recall.

22 Q Describe who said what to who during that
23 conversation?

24 A Stewart told me that Kelly was being promoted to
25 go over to the concentrator the Bonneville Concentrator to

1 be operation superintendent over there and that I was to
2 instruct him of that.

3 Q Was there anything else said during this
4 conversation that you recall?

5 A That it was an opportunity to go over and correct
6 what was an existing problem. The production of the
7 concentrator had dropped significantly and that it was a
8 good opportunity for Kelly.

9 Q Do you recall anything else that was said?

10 A I do not.

11 Q Do you recall anything that you said?

12 A I talked about my concern about how I would
13 replace him because he was an important part of the
14 organization, how that was going to happen. I was somewhat
15 concerned about the timing.

16 Q Can you be more specific? What did you discuss,
17 your specific concerns about losing Mr. Sorenson?

18 A I was concerning about losing Kelly. I was
19 concerned about not having adequate time to train someone
20 else for him.

21 Q Did Mr. Smith respond to that in any way?

22 A He said they'd let Kelly come back. They needed
23 help over there right away. They would let him come back
24 and train a new individual.

25 Q Do you recall anything else that was said during

1 the conversation?

2 A No, I don't.

3 Q Now, following that conversation you had, did you

4 have a conversation with Mr. Sorenson?

5 A Yes, I did.

6 Q And where did that conversation take place?

7 A Material handling, Filter Plant area.

8 Q And do you recall when it took place?

9 A Took place right shortly after the day or so

10 after the meeting with Mr. Smith.

11 Q And who was present at this?

12 A Kelly and I.

13 Q What do you recall being said during that

14 meeting?

15 A Told Kelly that he was being promoted to be

16 separation superintendent over at the concentrator, that

17 the employee he was replacing--that this was a good

18 opportunity because the plant had serious problems as far

19 as operations in housekeeping, and there was a chance to go

20 into a plant that had not been running well and turn it

21 around. That I was saddened to see him go because he had

22 done a good job for me but that I thought it was a good

23 opportunity.

24 Q Did Mr. Sorenson respond in any way?

25 A Yes. I was affirmative. I thought it was a good

1 opportunity for him.

2 Q Do you recall any specific statements that he
3 made during this conversation?

4 A No more than to say that he was pleased with the
5 opportunity.

6 Q Okay. Did you then have a conversation with Mr.
7 Smith?

8 A Yes.

9 Q And when was that?

10 A That was the next day.

11 Q And where did that take place?

12 A In the smelter management room, conference room.

13 Q Do you recall anyone else being present besides
14 you and Mr. Smith?

15 A Yes.

16 Q Who was present?

17 A At that time Al Supulveda was there. Tom
18 Beyersdorf.

19 Q Okay. And describe who said what to who during
20 that conversation?

21 A I told Stewart that I had informed Kelly about
22 him going over there and what the timing was for all of
23 that.

24 Q Okay. Can you be more specific as to what you
25 said?

1 A Just reported back that Kelly was pleased and
2 that he was prepared to go over there, and once again,
3 voiced my thoughts about having an immediate replacement
4 for him.

5 Q Did Mr. Smith respond in any way to those
6 comments?

7 A Not that I recall.

8 Q Okay. Did you then have another conversation
9 with Mr. Sorenson?

10 A I'm sure I did. I can't give you any specifics
11 on that. We continued to work until he left but I
12 didn't--not with regard to his transfer over there.

13 Q Did you have any conversations with Mr. Sorenson
14 regarding a visit that he'd had with Mr. Ramsey?

15 A No, I did not, that I can recall.

16 Q Okay. Mr. Hansen, during your employment at
17 Kennecott, did anyone ever define for you what an at-will
18 employee was?

19 A No, they did not.

20 Q Did you ever hear those words used in your
21 employment at Kennecott?

22 A No.

23 Q During the inventory time that you worked there,
24 did you ever hear anyone ever tell you that progressive
25 discipline should not or will not be used in connection

1 with salaried personnel?

2 A I did not.

3 Q You are aware of the fact that--are you familiar
4 with the fact that Kelly Sorenson was terminated from his
5 employment?

6 A Yes.

7 Q And are you familiar with the fact that Kennecott
8 alleges that it was for poor performance?

9 A Yes.

10 Q Are you--

11 MS. POLICH: Objection. Lack of foundation.

12 THE COURT: Sustained.

13 Q (By Mr. Davis) How?

14 MS. POLICH: Move that it be stricken.

15 THE COURT: Well, I don't think the last question
16 is objectionable. The one that wasn't answered is the one
17 that was. You can proceed.

18 MS. POLICH: I'm sorry I thought it had been
19 answered. I apologize.

20 Q How did you become familiar with the fact that
21 Mr. Sorenson had been terminated for poor performance?

22 A Kelly Sorenson told me.

23 Q Are you familiar with the fact that Mr. Sorenson
24 is alleging that prior to his termination that he was not
25 given a warning of this impending termination?

1 A Yes.

2 Q And how did you come to that understanding?

3 A Kelly told me.

4 Q Assuming that those facts are true, do you have
5 an opinion as to the propriety of Mr. Sorenson's
6 termination?

7 MS. POLICH: Objection. Irrelevant.

8 THE COURT: Sustained.

9 Q (By Mr. Davis) Assuming those facts are true,
10 during the time that you were employed at Kennecott, were
11 you ever aware that someone--salaried individual such as
12 Mr. Sorenson, had been terminated in this fashion?

13 A No.

14 MS. POLICH: Objection.

15 THE COURT: What's the objection?

16 MS. POLICH: Vague and ambiguous. I don't even
17 think we know at this time what the facts are he is
18 alluding to.

19 THE COURT: Overruled. You can answer that.

20 THE WITNESS: No.

21 MR. DAVIS: I have no further questions of this
22 witness.

23 THE COURT: Thank you.

24 You can proceed.

25 CROSS EXAMINATION

1 BY MS. POLICH:

2 Q Mr. Hansen, you have used the term progressive
3 discipline throughout your testimony, correct?

4 A Yes.

5 Q Now, the term progressive discipline, Mr. Hansen,
6 doesn't mean that one is always entitled to a verbal
7 warning, does it?

8 A It does not.

9 Q And the term progressive discipline does not mean
10 that you cannot be given a written warning unless a verbal
11 warning has been given?

12 A That's correct.

13 Q And the term progressive discipline doesn't mean
14 that you always have to have first a verbal warning and
15 then a written warning before a suspension can be given?

16 A That's correct.

17 Q And similarly, isn't it true that you don't
18 always need to have both a verbal and written warning
19 before ones pay can be docked?

20 A That's not true.

21 Q Isn't it true that one--isn't it true the term
22 progressive discipline doesn't mean that one must always
23 have a verbal warning, a written warning, and suspension
24 before a discharge of a salaried employee can occur?

25 A That's correct.

1 Q In the definition of progressive discipline, all
2 offenses are not viewed equally; isn't that correct?

3 A Yes.

4 Q And that there has been considerable discussion
5 about defenses categorized as minor, excuse me. Some
6 offenses are categorized as minor, correct?

7 A The question again, please.

8 Q I'm sorry. Some offenses, from the standpoint of
9 the application of progressive discipline, are categorized
10 as minor, correct?

11 A Yes.

12 Q And similarly some offenses are categorized as
13 serious, correct?

14 A Yes.

15 Q And some are categorized as major; is that
16 correct?

17 A Yes.

18 Q When you taught the concept of progressive
19 discipline, you taught that it was--that progressive
20 discipline was corrective rather than punitive; isn't that
21 correct?

22 A Yes.

23 Q So when you taught, you did not teach that a
24 verbal warning was required in each instance; isn't that
25 correct?

1 A That's correct.

2 Q And you didn't teach that a written warning was
3 required in each instance; isn't that correct?

4 A Yes.

5 Q What you, in fact, taught is that verbal--a
6 verbal warning was less punitive than a written warning;
7 isn't that correct?

8 A Yes.

9 Q And what you taught is that a written warning was
10 less punitive than an action such as suspension or
11 termination, isn't that correct?

12 A Yes.

13 Q And what you taught was that suspension--excuse
14 me, that a verbal warning, written warning, and suspension
15 each were less punitive than the ultimate penalty of
16 termination, correct?

17 A Yes.

18 Q What you, in fact, taught, was it not, Mr.
19 Hansen, is that when applying discipline, one must look at
20 the offense and decide what discipline was appropriate?

21 A Correct.

22 Q When you were at the smelter, Mr. Hansen, you
23 understood that front line foremen could not establish
24 policy for the discipline of salaried individuals; isn't
25 that correct?

1 A Yes.

2 Q And similarly, you understood that general
3 foremen could not establish policy for the discipline of
4 salaried employees; isn't that correct?

5 A I'm pausing because I don't know how to answer
6 that within the way it is framed correctly.

7 Q Is it your understanding, Mr. Hansen, that a
8 general foreman could enunciate a new approach to the
9 discipline of salaried employees?

10 A No.

11 Q A superintendent could not enunciate a brand new
12 approach to the discipline of salaried employees; isn't
13 that correct?

14 A That's not correct.

15 Q Could a superintendent decide, for instance, that
16 as a matter of policy, which everyone would be required to
17 follow, that a particular offense could result in immediate
18 termination?

19 A No.

20 Q Could a superintendent issue written
21 policies--superintendent could not issue a written policy
22 on how discipline should be approached without the consent
23 of human resources or the general manager; isn't that
24 correct?

25 A That is correct.

1 Q And similarly, a plant manager did not have the
2 authority to issue written policy concerning the discipline
3 of salaried individuals without the consent of human
4 resources and the general manager; isn't that correct?

5 A I do not know.

6 Q When you taught the various seminars, Mr. Hansen,
7 no one told you that you had the ability to create policy
8 as part of teaching those seminars, did they?

9 A No.

10 Q With respect to terminations, a front line
11 foreman did not have the authority to--simply to terminate;
12 is that correct?

13 A That's correct.

14 Q Similarly general foremen did not have that
15 authority to simply terminate?

16 A That's correct.

17 Q Nor did a supervisor; is that correct?

18 A Supervisor? What do you mean supervisor?

19 Q Excuse me. Superintendent.

20 A Correct.

21 Q And similarly, the plant manager did not have
22 that unilateral authority?

23 A That is correct.

24 Q It was necessary to have the general manager?

25 A Yes, it was.

1 THE COURT: That is to terminate anybody?
2 THE WITNESS: Anybody.
3 THE COURT: Whether represented or
4 nonrepresented?
5 THE WITNESS: Correct.
6 Q (By Ms. Polich) You have never seen a formal
7 written policy on the discipline of salaried employees,
8 have you, Mr. Hansen?
9 A I have not.
10 Q Now, union who hourly people, in terms of
11 discipline, they are entitled to go through a grievance
12 procedure; isn't that correct?
13 A Yes.
14 Q Let me back up. Union employees are covered by
15 collective bargaining agreements, correct?
16 A Yes?
17 Q Which provides them with certain rights; isn't
18 that correct?
19 A Correct.
20 Q And provides them with certain rights as it
21 concerns discipline; isn't that correct?
22 A Yes.
23 Q And it provides certain rights as it concerns
24 discharge; isn't that correct?
25 A Yes.

1 Q And those rights most recently were embodied in
2 article 5 of the collective bargaining agreement, or in
3 1986 they where; isn't that correct?

4 A I don't know the article number. It was the
5 Justice and Dignity clause.

6 Q Okay. I think there is a collective bargaining
7 agreement--excuse me, your Honor, if I may approach for a
8 minute.

9 THE COURT: Yes.

10 MS. POLICH: Right in the front of here--perhaps
11 if you could just confirm that and I believe it is Article
12 5.

13 A Yes, it is in this one.

14 Q And as part of the justice--you helped
15 negotiate--had some involvement in negotiating that
16 contract; is that correct?

17 A Yes.

18 Q And as part of the Justice and Dignity clause,
19 excuse me. Represented employees had a right to
20 reinstatement while a discipline decision was being
21 challenged; isn't that correct?

22 A That is correct.

23 Q And also hourly employees had a right to have
24 their record expunged after a certain period of time; isn't
25 that correct?

1 A Yes.

2 Q And they also had a right to arbitration under
3 certain circumstances; isn't that correct?

4 A I believe under all circumstances.

5 Q And the right to arbitration meant that there
6 would be an outside individual who would make ultimate
7 decisions on whether or not the application of discipline
8 was correct; isn't that correct? I did not--let me--let me
9 get rid of a few of those. I think that was about a
10 quadruple negative there. I don't know if that balances
11 out.

12 The question is: They had a right, represented
13 employees did, to have an outside individual make the
14 ultimate determination as to whether or not the discipline
15 was appropriately applied?

16 A Correct.

17 Q And that decision included both substantively,
18 whether or not--or excuse me, included a decision as to
19 whether or not proper procedures had been followed; is that
20 correct?

21 A Yes, it is.

22 Q And going back, to just clarify, and it involved
23 the right to have the arbitrator make the decision if the
24 actual punishment was appropriate, correct?

25 A Yes.

1 Q Union, hourly individuals also had a right to
2 have a union representative present during certain stages
3 of the discipline process; isn't that correct?

4 A Yes.

5 Q Was it all stages?

6 A No.

7 Q Could you tell me which stages they had a right
8 to have union representatives present.

9 MR. DAVIS: I am going to object. I don't see
10 the relevancy of this line of questioning.

11 THE COURT: The objection is relevance?
12 Overruled.

13 THE WITNESS: They would have a right--anything
14 above the verbal, which was the--not a hearing, but a
15 counseling session where you sit down and discuss that, but
16 any other step above that, union officials would be
17 present. If there was a hearing held, if there was a
18 written warning, that sort of thing would all have a union
19 officer present.

20 Q (By Ms. Polich) Now, salaried employees did not
21 have a right to invoke the grievance procedure, did they?

22 A That's correct.

23 Q And salaried employees had no right to invoke the
24 arbitration procedure; isn't that correct?

25 A That is correct.

1 Q And salaried employees had no right to
2 expungement of the record; isn't that correct?

3 A Yes, it is.

4 Q And salaried employees had no right to the
5 application of the concept embodied in the Justice and
6 Dignity clause; that is, a right to reinstatement while a
7 discipline decision was being challenged; is that correct?

8 A That is because the contract does not apply to
9 salaried supervisors.

10 Q None of the contract applies to salaried
11 supervisors; isn't that correct?

12 A Yes, it is.

13 Q And there isn't any document, is there, similar
14 to the collective bargaining agreement, which outlines as a
15 matter of contract, the rights of salaried individuals; is
16 that correct?

17 A That is correct.

18 Q And salaried individuals are not entitled to have
19 a shop steward present, isn't that correct?

20 A That is correct.

21 Q And there is no particular individual in the
22 organization at Kennecott which serves the same function as
23 a shop steward for salaried individuals; isn't that
24 correct?

25 A That is correct.

1 Q Now, the rules of conduct, Mr. Hansen, those--I
2 think you testified those rules of conduct were written for
3 all employees; is that correct?

4 A I didn't. Pardon me, I did. I did testify to
5 that, yes.

6 Q But is it also true that all those--that is as a
7 superintendent, you viewed the application of rule of
8 conduct somewhat differently for salaried and represented
9 employees?

10 A Yes.

11 Q One of the plans or purposes of the rules of
12 conduct was to be sure your hourly employees understood the
13 parameter of the acceptable behavior; isn't that correct?

14 A No.

15 Q You didn't--one of the purposes was not to
16 establish where the boundaries of appropriate behavior?

17 A One of the purposes?

18 Q Yes.

19 A Yes.

20 Q Now, Mr. Hansen, I'd like to hand you what's been
21 marked as Exhibit 173.

22 Reid, do you have this? I don't know if you have
23 another copy of this.

24 If I may approach both the bench and the witness.

25 MR. DAVIS: Yes. What was it.

1 operated, what chances needed to be made.

2 I was convinced that the problem was a training
3 problem. He was convinced it was a problem with equipment
4 and facility. We continued to struggle over that and he
5 sent me a series of letters that culminated in the fact
6 that he finally decided to remove me from that
7 responsibility and give that today David George.

8 And so Kelly Sorenson worked for me as anode
9 foremen in that area for a period of what was six or eight
10 weeks, until the responsibility was removed to David
11 George. David George had it for about four or five weeks.
12 Production dropped dramatically when he took it over.

13 Stewart Smith came to me in a meeting with Al
14 Supulveda, Tom Beyersdorf, David George, sitting there and
15 said to David George that they needed me to go back and
16 take it over. I went back, accepted that responsibility,
17 promoted Kelly Sorenson and we turned the Anode Plant
18 around.

19 Q Do you receive this letter prior to the time that
20 Mr. Sorenson was promoted to general foreman?

21 A Yes, I did.

22 Q Did you have any discussion with Mr. Smith in
23 regard to whether or not he was criticizing Mr. George's
24 performance in the Anode Plant?

25 A Smith was criticizing the performance of two

1 Q In connection with Mr. Smith's problem, and I
2 take it that was Ben Smith?

3 A Yes.

4 Q Do you recall more precisely or have a better
5 recollection as to when that took place?

6 A That would have been I believe the latter part of
7 September to the best of my recollection.

8 Q September in what year?

9 A Of 1988.

10 Q And do you have a recollection as to who was
11 there at this particular meeting?

12 A Yes. In this particular meeting I had expressed
13 to Mr. Britton that I needed to speak with him and
14 subsequent to the rest of the business items being taken
15 care of, Mr. Britton and I stayed in the conference room
16 and discuss Mr. Smith.

17 And basically, I related to him the performance
18 problems that I had noted at the Filter Plant. Mr. Britton
19 was in agreement with those and we discussed how we should
20 approach Mr. Smith on that problem. And basically I
21 requested of Mr. Smith or Mr. Britton, I'm sorry, some
22 guidance on how to handle that. I was told to have a
23 verbal communication with him as the initial step, and then
24 to, if it was necessary, to follow that up with additional
25 steps, a written warning, possibly a letter to his file

1 indicating some performance problems. And I was instructed
2 to record that meeting.

3 Q Record which meeting?

4 A The meeting between myself and Mr. Smith. The
5 fact that I had met with him. We had discussed the
6 performance problems and essentially brought those items to
7 his attention that he might correct that problem--those
8 performance problems.

9 Q Was that recorded in writing?

10 A Yes, and I have that in my Daytimer.

11 Q Do you recall any other specific instances in
12 which you discussed the discipline of salary individuals?

13 A That was the only specific instance that I
14 discussed with Mr. Britton one-on-one. The other
15 situations were relating to other general foremen and were
16 discussed in our morning meeting.

17 Q Do you recall the specific topics that were
18 discussed with individuals that were discussed at these
19 meetings?

20 A I remember Steve Bailey having some discussions
21 relating to one of his foremen and I don't recall that
22 foreman's name.

23 Q Who is Mr. Bailey?

24 A Mr. Bailey was the general foreman over the
25 converters and anode area.

1 A I was called down to Mr. Britton office and given
2 a letter explaining some deficiencies in my performance and
3 at that time was reassigned responsibilities.

4 Q Did you receive any counseling from Mr. Britton
5 at that time?

6 A I did not. I went into his office, he closed the
7 door, we sat down, he handed me the letter. I read through
8 it. The last line indicated that I was to report to Mr.
9 Smith for reassignment.

10 His comments were, "Do you have anything to say
11 about that?"

12 My comment was something to the effect it
13 wouldn't do me any good anyway. I went to Mr. Smith's
14 office for reassignment.

15 Q Do you recall receiving any general instructions
16 during the time that you worked at the smelter to the
17 effect that progressive discipline applied to salary
18 individuals?

19 A I'm sorry?

20 Q Did you receive any general instructions--I think
21 you've gone through and enumerated certain instance in
22 which you discussed individuals. But did you receive--do
23 you recall receiving any general instructions that
24 progressive discipline applied to salary individuals?

25 A During our general foremen meetings and,

1 Q Do you recall who was addressing the people
2 present?

3 A It was Jerry Hansen, I believe.

4 Q And what do you recall Mr. Hansen saying?

5 A That in general terms to maintain the dignity of
6 the individuals. There was--that the initial steps were to
7 correct offensive behavior, and as I recall a general
8 scenario of how those events should take place.

9 Q Do recall anything more specific than that?

10 A I don't right off, no.

11 Q Do you recall Mr. Cottrell's name being
12 mentioned?

13 A Yes.

14 Q Do you recall discussion pertaining to Mr.
15 Cottrell?

16 A Yes.

17 Q What do you recall in connection with him?

18 A The situation--the situation that had evolved
19 into him receiving progressive discipline and the problems
20 relating to that, how that was handled.

21 Q Thank you very much, Mr. Johnson.

22 No further questions, your Honor.

23 THE COURT: All right.

24 Mr. Casey?

25 THE WITNESS: Your Honor, the name of the

1 individual was Steve, that I got from the reactors, the one
2 which I inherited. Steve.

3 MR. DAVIS: Excuse me. Just a minute

4 THE WITNESS: I'm sorry. It is coming. I have
5 got the first name. I'll work on the second.

6 MR. DAVIS: I'd like to preserve that if I could
7 on redirect.

8 THE COURT: Why don't you just go ahead with it.
9 I don't know that the guy's name is all that critical. Go
10 ahead with what you were going to do.

11 Q (By Mr. Davis) Anyway, tell me about this
12 individual.

13 A Poulsen.

14 Q Steve Poulson, very good. What do you recall
15 about Poulsen?

16 A Poulsen was--had some performance problem in the
17 reactor area under Jack Haymond.

18 Q Do you recall when those were occurring?

19 A That would have been during the spring and summer
20 of 1988.

21 Q All right. Subsequently?

22 A Subsequently Mr. Poulsen received a letter
23 indicating--

24 MR. CASEY: Objection. No foundation.

25 THE COURT: Sustained.

1 A He was a foreman in the reactor area,
2 subsequently a foreman in the service department that I was
3 responsible for.

4 MR. DAVIS: Thank you very much.

5 THE COURT: You can proceed, Mr. Casey.

6 CROSS EXAMINATION

7 BY MR. CASEY:

8 Q Your Honor, could I ask that Mr. Johnson's
9 deposition be published now, so I don't interrupt?

10 THE COURT: Any objection?

11 MR. DAVIS: No objection.

12 THE COURT: It will be published.

13 Q (By Mr. Casey) Mr. Johnson, you were terminated
14 by Kennecott in July of 1989, weren't you?

15 A Correct.

16 Q And at the time you were terminated you did not
17 believe that termination was appropriate; isn't that
18 correct?

19 A That's correct.

20 Q And in fact you believe the termination was for
21 political reasons; is that correct?

22 A That's correct.

23 Q During January, February of 1989, you were
24 concerned about your status at Kennecott, weren't you?

25 A Yes, I was.

1 Q And you, in fact, approached Mr. Smith and asked
2 him if he could give you any guidance as to whether you
3 were in jeopardy in your job at Kennecott; isn't that
4 correct?

5 A That's correct.

6 Q And at that time you had never seen a written
7 document telling you that your status at Kennecott was in
8 jeopardy had you?

9 A I had not.

10 Q You had never been told by anyone that your
11 status at Kennecott was in jeopardy, had you?

12 A No, I had not.

13 Q You had never been suspended, had you?

14 A No.

15 MR. CASEY: Nothing further.

16 THE COURT: Anything further, Mr. Davis?

17 MR. DAVIS: No further questions.

18 THE COURT: May this witness with excused without
19 objection?

20 MR. CASEY: Yes, your Honor.

21 THE COURT: Any objection, Mr. Davis?

22 MR. DAVIS: No objection, your Honor.

23 At this time co-counsel Steve Cook will continue
24 in our behalf.

25 MR. COOK: There is an additional witness.

Excerpts from Stewart Smith Deposition

Smith (Examination by Mr. Lee)

1 MR. LEE: Go ahead.

2 A. Not particularly well.

3 Q. BY MR. LEE: Can you tell us what happened
4 in terms of that start-up.

5 MR. DAVIS: Objection. Foundation and
6 relevancy.

7 MR. LEE: Go ahead.

8 A. There were numerous problems getting the
9 metal to the casting spoon. It was a completely new
10 designed facility. It was totally unfamiliar to the
11 Kennecott personnel, but we had assistance from the
12 equipment manufacturers, and after they left site,
13 we -- we went into a period where there were
14 particular problems, and we -- we failed to meet our
15 production quota through that operation.

16 Q. BY MR. LEE: And did the manufacturer come
17 back to try and assist in helping with the start-up?

18 A. Yes, he did.

19 MR. DAVIS: Again, objection, relevancy.

20 MR. LEE: So that counsel will know where
21 this is going, on the record, this relates to
22 warnings that Mr. Sorenson received about his
23 performance in these roles, and we'll demonstrate why
24 he was moved from one assignment to another, and
25 ultimately ended up in a third assignment.

Smith (Examination by Mr. Lee)

1 MR. DAVIS: Just for the record, we would
2 object to any testimony elicited from the witness on
3 Mr. Kelly -- or Mr. Sorenson's performance while out
4 at the smelter, and during a time period not relevant
5 to the issues of this lawsuit.

6 MR. LEE: All right.

7 MR. DAVIS: That will be a standing
8 objection.

9 MR. LEE: Okay. Let's proceed now.

10 Q. When the manufacturer's rep came in, would
11 you have meetings with the rep to try and figure out
12 what needed to be done on the project?

13 A. We had daily meetings late in the afternoon
14 to assess our performance in the last 24 hours, and
15 plan for the forthcoming 24 hours.

16 Q. Would Mr. Sorenson attend those meetings?

17 A. Yes.

18 Q. And would Mr. Hansen be in those meetings?

19 A. Yes.

20 Q. And can you tell us about the result of
21 those meetings, in terms of Mr. Sorenson's
22 performance.

23 A. Well, there were numerous plan of actions
24 determined at the meeting which Mr. Sorenson was
25 expected to implement, and in some cases they were

Smith (Examination by Mr. Lee)

1 not implemented at all or implemented improperly.

2 Q. And ultimately was Mr. Sorenson removed
3 from that assignment?

4 A. Yes, he was.

5 Q. And why was he removed from that
6 assignment?

7 A. Inadequate performance.

8 Q. And do you know -- let me ask you: Did you
9 talk to Mr. Sorenson directly about that?

10 A. I had occasion to discuss particular
11 problems with Mr. Sorenson on the shop floor.

12 Q. Did you consult with Mr. Hansen about the
13 removal of Mr. Sorenson from that assignment?

14 A. Yes, I did.

15 Q. And did you direct Mr. Hansen to remove him
16 from that assignment?

17 A. Yes, I did.

18 Q. Did you tell Mr. Hansen why Mr. Sorenson
19 was being removed from that assignment?

20 A. Yes, I did.

21 Q. What was the next assignment that
22 Mr. Sorenson had at the smelter plant?

23 A. Mr. Sorenson was assigned to the technical
24 department within the Utah smelter.

25 Q. And who was his immediate supervisor?

Smith (Examination by Mr. Lee)

1 A. David George.

2 Q. And did Mr. George report directly to you?

3 A. Yes, he did.

4 Q. Do you know what kind of work Mr. Sorenson
5 was doing?

6 A. He was doing work -- metallurgical
7 development work for the smelter, process
8 optimization.

9 Q. Did Mr. George report to you on the
10 performance of Mr. Sorenson?

11 A. Yes, he did.

12 Q. Was Mr. Sorenson subsequently -- go ahead.

13 MR. DAVIS: Objection. Foundation, on the
14 last question.

15 Q. BY MR. LEE: Okay. Mr. George, you
16 indicated, was the supervisor for Mr. Sorenson?

17 A. Yes.

18 Q. And he would report to you on the
19 performance of Mr. Sorenson and other people that
20 were under him?

21 A. Yes, he did.

22 Q. And he reported -- well, was Mr. Sorenson
23 subsequently removed from that assignment?

24 A. Yes, he was.

25 Q. And can you tell me why he was removed from

Smith (Examination by Mr. Lee)

1 that assignment.

2 A. Poor performance.

3 Q. Was this a request from Mr. George for
4 removal?

5 A. Yes.

6 Q. What did Mr. George say to you, if you can
7 recall?

8 MR. DAVIS: Objection, foundation.

9 MR. LEE: Just go back a minute.

10 Q. Did Mr. George discuss with you the
11 performance of Mr. Sorenson?

12 A. Yes, he did.

13 Q. And as a result of that performance, did he
14 make a request to you?

15 A. Yes, he did.

16 Q. And what was his request?

17 A. To --

18 MR. DAVIS: Objection, foundation.

19 MR. LEE: Okay.

20 A. To have him removed from his department.

21 Q. BY MR. LEE: He didn't want him in his
22 department? *obj. sustained at trial*

23 A. No, he did not.

24 Q. Do you know if -- did Mr. Sorenson, after
25 that, continue to work in the smelter?

1 A. He continued to work for Mr. George, until
2 he was transferred out to the concentrator
3 department.

4 Q. Did you have a conversation with
5 Mr. Sorenson before he left the smelter and went over
6 to his assignment at the concentrator?

7 A. Yes, I did.

8 Q. And can you tell us when that conversation
9 took place.

10 A. It was just prior to Kelly following up on
11 the transfer request -- or on the transfer to the
12 concentrator department. He was expected to be there
13 by a specific date. The date I cannot recollect.

14 But Kelly was tardy in meeting this date,
15 because it conflicted with his vacation, and I had
16 reason to call Kelly in and advise him that this may
17 be his last chance, and he should get over there
18 post-haste.

19 Q. If Mr. Sorenson had not been transferred to
20 the concentrator, would you have continued to have
21 him work at the smelter?

22 MR. DAVIS: Objection, speculation.

23 MR. LEE: I don't think it's speculation.
24 I need to know.

25 Go ahead.

Smith (Examination by Mr. Lee)

1 A. No, I would not have had him continue at
2 the smelter.

3 Q. BY MR. LEE: Why not?

4 A. Because his performance was inadequate, and
5 he had had ample opportunity to mend his ways.

6 MR. LEE: Okay.

7 Off the record a moment.

8 (There was a discussion held off the record.)

9 Q. BY MR. LEE: To go back, just a moment,
10 discussing your conversations with Kelly Sorenson
11 after -- before he left the smelter and just before
12 he was to go over to the concentrator, how did that
13 conversation come about?

14 A. How did it come about?

15 I was under pressure either from the
16 concentrator management or the human resources
17 department to have Kelly over there quickly, because
18 he was either replacing somebody that was leaving or
19 somebody that was going on vacation, but it was
20 important that he get over there and take on his new
21 assignment promptly.

22 Q. And did you convey this information to
23 Mr. Hansen -- I mean, to Mr. George, his supervisor?

24 A. Yes.

25 Q. And you -- as I understand your testimony,

1 Kennecott smelter.

2 MR. LEE: Okay.

3 A. Well, I believed Mr. Hansen's performance
4 was substandard and he should be removed from the
5 operating superintendent role. *obj sustained*

6 Q. BY MR. LEE: Did you -- you said you had
7 discussions with him.

8 A. Yes.

9 Q. What was his reaction to your removing him?

10 MR. DAVIS: Objection, foundation.

11 A. I could tell he was extremely disappointed
12 by -- by the transfer. He felt that he was doing a
13 good job -- *obj sustained*

14 MR. DAVIS: Objection, speculation.

15 Q. BY MR. LEE: Just tell me what he said.

16 A. I can't remember specifically what he said,
17 but he -- he expressed total disappointment in his
18 removal from the job.

19 MR. LEE: Off the record.

20 (There was a discussion held off the record.)

21 Q. BY MR. LEE: I want to go back to the
22 conversation that you had with Kelly Sorenson at the
23 plant, at least the last conversation before he went
24 over to the concentrator.

25 A. Yes.

Smith (Examination by Mr. Lee)

1 Q. Can you tell us in your own words what you
2 said to Kelly Sorenson at that time, the best you
3 remember.

4 A. The best I remember is "Kelly, this is an
5 opportunity where you can redeem yourself. I suggest
6 you get over there and give it your best shot."

7 Q. There wasn't anything else that you can
8 recall?

9 A. Not specifically, no.

10 Q. When did you leave Kennecott?

11 A. I left Kennecott in July 1989.

12 Q. And where are you located now?

13 A. I'm located in a place called Flin Flon in
14 northern Manitoba.

15 Q. Who do you work for?

16 A. Hudson Bay Mining & Smelting.

17 Q. And what's your assignment with them?

18 A. I'm vice president, metallurgical
19 operations.

20 Q. Does that mean that you have a smelter
21 under your jurisdiction?

22 A. Yes, I do. Two smelters.

23 MR. LEE: That's all.

24 MR. DAVIS: Could we take a brief recess
25 for just a few minutes?

1 A. Yes.

2 Q. All right. You've previously mentioned
3 that you felt that Kelly had performance problems
4 while he was employed at the smelter.

5 A. Yes.

6 Q. Do you know if any of the performance
7 problems that you have alluded to are reflected on
8 any of his performance evaluations?

9 A. My recollection is that any performance
10 problems that Kelly had laterally would be in his
11 performance appraisal completed by David George.

12 Q. So if -- if he was experiencing performance
13 problems, you would expect to see them to show up on
14 his evaluations?

15 A. On his performance appraisal, yes.

16 Q. Okay. You've testified that because of
17 these alleged performance problems you had met with
18 Mr. Sorenson's supervisors, and in fact Kelly
19 himself, on these problems; is that correct?

20 A. Moreso with his supervisors.

21 Q. Okay. You also testified that in more
22 benign types of performance problems and employee
23 problems, you would customarily counsel that
24 supervisory employee; if that didn't work -- or after
25 a period of corrective period taking place, you would

Smith (Examination by Mr. Davis)

1 then write a letter to the file? Do you have --

2 A. No. Excuse me. No.

3 Usually a verbal communication regarding
4 performance would be -- a note would go to file on
5 that.

6 Q. Okay. Do you have any knowledge or
7 recollection that based on the problems that Kelly
8 was allegedly having, any note or written report went
9 into his file pertaining to these problems?

10 A. I have a vivid recollection of seeing a
11 letter that David George sent him.

12 Q. Okay. And would that have been in
13 Mr. Sorenson's -- would that have been placed in his
14 file?

15 A. I couldn't say.

16 Q. Is that the only recollection you have of
17 any kind of written criticism of his performance?

18 A. Other than his performance appraisal done
19 round about the -- say, approximately the same
20 period.

21 Q. And is it your recollection that there were
22 some criticisms of his performance on one of the
23 performance appraisals or evaluations that he was
24 given?

25 A. Yes.

1 supervisor's performance?

2 A. Not at all.

3 Q. Okay. So there is a difference between
4 merely discussing day-to-day problems and discussing
5 personal performance problems that a supervisor may
6 have?

7 A. Yes.

8 Q. Did any of the counseling that you've
9 referred to with Mr. Sorenson, did any of that
10 constitute just discussing the problems that may be
11 occurring in his particular department?

12 A. Some of the counseling did refer to the
13 particular problems in his department.

14 Q. So would it be fair to say that -- that
15 most, if not the overwhelming majority of the
16 conversations that you had with Mr. Sorenson, had to
17 do with problems in the plant, rather than specific
18 performance problems that he was having?

19 A. I would say yes, in part, but some of the
20 problems regarding performance were discussed with
21 Kelly.

22 Q. Now, you indicated that prior to
23 Mr. Sorenson's transfer to the Bonneville
24 concentrator, you had had a discussion with him.

25 A. Yes.

Smith (Examination by Mr. Davis)

1 A. I don't know of anything specific. I think
2 Jerry was particularly talented. He had a pleasing
3 personality and a good manner in dealing with people,
4 so I relied on that.

5 Q. Did you ever ^{refer} defer to him in any way, in
6 terms of methodology used in disciplining or
7 correcting performance problems of supervis- --
8 supervisory personnel?

9 A. I may have done. I don't know
10 specifically.

11 Q. Okay. Mr. Smith, you left Kennecott in
12 1989?

13 A. Yes.

14 Q. What was the reason for you leaving
15 Kennecott?

16 A. I was fired.

17 Q. Were you given a reason for that?

18 A. Nope.

19 Q. So you -- you worked for Kennecott
20 approximately -- was it approximately three years?

21 A. Three years, yes.

22 Q. Did you ever feel that during the three
23 years you were at the smelter, that you were able to
24 effectively implement or establish your own
25 management style?

1 Q. Okay. There was a question concerning the,
2 as you call it, behavior modification procedure you
3 would like to follow with the supervisors, and you
4 answered a question with regard to suspension.

5 Will you clarify for me again: As a part
6 of your procedure, did you say that suspension was
7 proper or it was not proper?

8 A. It was not proper.

9 Q. And you told your supervisors that in a
10 meeting?

11 A. Yes, I did.

12 Q. The question was asked you as to whether
13 this behavior modification became a policy. Was it a
14 company policy, to your knowledge?

15 A. No.

16 Q. Was it a policy you were following at the
17 smelter -- or I mean a procedure --

18 A. Procedure, yes.

19 Q. -- that you were following at the smelter?

20 A. I believe it's just a good management
21 procedure.

22 Q. As a part of the procedure you had,
23 however, could an employee be terminated without
24 going through the procedure?

25 A. No.

Excerpts from Kelly Sorenson Deposition

1 would have attended this training course?

2 A I don't remember the month. I know it was before I
3 went to the Bonneville concentrator. It was during the time
4 that I was at the filter plant, at the smelter.

5 Q So that would have planned during what month,
6 December '87?

7 A Between November of '87 and July of '88.

8 Q Can you place it any better than that?

9 A Other than it was in 1988, it was after we had
10 started the operation, if I remember right, at Copperton so that
11 would have been between February and -- February of '88 and
12 July, early, first of July.

13 Q Do you remember who requested or how you were
14 requested to attend that seminar?

15 A I received a letter from Stuart Smith saying that I
16 was scheduled to go to the training seminar on that particular
17 date. As I remember, there were complications with the schedule
18 we were working on at the filter plant, so that the initial date
19 was changed. ~~I went at a subsequent time.~~

20 Q Do you recall who taught the session?

21 A Looking back, I'm not sure. If I remember right,
22 Drew Hunter was involved in it, and I just can't remember who
23 else was involved in it at that time.

24 Q What was the purpose of the training seminar?

25 A It was to increase the management's leadership

1 abilities, to refine their -- what do you call it -- their
2 attributes, their leadership styles, acquaint them with a better
3 -- make a better leadership team, really.

4 Q I'm sorry -- to make a better leadership team; is
5 that what you said?

6 A Yes.

7 Q Anything else?

8 A Well, we dealt with leadership styles, EEO. There
9 was parts on different case studies that we went through and
10 analyzed, looked at.

11 Q Anything else?

12 A We dealt with the discipline, handling of that. That
13 was what a lot of the case studies were about, what we felt were
14 the correct discipline and incorrect.

15 Q Was that --

16 A More or less acquainted us with the company's feeling
17 as towards what that discipline should be.

18 Q Was the correct discipline related to how to deal
19 with hourly or union representative employees?

20 A Some of the case studies dealt with union and our
21 hourly employees.

22 Q Do you recall some case studies that did not deal
23 with hourly employees with respect to discipline?

24 A With respect to discipline, I remember some of the
25 case studies earlier dealing with management styles and at least

1 with supervisory staff and supervisors, some of them dealing
2 with senior engineers dealing with lower level engineers.
3 Certainly the majority of them dealt with the union employees
4 because that's -- essentially 80 to 90 percent of the employees
5 are hourly or at least unionized and have the contract, that
6 contract that we are required to meet.

7 Q The case study of the senior engineer and the lower
8 level engineer, was that a case study used with the discipline
9 portion of the seminar?

10 A It was. I believe it was. I'm not sure. I remember
11 it was dealing with engineers and it may have been in the
12 leadership style section where we dealt with -- it was a case
13 that involved a senior engineer and not getting the results that
14 he felt from the lower engineers and how he was going to modify
15 their behavior or change or what his options really were.

16 Q Tell me the format of the training session.

17 A Well, there were discussions and then you would break
18 up into smaller groups, talk about the particular case study,
19 make recommendations, and then as a larger group discuss your
20 findings from the small groups.

21 Q I'm sorry -- you said there would be a discussion,
22 meaning in a big group?

23 A Yes.

24 Q Some sort of presentation?

25 A Yes.

See
correction 11

1 Q Then would a case study be presented as part of that
2 when you were part of the larger group?

3 A More -- not the particular case studies. It would be
4 more the broad general guidelines or topic and then
5 recommendations, break up into a small group and discuss the
6 case study or case studies and then bring those recommendations
7 back to the larger group.

8 Q How many people were in the larger group?

9 A It seemed like there were probably 20.

10 Q When you would break down into smaller groups, how
11 many would there be?

12 A Four or five.

13 Q Tell me who you recall attended this session that you
14 were in, Mr. Sorenson.

15 A I don't remember that -- well, there weren't any that
16 I was working with at the smelter, so most everybody was new to
17 me. And so I can't give you -- I really don't have a --

18 Q No names at all?

19 A No names.

20 Q Do you remember where the people predominantly came
21 from, which part of the organization?

22 A The mine and the concentrator.

23 Q And you were the single person from the smelter?

24 A Yes, that I remember.

25 Q What was the first topic that was discussed?

1 A I believe we talked about leadership styles,
2 leadership, what makes a good leader, the attributes.

3 Q Do you recall who presented that part of the program?

4 A No, I don't.

5 Q Tell me in as much detail as you can what was
6 presented in that session, if there were case studies what the
7 case studies were about, whatever you can remember about that
8 topic.

9 A We talked about dealing with problem employees, the
10 management style in terms of the autocrat or the democrat, X and
11 Y type leaders, the different management styles and how with
12 some groups one style may work but with other types of employees
13 another style is more appropriate.

14 Q And do you recall any case studies in connection with
15 that topic?

16 A I recall the one where a senior -- an electrical
17 foreman --

18 Q Senior what?

19 A It's where an electrical foreman was promoted from an
20 electrician to an electrical foreman and dealt with the
21 employees in a different manner in terms of giving them orders
22 -- no. It wasn't electricians. It was actually laborer, labor
23 type employees, where he was giving them directions, orders and
24 so forth, and then at a later time was promoted to Electrical
25 General Foreman and that same management style didn't work in

1 terms of dealing with the electrical foremen or the journeymen
2 electricians. It was a need for a different style.

3 Q Any other case studies presented at that time?

4 A Not really. Because of what was going on at the
5 filter plant, a lot of this is looking back at the book that was
6 given us, so a lot of it was more refreshing for me.

7 Q I'm sorry. Could you say that again?

8 A Okay. A lot of the specifics and details of the
9 class are missing because of what -- it was a very hectic time
10 at the filter plant. And, therefore, the materials were --
11 again, looking back at them later, it's the written material
12 that we were given.

13 Q You said you looked back at the written materials
14 later; is that correct?

15 A Yes.

16 Q When was that? When are you referring to?

17 A When I was back at work, when I had a little more
18 time, and I had a little bit more time to think about it.

19 Q When you went back and reviewed the materials, was
20 that still while you were at the filter plant?

21 A Yes.

22 Q Did you ever have occasion to review, go back to the
23 materials, the manual, while you were at the concentrator?

24 A No, I don't. I don't remember doing it then.

25 Q You said that a lot of the details are simply missing

1 for you, and that's because a lot was going on at the filter
2 plant.

3 A Filter plant. You know, I was working 16, 18 hours a
4 day out there, and it was, as much as I remember at the time,
5 that I got or went to the meeting as a chance to really get away
6 from the filter plant. It was more enjoying being away from the
7 filter plant as much as being in the meeting.

8 Q Did you get to the meeting, to the training session
9 when it first started or did you miss any portion of it?

10 A I believe I was there at the beginning. I'm not
11 sure. I don't remember coming late.

12 Q Did you stay through the whole session, whole
13 training program?

14 A Yes.

15 Q Do you recall being gone for any part of the session
16 at all?

17 A I could have been out to take a phone call or two.
18 There were numerous phone calls.

19 Q For you or for people in general?

20 A For me.

21 Q When you say numerous -- 2, 10, 20?

22 A A couple. In Fresh Start I was always being called
23 out for a phone phone call, some problem.

24 Q I'm sorry --

25 A For problems at the filter plant.

1 Q Do you have a specific recollection of being called
2 out to take a phone call during this training session?

3 A No, not in particular.

4 Q You are just saying it might have happened?

5 A Yes.

6 Q Do you recall how long the training session was,
7 essentially, the time frame of the the training session, 8:00 to
8 5:00, 10:00 to 4:00?

9 A Seemed like it was 8:00 to 4:00 or 3:30 or 3:00,
10 something like that.

11 Q Did you consider the training session to be relevant
12 to what you were doing at the filter plant?

13 A In that it talked about management styles and what
14 was necessary to be a good manager and more of a refresher
15 course than the details.

16 Q Excuse me, I apologize.

17 A I'm sorry. And the details associated with the
18 discipline, and I believe we talked a little bit about EEO.

19 Q You said it was more of a refresher course than the
20 details associated with, say, EEO. Where had you received
21 training with EEOC?

22 A We had it at the plant level. We had courses on it
23 or at least -- not courses, but at least someone would come and
24 talk to us about what was our responsibilities in terms of EEO.
25 Over the 15 years that I was with Kennecott, we have had

1 And at that time we discussed time off, how we would administer
2 that.

3 Q Tell me exactly what you recall about the discussion
4 in terms of using time off as a way to get Mr. Stireman to shape
5 up.

6 A Simply that we were talking about three days off, how
7 would we do that. Is there a problem in docking somebody's pay
8 three days, requiring them to work and not paying them, is that
9 an option, or do you cut their salary the equivalent of three
10 days pay and essentially give them three days off, would that be
11 the way to go. It was more how to administer, what would be the
12 options. I don't remember it ever taking place that he was ever
13 given three days off. But we had hit upon the idea that what we
14 would do was essentially give them three days off and have
15 payroll deduct three days pay.

16 Q You were not aware of that ever having been done with
17 a salaried employee at the time that discussion took place?

18 A No.

19 Q Did anyone in that room indicate that he was aware
20 that such had ever been done with a salaried employee,
21 essentially a salaried employee had been given time off or
22 suspended?

23 A I don't recall anyone saying that we had ever done it
24 at the smelter. We were more or less exploring what we would do
25 in that instance.

1 Q You were looking for a new creative way to handle the
2 problem; is that correct?

3 A Right.

4 Q Now I think you said you don't think it was ever
5 done, that Mr. Stireman was given any time off or suspension,
6 correct?

7 A Right.

8 Q Do you know if Mr. Stireman's behavior came up to an
9 acceptable level?

10 A What happened, again, about that time was that we
11 started the cutbacks. And Mr. Stireman was one of those that --
12 one of the first ones that was let go. We looked at keeping the
13 best foremen and letting worse ones go and started cutting the
14 number of foremen that we could keep. And it was shortly around
15 that time or following that that he was let go. Thinking back,
16 that may have been prior to '84.

17 Q Prior to '84?

18 A Yes. It could have been as early as '82 that that
19 took place. I can't remember which one of the layoffs. That's
20 what I was trying to place was which one of the layoffs.

21 Q There were major layoffs in 1982 as well, right?

22 A Yes.

23 Q Did you participate in the decision to choose Mr.
24 Stireman for reduction in force?

25 A No.

Plaintiff's Exhibit 1

KENNECOTT COPPER CORPORATION
UTAH COPPER DIVISION

July 1, 1973

TO: ALL UTAH SMELTER EMPLOYEES

SUBJECT: GENERAL RULES OF CONDUCT

FORWARD

All organizations require rules by which to operate efficiently. Without them, an individual in that organization would be unable to work effectively toward the organization's goals.

We expect you to observe those "common sense" rules of honesty, common decency, and general conduct always necessary when a large group is working together, so that the actions of one individual will not be detrimental to other employees, or to the company.

Listed below are the general rules of conduct that apply to all Kennecott personnel while on company operating property. These rules are not all-inclusive, but serve as a guide to good company citizenship.

Violation of these rules is cause for either (1) written warning, or (2) suspension subject to hearing for discipline purposes. Such a hearing can result in penalty layoff or discharge, depending upon the seriousness of the offense.

1. Insubordination is prohibited.
2. Drinking or being under the influence of or possessing intoxicants is prohibited.
3. Sleeping during working hours is prohibited.
4. Fighting is prohibited.
5. Stealing or hiding of property, materials, or supplies of the company or of another employee with malicious intent is prohibited. Borrowing, without permission, is prohibited.
6. Leaving the job (work place) during working hours without supervisory permission is prohibited.
7. Distributing literature without permission is prohibited.
8. Violation of safety and operating rules is prohibited.
9. Personal weapons or firearms of any type are prohibited.

KS000569

10. Soliciting funds or money, without managerial authorization, is prohibited.
11. Interfering with the work of others is prohibited.
12. Taking pictures without management authorization is prohibited.
13. Destruction or defacing of company property or that of another employee by willful intent or neglect is prohibited.
14. Reading during working hours without permission is prohibited.
15. Gambling is prohibited.
16. Playing cards or other games during working hours is prohibited.
17. Falsification of records or reports is prohibited.
18. Horseplay is prohibited.
19. Loafing or malingering is prohibited.



D. A. Kinneberg
Smelter Plant Superintendent



KS000512

Plaintiff's Exhibit 5



KENNECOTT - UTAH COPPER

MANAGEMENT TRAINING PROGRAM



BP MINERALS AMERICA

EXHIBIT A

**PLAINTIFF'S
EXHIBIT
5**

INTRODUCTION

KENNECOTT - UTAH COPPER

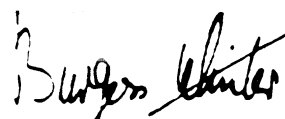
MANAGEMENT TRAINING

PHILOSOPHY

Training in supervision and management is vitally important to our success and helps to ensure that all members of management make a maximum contribution to the Company and achieve their full potential by increasing knowledge of management principles and improving management skills and techniques.

OBJECTIVES

- 1) To improve management skills and techniques
- 2) To share managerial experiences
- 3) To promote the Team Utah concept
- 4) To achieve a safe, prosperous and secure Utah Copper


Burgess Winter

PHILOSOPHY OF UTAH COPPER

Kennecott's Utah Copper is guided by this statement from our parent company, Standard Oil:

The goal of Standard Oil is to create real long-term economic value for our shareholders and society while operating with integrity in a manner which is fair to our employees and the communities in which we do business.

Achieving this goal requires a highly motivated team of people striving for excellence, sharing ideas, combating waste, and wisely using time. It also requires that each team member act affirmatively to carry out our firm commitment to equal employment opportunity, fairness, and consistency. The management of Utah Copper actively solicits the help of all employees in this team effort.

Communication is the lifeblood of teamwork. Managers at all levels are responsible for communicating work expectations, providing regular feedback, and promoting cooperation.

Every employee can expect to be recognized for their contributions and held accountable for their performance. Everyone will be regularly informed of work unit and overall Utah Copper performance.

Training is vitally important to our success and safety and health training is given first priority. This is followed closely by skill and management training. Employees are encouraged to enroll in educational programs that enhance individual growth and development. Investing in people is as important as investing in technology.

Union membership is important to some team members and everyone is expected to respect and honor all collective bargaining agreements.

Utah Copper is an active and responsible corporate citizen, conducting public affairs with honesty, integrity, and openness. Individuals are encouraged to become active in public service.

The Utah Copper team recognizes the importance of customers and seeks excellence in product quality. Our goal is to occupy a prominent position in the world metal market and further our reputation as a reliable producer of quality products.

***IT TAKES A COMPLETE TEAM OF COMMITTED PEOPLE TO ACHIEVE A
SAFE, PROSPEROUS, AND SECURE UTAH COPPER***

MANAGEMENT TRAINING

Spring 1988

Course Content

Situational Leadership - Identifying the appropriate leadership style for individuals in specific work situations.

EEO: Making It Work - Managing and understanding EEO problems in day-to-day operations.

Counseling/Discipline - Improving performance and correcting problem behavior through the proper use of counseling and disciplinary skills in a variety of work situations.

COUNSELING/DISCIPLINE

COUNSELING/DISCIPLINE

INTRODUCTION

Kennecott Utah Copper, like other business organizations, has rules and regulations that establish the framework for employee behavior. Our framework of rules and regulations are reasonable and necessary for the orderly operation of our business. Most employees respect authority and willingly carry out instructions and abide by rules such as the published General Code of Conduct. There is always a small percentage, however, who test the rules or refuse to abide by them. In addition, this small percentage of employees often cause most of our disciplinary problems. It is management who has the responsibility to take appropriate counseling and/or disciplinary action to correct unruly or problem employees or they will negatively impact the self-disciplined majority. This section will explore this key management role and its importance in improving employee performance and correcting problem behavior.

The objectives of counseling/discipline training are:

- o To enhance counseling skills.
- o To improve employee performance and correct behavioral problems.
- o To properly use corrective discipline in variety of disciplinary situations.

COUNSELING

There's no doubt that authoritarian, even insensitive, managers sometimes get results. But there's a difference between correcting a problem temporarily and solving it long-term. Experience tells us that long-term solutions come from changing behavior. In problem situations, using counseling to directly change behavior has proved the best way to improve employee performance over a long period of time. It relieves the supervisor of the time-consuming task of having to correct the same problem again and again, and it leads to a work group that is marked by higher morale and better levels of performance.

GENERAL PRINCIPLES OF COUNSELING

- o Focus on the problem, issue or behavior, not the person.
- o Maintain the self-confidence and basic self-esteem of the employee.
- o Maintain constructive supervisor employee relationships.

IMPROVING EMPLOYEE PERFORMANCE

When was the last time you thought, or heard a colleague say: "People just don't care about their work anymore," or "In the old days, people gave 100%."

The fact remains that a major difference between a highly effective manager and a merely adequate manager is the ability of the former to improve the performance of his or her employees.

No manager who is truthful would say it's an easy job. It isn't. Ever-increasing paperwork, unanticipated crises on the job, maintenance problems, and equipment breakdowns all combine to make the job of improving the performance of your employees an easy one to put off until tomorrow - and the day after.

Yet the truly professional manager succeeds because he or she doesn't put off the job. In fact, good managers see the task of improving employee performance as a challenge to be met, to be mastered, and to be used as a measure of their own performance.

How do you meet this challenge? First of all, you don't try to re-invent the wheel. There are proven ways to go about the task.

COUNSELING SKILLS FOR IMPROVING EMPLOYEE PERFORMANCE

- o With the employee discuss and define the performance problem that concerns you.
- o Stay positive and friendly, actively seeking and listening to your employee's ideas during your discussion.
- o Agree on specific actions that each of you will take and establish a timetable for improvement.
- o Set a specific follow-up date to check on progress.
- o Express confidence that your employee can do the job.

Note: Remind the employee of formal discipline if performance remains unsatisfactory.

CORRECTING PROBLEM BEHAVIOR

If you sometimes ignore employee problem behavior you're not alone. Many managers do and, understandably so. The line between individual expression and problem behavior can be a fine one, and requires managerial discretion.

What are the dangers of ignoring problem behavior, and is there a rule of thumb which lets you know when individual expression has become problem behavior?

First, the dangers. If you ignore problem behavior, your employees won't ignore the fact that you're letting rules be bent, and standards be lowered. It will only be a matter of time until other members of your work group begin to lower their standards. Low standards produce low morale and decrease levels of performance. Suddenly, you, as a manager have a major problem instead of an isolated case of problem behavior on the part of a single employee.

How then, do you decide if you have a behavior problem on your hands? Ask yourself the "What if" questions. What if everyone came in late? What if everyone refused to wear safety equipment? What if everyone failed to show up on Mondays?

If the answer to your "What if" questions is: "As manager, I couldn't allow everyone to do it," then you may have a behavior problem which you must address.

COUNSELING SKILLS FOR CORRECTING PROBLEM BEHAVIOR

- o Calmly identify the problem, explain why it concerns you and express your desire for change.
- o Seek out and listen to the employee's reasons for this behavior.
- o Ask for the employee's ideas for solving the problem.
- o Offer your help as the employee's supervisor.
- o Agree on an action plan and set a date to review progress.

Note: Remind the employee of formal discipline if the problem behavior continues.

KEY POINT: Remember these tips on counseling.

Encourage the employee to talk, and above all, listen to the employee.

Put yourself in the place of the employee -- empathize.

Help the employee understand his/her problem. If one is able to recognize their problem, they are better equipped to solve it.

Help the employee develop a plan of action to become a self-disciplined worker.

GENERAL PRINCIPLES OF CORRECTIVE COUNSELING/DISCIPLINE

- o Definite Rules of Expected Behavior Must be Drawn Up and Communicated.

~~In administering discipline, ignorance of the law may be an excuse. Managers must insist that employees know the rules before they can be disciplined for violating it.~~

- o Purpose of Discipline is to Correct Problem Workers Rather than Punish Them.

This corrective approach to discipline does not mean that the manager avoids disciplinary problems rather, it means that he/she meets each disciplinary problem head on.

- o Discipline Should be Administered on the Same Principle as Preventive Maintenance.

Correcting small problems will prevent large problems. Correcting problem employees will prevent others from becoming problem employees.

- o Each Disciplinary Case Should be Considered on Its Own Merits.

- o Discipline Should be Administered Only for "Just Cause."

"Just cause," when referring to discipline, means:

(1) Discipline shall not be arbitrary (without cause).

(2) The reason for discipline must be sustained in fact and must not offend a reasonable person's sense of equity.

(3) Discipline must be nondiscriminatory.

Each disciplinary case is uniquely different in some way from all other cases.

Disciplinary action must be consistent, but not necessarily uniform.

Fully document reasons for any mitigation to avoid later charge of discrimination.

KEY POINT: Remember these points for discipline to be corrective:

- 1) Be Firm
- 2) Be Fair
- 3) Be Consistent

SPECIFIC PRINCIPLES FOR ADMINISTERING CORRECTIVE DISCIPLINE

- o Never discipline an employee when you are angry.
- o Fully investigate each disciplinary case.
- o Make a record of the disciplinary action.

KEY POINT: The faintest ink is better than the best memory.

- o The employee must be fully advised of the offense with which she/he is charged and their reasons behind the disciplinary action imposed.
- o Disciplinary action assessed for similar offenses must be consistent.

This does not mean that disciplinary action must be perfectly uniform. It is a part of the supervisor's job to consider each case on its merits and to take corrective action. If leniency is merited, document reasons for leniency.

- o Each employee should be counseled on how to avoid future infractions.

HOT STOVE RULES FOR DISCIPLINARY ACTION

- o Discipline is Immediate -- If you touch the stove, you are burned (you associate the punishment with the act).
- o You had a Warning -- Especially if stove was red hot (having been warned, you accept at least part of the blame for being burned).
- o The Discipline is Consistent -- Every time you touch the stove, you are burned. (You are not lulled into a fake sense of security as would happen if you are only burned on occasion.)
- o The Discipline is Impersonal -- Whoever touches the stove is burned. (The discipline was fair and happened because of what I did, not because of who I am.)

A CHECK LIST FOR ADMINISTERING DISCIPLINE

In administering discipline, remember to:

Investigate -- get the facts.

Analyze the facts.

Make certain the reprimand is for "just cause."

Be specific in charges.

Give the employee the opportunity to reply.

Fill out the appropriate disciplinary form in detail.

Adjust the counseling interview to fit individual.

Counsel the employee on how to avoid future infractions.

In administering discipline, avoid:

Losing temper.

Making idle threats.

Using profanity.

Being sarcastic.

Attempting to humiliate the employee.

Reprimanding in public.

Delegating your discipline/counseling responsibility to someone else.

VIOLATIONS WARRANTING SUSPENSION

- o Insubordination
- o Fighting on company property
- o Sleeping on the job
- o Theft or fraud
- o Damaging, destroying or misusing property
- o Being under the influence of, or possessing, using, consuming, selling alcohol or drugs.

CONTRACTUAL CHECKLIST FOR DISCIPLINE - ARTICLE 5.1

Suspension or Discharge Cases

- 1) No employee shall be disciplined or discharged without _____.
- 2) Following notification, the hearing is to be held within _____ normal business days.
- 3) Following the hearing, the Company's decision is given within _____ normal business days.

Non-suspension or Non-Discharge Cases

- 1) The employee may request that a _____ be present as he/she is advised of disciplinary action.

Impact of Past Discipline on Future Discipline

<u>Action</u>	<u>Time Frame To Escalate Action</u>
Written Warning	_____ calendar year
Suspension of three days or less	_____ calendar years
Suspension of more than three days	_____ calendar years

A CONTRACTUAL CHECKLIST FOR JUSTICE & DIGNITY - ARTICLE 5.2

- 1) Applicable to _____ employees.
- 2) Applicable for suspensions and discharges provided continued employment does not represent an _____ in the Company's ability to operate in a safe and efficient manner and no _____ is involved.
- 3) Not applicable in cases regarding:
 - a) _____ on the job.
 - b) Possession or being under the influence of _____.
 - c) _____ or fraud.
 - d) _____ to perform assigned work.
 - e) Willful intent to damage, destroy or misuse _____.
 - f) Actions that represent a danger to the _____ of employees.
- 4) If a grievance is properly filed, the employee is allowed to remain _____ while the grievance is processed to a conclusion.

KEY POINT

After an employee has been reprimanded, it is important to show by your actions that you do not hold a grudge -- you do not want to make an enemy. The discipline was for something the employee did and not for personal reasons. Be as positive and supportive of the employee as possible, especially if he/she begins correcting his/her behavior or improving his/her performance.

CONCLUDING COMMENT

Counseling and/or discipline to be successful, cannot be ends in themselves, but necessary tools for conflict resolution. The objectives of conflict resolution are to properly use counseling to correct problem behavior and improve employee performance and to correctly use discipline when required in a variety of disciplinary situations.

The following management ~~procedures~~ govern the handling of violations of Company rules warranting suspension.

I. Company Policy

Kennecott Utah Copper's General Code of Conduct prohibits:

- A) Insubordination
- B) Fighting on Company Property
- C) Sleeping on the Job
- D) Theft or Fraud
- E) Damaging, Destroying or Misusing Property
- F) Being under the Influence, Possessing, Using, Consuming, Selling Drugs or Alcohol

II. Management Responsibilities

- A) Observation/Investigation
- B) Disciplinary Suspension
- C) Documentation/Communication

A) Observation/Investigation

- 1) Observe and gather facts
- 2) Investigate the incident
- 3) Question the employee, witnesses, etc.
- 4) ~~If necessary, consult with line management~~ and Labor Relations
- 5) Be certain that a serious violation occurred and be prepared to prove the allegations.
- 6) ~~When possible, contact a shop steward or union representative to be present. Do not wait for their arrival to question the employee.~~

B) Disciplinary Suspension

- 1) Suspend the employee and issue a Notice of Investigation and Hearing.
- 2) Advise the employee:
 - a) Pay discontinues immediately
 - b) Will be notified of the hearing date as soon as possible
- 3) Report the incident to Labor Relations (ext. 6038 or 6061).
- 4) ~~Contact a shop steward or union representative~~ if not present at the time of the incident or investigation and advise them of the suspension.

C) Documentation/Communication

- 1) Document observable facts.
 - a) Make notes immediately.

- b) Prepare a thorough report of the incident. Be specific as to employee's name, actions, statement, time, chronological order of events, etc.

Remember: The faintest ink is better than the best memory.

- 2) Communicate the incident to management.

- a) ~~Report the incident to the employer's general foreman.~~
- b) ~~Report the incident to your foreman~~ (ext. 6038 or 6061).
- c) In the disciplinary hearing, make your testimony factual and objective.

Remember: Your credibility is your most important asset.

III. Violations Warranting Suspension

- A) Insubordination
- B) Fighting on Company Property
- C) Sleeping on the Job
- D) Theft or Fraud
- E) Damaging, Destroying or Misusing Property
- F) Being under the Influence, Possessing, Using, Consuming, Selling Drugs or Alcohol

A) Insubordination (refusal to work or to follow orders)

- 1. Refusal to obey a reasonable order or accept a reasonable assignment is treated as "insubordination". The only legitimate exception is a refusal based on an alleged condition that may constitute a safety or health hazard. There is a specific procedure to follow in these cases.
- 2. Refusal to wear safety equipment as ordered by a supervisor and arguing with a supervisor about wearing the equipment is considered insubordination, justifying suspension.
- 3. Using foul and abusive language towards a supervisor is insubordination. By the same token a supervisor cannot use foul and abusive language towards an employee.
- 4. An insubordination charge cannot be sustained unless it is proven that the grievor refused to obey instructions given by someone in authority.
- 5. Guidelines to follow when an employee refuses to follow an order or to accept a reasonable work assignment:
 - a) Do not immediately suspend the employee.
 - b) Ask why he/she does not want to do the work.
 - c) Listen to what he/she has to say.

- d) If he/she is refusing because of safety or health reasons, then follow the established safety procedure.
 - e) If safety or health is not involved, then inform the employee, that he/she has been given a "reasonable" assignment and that if he/she refuses to accept the order or assignment he/she will:
 - 1) Be subject to a charge of insubordination.
 - 2) Have his/her pay immediately stopped.
 - 3) Be suspended pending a hearing.
 - 4) Face possible disciplinary action.
 - f) If the employee still refuses then immediately suspend him/her pending a hearing.
- 6) Do not use the expression, "either you do it or go home".
- This indicates that the employee has a choice which he/she does not have. It has been argued in such cases that the employee was given a choice and chose the latter - to go home.
- 7) Insubordination is a critical offense and the employee must be suspended pending a hearing. Insubordination can warrant a severe disciplinary suspension (time off) or discharge.

B) Fighting on Company Property

- 1) Fighting or assaulting a fellow employee on Company property is cause for automatic suspension pending a hearing.
 - a) Separate the employees immediately.
 - b) Question each employee involved in the incident. Do not question one participant in the presence of another participant.
- 2) Remember if two or more employees engage in a fight on Company property, the supervisor must suspend all employee so involved, pending a hearing.
- 3) Fighting on the job can warrant a severe disciplinary suspension (time off) or discharge.

C) Sleeping on the Job

- 1) Sleeping on the job can warrant suspension pending a hearing. If suspended, the employee should only be suspended for the balance of the shift.
- 2) Use discretion in such cases. If an employee merely dozes at his place of work he should be awakened, verbally cautioned, and told to get up, walk around, get some fresh air.
- 3) Consider the circumstances. For instance, a pumpman dozing in a chair because of the hum of motors, heat, etc., is entirely different from a case where an employee deliberately hides, makes a bed and goes to sleep.
- 4) Sleeping on the job generally warrants a minor disciplinary suspension (time off).

D) Theft or Fraud

- 1) Theft of Company or employee property is cause for automatic suspension pending a hearing.
- 2) If possible, confiscate or secure the item or equipment that the employee was attempting to steal.
- 3) In the presence of another (supervisor or security officer) secure the item and give it to the Security Sergeant or Lieutenant on shift.

Remember: A chain of custody is being developed.

- 4) Theft or fraud is considered a dischargeable offense.

E) Damaging, Destroying or Misusing Property

- 1) Damaging, destroying or misusing Company or employee property is cause for automatic suspension, pending a hearing.
- 2) If possible, confiscate or secure the item of property that was damaged, destroyed or misused.
- 3) It is difficult to prove "willful" intent regarding damage, destruction or misuse of property. Therefore:
 - a) Obtain evidence.
 - b) Question the employee and any "eye witnesses" to the event.
- 4) Such action generally warrants a severe disciplinary suspension (time off) or discharge.

F) Drug and Alcohol Related Incidents (see separate Guidelines)

~~Management Responsibilities~~ govern the handling of drug and alcohol
~~related incidents on company property.~~

I. Company Policy

Kennecott Utah Copper's General Code of Conduct prohibits:

Bringing onto company property, having possession of, being under the influence of, using or consuming, transferring, selling or attempting to sell, any form of intoxicant, narcotic, depressant, stimulant, hallucinogen or any mind or perception-altering drug or substance (excepting only the taking of a prescribed drug under the direction of a physician) at any time during working hours, or on company property.

II. Management Responsibilities

- A) Observation/Investigation
- B) Disciplinary Suspension
- C) Documentation/Communication

A) Observation/Investigation

- 1) Look for these signs or observable facts:
 - a) Strong odor of alcohol on the breath
 - b) Slurred or irregular speech
 - c) Reddened or unfocused eyes
 - d) Poor coordination and balance
 - e) Heavy perspiration or sweating (face)
 - f) Peculiar or unusual behavior
 - g) Wandering concentration
- 2) Ask questions:
 - a) Ask the employee his/her legal name and verify with proper identification.
 - b) Are you feeling ok?
 - c) If you suspect that an employee is under the influence tell him/her that you are concerned about his/her safety; i.e., unsafe to work, unsafe to drive.
- 3) If you are of the opinion that an employee is under the influence, have another supervisor (Kennecott), or if one is not available, a security officer also observe the employee's actions, behaviors and statements.
- 4) When possible, contact a shop steward or union representative to witness the event. Do not wait for their arrival to question the employee.
- 5) If an employee appears to be under the influence based on observable facts contact the employee's supervisor or general foreman, immediately.

- 6) If the employee's supervisor is present let him/her ask the major questions - if not present you ask them. Whenever possible have another person (supervisor or security officer) present.
- a) You appear to be under the influence, I'm concerned about your safety, have you been drinking or have you taken anything?
 - b) If answer is yes, follow-up questions:
 - When?
 - What? In what amounts?
 - c) Are you on or taking any medication? If so what?
 - d) Ask the employee to empty pockets, open up their lunch box. Ask them to remove the contents.
- Note: If the employee refuses this request and the request is made by a supervisor, the employee can be charged with insubordination.
- 7) Confiscate any paraphernalia or contraband; i.e., smoking papers, matches, viles, bottles, etc.
- 8) In the presence of another (supervisor or security officer) store the contents or seal them in a box or envelope, initial the seal and give the package to the Security Sergeant or Lieutenant on shift. A chain of custody is being established.

B) Disciplinary Suspension

- 1) If you declare that an employee is under the influence, possessing, using or consuming, suspend the employee from service, pending a hearing.
- a) Issue a Notice of Investigation and Hearing.
 - b) ~~Where possible, contact a shop steward or union representative~~ if not present at the time of the incident or investigation and advise them of the suspension.
 - c) Remind the employee that you are concerned about his/her safety.
 - d) Discourage them from driving.
 - e) Do not allow them to enter the property or return to work.
 - f) Make arrangements for a family member, co-worker or County Sheriff to take the employee home.

If the employee refuses, inform him/her that when he/she leaves the property you will contact the County Sheriff and report the driver of the vehicle as being under the influence.

D) Documentation/Communication

1) Document observable facts.

- a) Make some notes immediately.
- b) Prepare a thorough written report of the incident. Be specific as to the employee's name, actions, behaviors and statements. List names, events, time, etc.

Remember: The faintest ink is better than the best memory.

2) Communicate the incident to management.

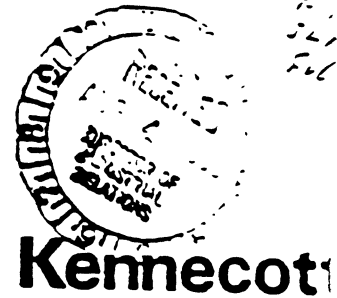
- ~~a) Report the incident to the employee's general foreman.~~
- ~~b) Report the incident to Labor Relations (ext. 6038 or 6061).~~
- ~~c) In the disciplinary hearing, make your testimony factual and objective.~~

Remember: Your credibility is your most important asset.

POLICIES/PROCEDURES

Kennecott
10 East South Temple
P.O. Box 11248
Salt Lake City Utah 84147

July 30, 1986

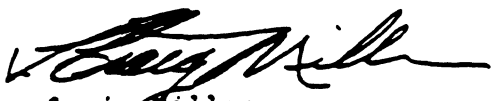


D. L. Babinchak
R. S. Ellett
J. M. Johnson
J. H. Macsherry
E. R. Peterson

Subject: Holiday Eligibility Administration

Problems of administration will most likely arise in connection with Article 17B(2), the shifts before and after requirement in relation to the "verifiable similar good cause" proviso. In negotiations, the only examples raised were the case of the heart attack of a spouse and the case of the snowed-in employee. If "verified," these could be "similar good cause" for missing the required shifts. In any case, the burden of verification rests on the employee.

No problem should arise in regard to the requirement of 17B(1), the one-month hire provision, and no problem should arise as to the B(3) work week requirement as long as we adhere strictly the four listed exceptions of vacation, jury duty, funeral leave and military encampment. In regard to B(3), we resisted any extension beyond the four exceptions; there is no "good cause" exception as there is in B(2). Thus, failure to satisfy the work week requirement due to an approved union leave or sick leave or layoff will disqualify an employee.


L. Craig Miller
Director Industrial Relations
& Benefits

EFM/ml

cc: J. R. Cool

Kennecott
10 East South Temple
PO Box 11248
Salt Lake City Utah 84147



July 30, 1986


Kennecott

D. L. Babinchak
R. S. Ellett
J. M. Johnson
J. H. Macsherry
E. R. Peterson

Subject: Funeral Leave Administration

In your administration of the Funeral Leave Article of your contract, be guided by the spirit of the attached colloquy between Messrs. Cool and Petris. This supersedes any past administration of this provision whereby an employee may have been given automatically three days paid time off.

If you get a grievance over our change in administration, please give me the full details so that we may raise the matter with the appropriate International Union people in order to reaffirm the understanding which the parties had on this matter.


L. Craig Miller
Director Industrial Relations
& Benefits

EFM/ml
Attachment

cc: J. R. Cool, w/att.

10 East South Temple
PO Box 11143
Salt Lake City, Utah 84111

September 26, 1986

TELECOPY TO:

D. L. Sackinshak, UCC
R. S. Elliott, RMD
J. M. Johnson, NMD
J. H. Macsherry, KRC
E. R. Peterson, CMC

Kennecott

Subject: Holiday Worked Pay

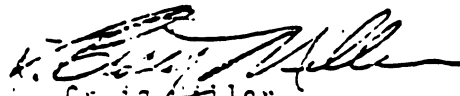
Questions have been raised concerning application of Article 17C, the holiday pay clause, as follows:

1. Question: Under some of the old contracts, if an employee was regularly scheduled on the A shift, but on a holiday he worked a different shift, he was paid the holiday allowance plus 2-1/2X for his work on such different shift. How is this handled under the new language?

Answer: The employee would not be entitled to the eight-hour allowance plus 2-1/2X for the hours worked. That is, under the new language, an eligible employee receives 2-1/2X for all time he worked on the holiday inclusive of the holiday allowance. Note that the holiday allowance is not tied to any particular shift within the 24-hour holiday period. Note also that to receive the holiday allowance for an unworked holiday or to receive 2-1/2X for work on a holiday, the employee must be "otherwise eligible," i.e., he must meet the requirements of Paragraph B.

2. Question: If an otherwise eligible employee is called out to work on a holiday for work of less than eight hours, what is he to be paid?

Answer: Such otherwise eligible employee is to be paid 2-1/2X for the hours worked inclusive of one holiday allowance hour for each hour worked plus the balance of the eight-hour holiday allowance, as shown in the attached table.


D. Craig Miller
Director, Industrial Relations
Benefits

7/4ml
Attachment

cc: J. R. Cobb, w/att.
E. R. Morrison, w/att.

A	B	C	D	E
HOURS WORKED ON A HOLIDAY CALL-OUT	STRAIGHT-TIME HOURS' PAY FOR HOURS WORKED DUE	(STRAIGHT-TIME HOLIDAY ALLOWANCE HOURS INCLUDED IN COLUMN B)	BALANCE OF EIGHT-HOUR STRAIGHT-TIME HOLIDAY ALLOWANCE DUE	TOTAL STRAIGHT-TIME PAY DUE
1	2.5 5.0 ⁰⁰	(1)	7	9.5 12
2	5.0 6.5 ⁰⁰	(2)	6	11.0 12
3	7.5	(3)	5	12.5
4	10.0	(4)	4	14.0
5	12.5	(5)	3	15.5
6	15.0	(6)	2	17.0
7	17.5	(7)	1	18.5
8	20.0	(8)	0	20.0

* Includes minimum 8 hours straight-time pay per
call-out provision

January 20, 1987

TO: Supervisors of Represented Employees

When an employee does not receive a 20-minute paid lunch between the 4th and 6th hour the card should look like this:

[illegible][illegible]

Kent Goble
W. K. Goble

A-50

An operating company of The Standard Oil Company, Inc.

Kennecott
Utah Copper Division
PO Box 31838
Salt Lake City, Utah 84131-0838
(801) 322-7000

January 29, 1987

Kennecott

TO: Front Line Supervisors

When represented employees "double" (work a full shift after working their full regular scheduled shift) and are eligible for overtime pay, the rate of pay for that overtime work is governed by the provisions of Article 8.E.

"Any employee required to perform work of a classification carrying a higher rate of pay for a period of two (2) hours or more shall be paid at such higher rate for the full shift. If an employee is required to perform work of a classification carrying a lower rate, no reduction in rate shall be made, except in cases of permanent transfer or demotion due to reduction in force. However, employees allowed to perform work of a higher rating as a means of gaining experience necessary to qualify them for promotion shall be paid their regular rates of pay applicable in their classification."

Examples of this provision as it applies to employees who double are as follows:

1. A Senior Operator (Pay Level G) doubles from A shift to B shift and works the entire shift as a cleanupman (Pay Level A). That employee would receive 16 hours (8 hours overtime) all at Pay Level G.
2. A Cleanupman (Pay Level A) doubles from A shift to B shift and works 5 hours as a Cleanupman and then is upgraded to an Attendant (Pay Level D) for the final 3 hours. That employee would receive 8 hours (straight time) at Pay Level A and 8 hours (overtime rate) at Pay Level D.
3. In example 2 above, if the employee had only worked one hour as an attendant, that employee would receive 8 hours (straight time) at Pay Level A; 7 hours (overtime rate) at Pay Level A and 1 hour (overtime rate) at Pay Level D.

This does not apply to "call-out" work which is paid at the rate of the classification of the work to be performed (Article 13.C.2-3), nor would overtime be payable if the double were the result of a normal shift or scheduled change (Article 13.A.2).


D. L. Babinchak

DLB/kb
cc: W. K. Goble

An operating company of The Standard Oil Company

June 15, 1987

Kenneco

To: Front Line Supervisors

Re: Overtime Lunch Procedure

There has been some uncertainty in the application of overtime meals and payment of wages for employees who work overtime. In order to help clear up some of the questions please adhere to the following procedures.

1. Employees who work four (4) hours or more of unscheduled overtime beyond the end of their regular scheduled shift are eligible for an overtime meal. Time to eat the meal can be given after two (2) hours of overtime if the supervisor knows the overtime will last at least four (4) hours. This enables supervisors to have some flexibility in relieving employees for an overtime meal in these cases.
2. Eligible employees should be given sufficient time to eat an overtime meal (normally about twenty (20) minutes). Employees working overtime are not subject to the timing of the lunch period provisions of Article 11.D and are therefore not subject to extra payments when the overtime meal is not provided at a certain time.

Sincerely,



P. D. Hunter
Labor Relations Manager

PDH/ch

Kennecott

We are continuing to experience mistakes in pay practices due to misunderstandings of new contractual provisions. Two of the most common errors concern call outs continuous to the shift and rates of pay for call outs or work on a scheduled day off. Please communicate the proper pay procedures as outlined below to those individuals in your plant responsible for filling out or checking time cards.

- While these are confusing provisions in some respects, nevertheless we must conform to proper procedures under the collective bargaining agreement.

Poster

PDH/ch
cc: W. K Goble
D. L. Babinchak

AGREEMENT

This Agreement is between the Company, which is Kennecott, Utah Copper Division, and the Union, which is:

United Steelworkers of America, Locals 485, 392, 692, 5486, 4347, 4329, 4413, 5120.

International Association of Machinists and Aerospace Workers, Lodge 568 (Mine).

International Brotherhood of Electrical Workers, Locals 1081 (Mine), 1081 (Refinery), 1438.

Operating Engineers, Local 3.

United Transportation Union, Locals 1416, 1038-E, 1038-T&C.

Office and Professional Employees International Union, Local 286.

System Federation 155.

Effective July 10, 1986

bargaining unit at a single plant and from a single cause may be consolidated at either party's discretion. Such consolidated multiple grievances may be filed at Step 3, subject to the written grievance requirements at the step and to the time restriction set forth at Step 1 for initiating a grievance.

- H. Grievances affecting employees working under more than one work center supervisor, within a plant, may be filed at Step 3, by the Union's Grievance Chairman, subject to the written grievance requirements at that step and to the time restrictions set forth at Step 1 for initiating a grievance.
- I. Any monetary grievance award shall be noted on the employee's paycheck stub.

Article 5.1.

DISCIPLINE

No employee shall be disciplined or discharged without just cause. When the Company determines that the conduct of an employee may justify discipline, the following procedures will apply:

- A. Disciplinary suspension or discharge cases:
 - 1. Within three (3) normal business days of notification by the Company that

the conduct of an employee may warrant disciplinary suspension or discharge, a hearing will be held by a representative designated by the Company, with the employee and Grievance Committee in attendance. The purpose of the hearing is to provide for an investigation and determination of the facts. The Company will notify the employee and the Union of its decision within five (5) normal business days after such hearing.

- 2. If the employee and the chairman of the Union Grievance Committee request in writing that the hearing in 1 above be waived in a case that may warrant disciplinary suspension, the Company will notify the employee and the Union of the Company's decision and of any disciplinary action to be taken within five (5) normal business days after notice of such waiver
- 3. Any grievance over disciplinary suspension or discharge may be presented in Step 3 of the grievance procedure within five (5) normal business days of notice of the Company's decision.
- 4. Hearings under this provision will be held during normal working hours. A reasonable number of witnesses will be allowed to attend hearings if they

have testimony which the Union Grievance Committee represents is relevant, material, non-repetitive and necessary. If Union representatives, the employee involved or witnesses are scheduled to work during a hearing, they must provide reasonable advance notice to their immediate supervisor to attend. No Union representatives or witnesses will be paid for time spent attending hearings, except that (1) the Chairman of the Grievance Committee or his/her designee and (2) witnesses called by the Company at the request of the Union will be paid for time lost from regular scheduled working hours to attend such hearings. The employee involved will be paid for time lost from regular scheduled working hours to attend the hearing, provided he/she has not been suspended without pay pending a hearing.

5. "Normal business days," as used above, excludes weekends and holidays.

B. Nothing herein will restrict the Company's right to immediately suspend an employee without pay pending a hearing or decision on disciplinary action. It shall not be the policy of the Company to resort to employee suspension pending a hearing for minor rule or conduct infractions.

C. In cases not involving disciplinary sus-

pension or discharge, the employee will be notified that he is to be disciplined. The employee may request that a Union representative be present as he/she is advised of the disciplinary action.

D. The impact of past disciplinary actions will be limited as follows:

1. A written warning dated one (1) calendar year or more prior to the occurrence of a new violation will not be used to escalate disciplinary action.
2. Violations which have resulted in disciplinary suspensions of three (3) days or less will not be used to escalate future discipline if the dates those disciplinary actions were imposed are more than three (3) years from the date the current violation was committed. Such suspensions that are less than three (3) years old can be used to escalate discipline.
3. Violations which have resulted in disciplinary suspensions of over three (3) days will not be used to escalate future discipline if the dates those disciplinary actions were imposed are more than five (5) years from the date the current violation was committed. Such suspensions that are less than five (5) years old can be used to escalate discipline.

4. All past and future violations will be covered by the foregoing provisions.

Article 5.2.

JUSTICE AND DIGNITY

- A.** The justice and dignity procedure shall be applicable to non-probationary employees for disciplinary suspensions, discharges and terminations, provided: (1) the continuance of employment does not represent an impairment in the Company's ability to operate in a safe and efficient manner; and (2) no concerted activity is involved.
- B.** This procedure shall not be applicable to suspensions, discharges and terminations resulting for causes such as the following:
1. Fighting.
 2. Possession of or being under the influence of drugs.
 3. Theft or fraud.
 4. Refusal to perform their assigned work.
 5. Willful intent to damage, destroy or misuse Company property or that of another employee.
 6. Actions that represent a danger to the safety of employees.

- C.** As long as a grievance has been properly filed in accordance with the basic labor agreement which specifically contests the propriety of a suspension, discharge or termination which was not for causes such as those above, the employee subject to the discipline will be allowed to remain at work (if he would have been scheduled to work but for the discipline) while the grievance is processed to a conclusion. The actual implementation of the suspension, discharge or termination (if sustained) will be made as soon as practical after the final determination of the grievance.
- D.** Regarding administration of discipline to which this procedure is applicable, the employee shall be returned to work (if he would have been scheduled to work but for the discipline) when a grievance is timely filed. If a grievance is filed after the start of suspension for a cause to which this procedure is applicable, the employee shall be contacted and shall be advised that as a result of the grievance filing, the remaining balance of the suspension period is being deferred pending final resolution of the grievance and he will be scheduled to return to work (if he would have been scheduled to work but for the discipline) as soon as practicable but without pay for the time he was held out of work, unless such pay is provided for in the final determination of his grievance.

- E. Grievances involving employees who are retained or returned to work under this procedure will be processed under the regular grievance and arbitration procedure; provided, however, the parties recognize that time is of the essence and both parties will exert their best efforts to expedite the processing of the grievance at all steps and will immediately select an arbitrator.**
- F. An employee who has invoked this procedure will remain subject to all other provisions and conditions of continued employment applicable to any other member of his or her bargaining unit.**
- G. Grievances or disputes concerning the applicability of this procedure will be submitted to the regular arbitration procedure.**
- H. An employee who pursues, or on whose behalf there is pursued, legal or statutory remedies for conduct that includes discipline covered by this procedure will not have the right to use or benefit from this procedure.**

Article 6.

ARBITRATION

- A. In the event the parties are unable through the grievance procedure herein provided to resolve a grievance concern-**

ing the meaning, interpretation or application of any specific provision(s) of this Agreement, such grievance may be submitted to arbitration by the Company or the Union.

- B. Within thirty (30) normal business days after receipt of the written decision at the Review Step of the grievance procedure, either the Union's International Union Staff Representative or Designated Official of the International Union or the Company's Human Resources Director must give written notice of intention to arbitrate.**
- C. Within ten (10) normal business days from receipt of the notice to arbitrate in paragraph B above, an arbitrator must be selected and a joint request for a hearing date must be sent to the arbitrator.**
- D. An arbitrator will be selected from the following panel. Selection will be on a case-by-case rotation basis, starting with the first case being handled by the first arbitrator listed below, unless the parties mutually agree to select an arbitrator from the panel on some other basis.**

**Howard S. Block
Sanford Cohen
Daniel J. Dykstra
William Eaton**

Plaintiff's Exhibit 17

TO: G. A. Jungenberg

12/6/88

FROM: K. M. Sorenson

SUBJECT: Immediate Cleanup Schedule

The following is a planned schedule of the cleanup that requires immediate attention. This plan will bring these pieces of equipment and surrounding areas up to acceptable levels of housekeeping. In the longer term there are items that must be corrected if we are able to maintain the housekeeping level. This plan also does not leave much room for breakdowns that create more spills.

The areas for cleanup are prioritized so that those with the greatest potential for damage are completed first.

<u>AREA</u>	<u>COMPLETION DATE</u>
2046,2050 & SCISSORS	12/6/88
2100	12/6/88
2045, GRIZZLY FLOOR & RETRACTABLE	12/7/88
2015,2020	12/8/88
1045,1046	12/9/88
2044,2090	12/12/88
2095, #2 FEEDER & COLLECTOR BELT	12/13/88
SYMONS MAINTENANCE BAY	12/14/88
GRINDING AREA COMPLETE	12/15/88

NOT COMPLETED ON
TIME - CLOSE
AT END OF
DECEMBER
W.M.

The scheduling of the maintenance repairs must follow closely this same schedule in order to minimize the necessity to repeat this cleanup on more than a routine basis. For example the scrapers are to be repaired on the 2045, 2046 and 2050 belts on 12/7.


Kelly Sorenson

PLAINTIFF'S EXHIBIT 17

KS000981

Defendant's Exhibit 127

Kennecott
Utah Copper Smelter
PO Box 329
Magna Utah 84044
(801) 569-6300

Stewart B. Smith
Manager Smelting

17 August 1987

*discussed
with
J. L. Hansen*

Kenneco

To: J. L. Hansen
From: S. B. Smith
Re: Anode Plant Operations

On Sunday morning I took the opportunity to review anode plant operations both during a casting period and also during an outage for some equipment malfunction.

By area my comments are as follows:

Holding Furnace

By far the least abused item of plant. Some major spills are accumulating under the furnace and require clean-up. The area to the immediate east of the battery room is full of trash and requires clean-up.

Refining Furnace No. 1

All beat up handrails and platforms need to be fixed immediately - and maintained in good order at all times. The furnace mouth has excessive build-up and should be cleaned.

The burner system does not function properly. There are some confusing stories as to how the burner got partially plugged with copper, some of which seem logical, and the unit fails to operate.

(On Saturday "B" shift the operator advised the burner had malfunctioned for sometime. There is no way to control combustion over the range of the burner and the ignitor does not work at all. Some control wires are hanging loosely, obviously severely damaged by fire. To light the burner operators turn on the gas and hope!)

Please have the burners restored to design specifications immediately.

Another incident I fail to comprehend is the situation where we allowed charge of copper to lose temperature. Please let me have a chronological report of how this situation was allowed to develop and what steps were taken to rectify the problem both immediate and long term.

K5003687

DEFENDANT'S
EXHIBIT
127

J. L. Hansen
17 August 1987
Page 2

The refiners and helpers have repeatedly complained about the inability to seal the skimming bay door. Please have D. B. George coordinate a design and have a door in place by the end of the week - Friday, 21st August 1987. The area around the furnace needs to be cleaned.

Refinery Furnace No. 2

Much the same comments on No. 1 unit.

Casting Equipment - Spoons and Launderers

Whole area full of splash and spills. "Icicles" had formed on launder, intermediate and casting spoon. What happened to the 15 minute surveillance by the refiner helper?

Casting Wheel

None of the molds were secured, 50% of the molds were not level, mold preparation was nonexistent (pins, lugs, dams, moldwash) and the product was totally unsatisfactory. Metal finning from damaged or improperly positioned Baltimore lugs was prevalent. The wheel is in dire need of a clean-up.

Shipping Product

The anodes in rack cars ready for shipment were an embarrassment. The lugs were badly finned, mold pin areas were finned, lugs were bent and thickness was inconsistent.

The product shipped from the Smelter is a measure of the Smelter's performance and standards. Right now our product is substandard and reflects on poor/lack of procedures and sloppy operation. Please institute immediately a quality control supervisory and sign-off such that product quality can be guaranteed.

Launder and Spoon Areas

Cluttered with bricks and copper. Clean-up, tidy-up on a regular basis and keep it that way please.

Control Rooms

Both control rooms were new 6 weeks ago. They are now both filthy and untidy. Clean them up regularly and remove the writing from the wall in the casting room. Devise a means of removing computer print outs from the printer.

The refining control room is not a storage area. Remove the daily newspapers and keep the place orderly and clean.

KSOO

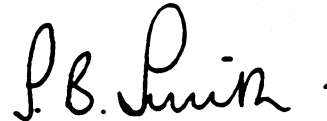
J. L. Hansen
17 August 1987
Page 3

General

From my comments above it should be obvious that I consider the operating standards in the anode plant area far from satisfactory. We have made reference to set up procedures, operating procedures, inspection procedures and routine plans for clean up - none of which I have regularly seen in the plant or in black and white!

I have a strong commitment to accountability and hold you totally accountable for the anode plant area. You must establish procedures and hold subordinates accountable. The technical group failed to establish well defined and documented procedures but I feel you must use D. B. George, 7 days/week 16 hours/day or whatever until these procedures are in place.

Please let me have a copy of all procedures, accountabilities and plans for the anode plant by Friday, 21st August 1987. For the months of July and August we failed to meet our production plan - I intend to make it and also ship in quality product in September.



S. B. Smith

cc: J. B. Winter

KS001889

Defendant's Exhibit 129

UTAH COPPER DIVISION INTEROFFICE LETTER

TO J. L. Hansen
D. B. George

DATE 19 Aug. 1987

FROM S. B. Smith

SUBJECT Anode Casting Operations

As a follow up to our recent series of meetings, and also as a supplement to my memorandum on the 17 August 1987 to J. L. Hansen, I believe certain aspects of the anode operations require conclusive resolution.

We discussed at length problems and solutions to such things as mold thickness, mold preparation, launder design, etc. and essentially agreed that the problem would be rectified. It does, however, appear to me that we did a great deal of talking and not too much resolving - one example coming quickly to mind is the mold thickness and the depth of penetration of the master mold. I have purged my notes on the meetings and would appreciate a written response/copies of procedures etc. which shows that all problems are being handled in a planned expeditious manner, who is the responsible individual assigned and the expected completion date for the resolution. The problems are as follows:

Furnace Area

- Determination of furnace "live" capacity.
- Pouring spout design to eliminate dripping.
- Skim bay door design and operation.
- Refining procedures and routine temperature monitoring.
- Daily/hourly standing instructions.
- Tuyere check procedures.

Launders & Spoons

a) Catch basin

- Catch basin cross section including design of dam.
- Refractory type and thickness.
- Procedure for cleaning copper from catch basin.
- Means of identifying catch basin.
- Procedure for preparing a catch basin for casting - i.e. drying and heat up.

b) Launderers

- Launder cross section including design of refractory and chin brick.
- Drawing of standardized launders, who will order and arrange for installation.
- Refractory type
- Procedure for cleaning copper from launders.
- Procedure for preparing a launder for casting - i.e. drying and heat up.
- Means for identifying launders.

c) Intermediate Spoon

- Spoon cross section including design of refractory and dimensions of opening under skim bar.
- Drawing standardizing support brackets.
- Refractory type
- Procedure for preparing a ladle for casting - i.e. drying and heat up.
- Means for identifying catch basins.
- Procedure for cleaning copper from spoon.

d) Casting Spoon

- As for intermediate spoon plus some means of controlling weight of the rebuilt unit.

Casting System

- Procedure to ensure set up is optimized and is free of interference.
 - (1) Position of catch basin and launders relative to furnace and intermediate spoon.
 - (2) Position of intermediate spoon in relationship to casting spoon.
 - (3) Position of casting spoon in relationship to all molds on the wheel and also check whether the spoon lip is horizontal.
 - (4) Procedure for supervisor inspecting set up of casting system and reviewing all clearances during, at least, one complete turn of the wheel.

- (5) Procedure to routinely check for build-up and removal of the same.

Molds

- Establish a technique to cast molds to ensure thickness does not vary by ± 0.25 ins.
- Standardize on penetration of master mold form.
- Finalize design of mold release applicators.
- Finalize materials used in mold release.
- Determine a cure time and preparation for new molds to eliminate burning.
- Establish a method to level, constrain and clean molds whilst on the wheel.
- Establish a means to identify molds and monitor mold "consumption" per ton of copper cast.
- Establish procedure to ensure good pin seating and sealing.
- Experiment and monitor the performance of various H.R. alloys on the heads of pins.
- Lugs/inserts - do we continue with cast iron or copper? Should we continue with a graphite coating.

Final Product Inspection

- Implement a sign-off for all products shipped to refinery. This sign off to include examination of anodes for:
 - Set
 - Fins
 - Weight discrepancy
 - Bent lugs, etc.
- Identify all casts by number and supervisor. Ensure correlation of sample taken during the cast with the cast number.

People

Particular attention should be given to supervisory training. When all the foregoing procedures are in place and sign-off sheets are formulated the foreman will have a guide for his job and we will have a means of holding him accountable. The foreman should have a supervisory sign-off for ensuring all is in order at the start of his shift and also the start of the cast.

In conclusion, my major fears are that we have acknowledged problems in the anode area, we have discussed them, but failed to resolve them adequately or in a timely manner.

Jerry Hansen is responsible for the anode operations. He should ensure that the necessary effort is expended by himself and D. B. George to guarantee finalization of the requirements of this memo by August 26, 1987 or sooner if possible.

A handwritten signature in cursive script, appearing to read "S. B. Smith".

S. B. Smith

SBS/1/kb

Defendant's Exhibit 143

Facilitator's Instructions

UTAH COPPER'S FRESH START PROGRAM

Exercise Process Guidelines

8:05 - 8:35 INTRODUCTIONS (Exercise)

OBJECTIVE

At the conclusion of this segment the participants will all have had an opportunity to stand before the group and make a presentation of their findings on the task (to interview one person and introduce that person to the group). They will have gained from that a little knowledge about their co-workers or people from outside their department or location -- the primary aim being 100% participation from the group.

Time

2

Introduce task:

The class will be divided into three groups. Within each group, have participants select a person whom they do not know. Ask them to take five minutes each to interview each other. Explain they will be introducing the person they interview so it would be useful to take notes (provide pencils and note pads). Suggest participants use the questions or similar questions as those posted (have questions drawn up ahead of time -- see Support Material). Suggest participants have some fun with the interviews and introductions. Read questions for interviews.

10

Participants, in teams of two, take five minutes to interview each other. (Facilitator announces time to change interviewers.)

33

Each person in turn takes 1-2 minutes to introduce to the group the person s/he interviewed.

Checklist

1. Either prepare card with person's names to be partners in the interview or be prepared to announce that individuals must find someone in the room s/he does not know to be a partner.
2. Prepare a chart with suggested interview questions to be posted. (See Support Material)
3. Arrange for pads and pencils to be available.

Equipment needed

None

Support Material

List of suggested interview questions.

1. Name
2. Position with the company
3. How many years with Kennecott?
4. What is something about yourself you rarely ever tell people?
5. What is the most unique thing that ever happened to you?
6. What are your hobbies or special interests?
7. What's the craziest thing that ever happened to you?
8. What nicknames were you called when younger or what is your nickname now?

KS00065

Facilitator's Instructions

UTAH COPPER'S
FRESH START PROGRAM

Exercise Process Guidelines

8:35 - 9:05 MANAGEMENT PRESENTATION

OBJECTIVE

Demonstrate Management commitment via visibility and show employees that management supports the new philosophy.

Time

- | | |
|----|---|
| 2 | Facilitator calls upon and introduces senior management representative. |
| 3 | Senior management representative introduces the Burgess Winter video tape and sets the stage for it. |
| 10 | On tape, Burgess Winter discusses the new philosophy and enhances its prime points. |
| 15 | Senior management representative then makes presentation on operational changes and business realities. |

Presentation should relate to the philosophy as far as possible.

Participants can ask few questions, but they will be advised that the general manager will take questions at days end. They will be encouraged to prepare written questions for Burgess as they think of them.

NO.

Video - E.E.O.
,

Mosier - Jokke

KS000657

Facilitator's Instructions

UTAH COPPER'S FRESH START PROGRAM

Exercise Process Guidelines

9:05 to 10:00 STEPS TO EXCELLENCE - TEAM UTAH (Discussion/
Exercise/Video)

Objective

At the conclusion of this segment the participants will have a clear idea of the characteristics of high performing teams and through their answers to questions will have stated what they can do as a team player in the workplace to assure excellence.

Time

- 1 Introduce video:
Film: "Do You Believe in Miracles?" is about U.S. Olympic hockey team which won the gold medal in 1980. Note what makes good teams, what role leaders play. Think of how you have participated in teams to accomplish task, play game, resolve an issue, etc.
- 25 Video: "Do You Believe in Miracles?"
- 1 Introduce exercise for small groups.
Task: For next 15 minutes, brainstorm in group two questions:
 1. What are the characteristics of a high-performing team?
 2. What is the role of leadership in assuring excellence for a team?

Have someone in the group take notes and be prepared to share findings after the 15 minute brainstorming session.
- 14 Small groups work on task.
- 14 Small groups report back. Facilitator wraps up comments with linkage to workplace making point of importance of "can do" attitude."

Checklist

Make chart of task assignment for group exercise.

Check out video before showing.

Have handouts duplicated for class.

KS00065

Equipment needed

Video player and monitor.

Video: "Do You Believe in Miracles?" MTI Teleprograms, Inc.
#AC28VHS, U.S. Olympic Hockey Team (1985 production)

Support Materials

Discussion notes.

Handout: Steps to Excellence

Facilitator's Materials

UTAH COPPER'S
FRESH START PROGRAM

Discussion Outline

9:05 to 10:00 STEPS TO EXCELLENCE - TEAM UTAH

Time

- | | |
|----|---|
| 1 | Introduce film: "Do You Believe in Miracles": <ul style="list-style-type: none">. About U.S. Olympic Hockey Team - 1980 Winter Olympics. Team brought together first time a few weeks before games. Played against seasoned teams who had played together for years. Came out winners of gold medal. Think about characteristics of good teams, how leadership role plays part, teams in which you have been involved and how you have participated |
| 25 | Play film |
| | Post chart on board with 2 questions: <ul style="list-style-type: none">1. What are the characteristics of high performing teams?2. What is the role of leadership in assuring excellence for a team? |
| 1 | Assign task (see Exercise Process Guidelines for task details) |
| 14 | Teams work on task 15 minutes |
| 14 | Small groups report on findings - one to two minutes each |
| | Wrap-up discussion <ul style="list-style-type: none">. What are some of the steps to assuring excellence through teamwork?. What part can you personally play as a team member - regardless of your position in the team?. How do we develop "can do" attitudes in the workplace?. Present list of Steps to Excellence |

KS0006r0

STEPS TO EXCELLENCE

1. Solid leadership - a coach and communicator.
2. Everyone understands what is expected (goals) and the challenges faced.
3. Everyone feels accountable.
4. Cooperation and cohesion.
5. Hard work and determination.
6. Teamwork and team feeling.
7. Everyone is on the team.
8. People are usually friends.
9. Risk taking is common.
10. Enthusiasm and pride.
11. Reasonable degree of individual freedom.

"PEOPLE MAKE THE DIFFERENCE"

UTAH COPPER'S
FRESH START PROGRAM

Exercise Process Guidelines

10:10 - 10:45 COMMUNICATIONS - "Ya Gotta Wanna" (Exercise)

OBJECTIVE

At the conclusion of this segment the participants will have experienced two types of communications (one in which the effectiveness of good listening is demonstrated, and another where those things which block communications are demonstrated). Through this experience, the participants will gain a better understanding of the importance of clear, two-way communications and will establish a personal standard for effective communications in the workplace.

Time

- 5 Discussion: Introduce concept of communications focusing on listening and being there for the person trying to communicate. Introduce task:
- 25 Dyad Exercise
Have group pair off quickly with someone sitting nearby. Each person is to face his/her partner with knees closely together. Ask for partners to identify person "A" and person "B." Have "A's" raise hands.
- Ask "A's" to think of a situation or recent important thing that has happened in his/her life that s/he would like to talk about. Ask Person "B" to be a terrific listener who is attentive and actively involved with the story Person "A" is telling. Tell them Person "A" has one minute to tell story.
- Say "Stop talking" after one minute and ask "A's" to report what it was like to be listened to. Allow no more than 3-4 minutes for comments.
- Now ask Person "B" to think of an important event s/he would like to tell to Person "A." Instruct Person "A" to be a poor listener. Person "A" can do any thing s/he would like to do to show disinterest, discount what "B" has to say or ignore it completely. Have them start talking. Allow one minute then stop action. Ask Person "B" how it felt to be ignored and not listened to. Allow 3-4 minutes max for this discussion.
- 5 Wrap-up discussion: Challenge everyone to be good listeners and for talkers to be effective in the way they present material. Show linkage to work situations.

KS000662

Checklist

Prepare charts showing principles of good communications. Have handouts duplicated for class.

Equipment Needed

None.

Support Material

Lecture notes.

Watch to control time sequences.

Handout: "Ten Commandments of Good Listening"

UTAH COPPER'S
FRESH START PROGRAM

Discussion Outline

10:10 to 10:45 COMMUNICATIONS - "Ya Gotta Wanna"

Time

5

Communication: the process of passing information and understanding from one person to another. The essence is understanding.

People communicate all the time at various levels of effectiveness.

Some seem to be naturals at being good at communications. (Example)

Communication skills must be learned and continually practiced. Certainly some people learn faster/better than others how to make it work. But, it's never too late to improve.

Types: Verbal, non-verbal

Things that get in the way of effective communications:

- . Values
- . Perceptions (example)
- . Predispositions
- . Defense mechanisms
- . Biases
- . Emotions

Effective communications are almost always two-way.

Important aspects of being on the delivery side of communications:

- . Make points relevant
- . Speak understandably
- . Be descriptive
- . Use verifiable statements
- . Limit output to that info necessary to be clear and complete
- . Be concise and comprehensive
- . Ask for feedback to determine if the communication was understood

Important aspects of being on the receiving end of communications:

- . Be there/show up for the other person
- . Look for areas of common interest
- . Focus on content, not delivery
- . Hold your fire before you respond
- . Resist distractions
- . Keep an open mind
- . Work at it--don't be passive--ask questions
- . Be aware of the Ten Commandments of Good Listening (handout)

25 Dyad Exercises (See Exercise Process Guidelines for details)

Process each segment after it is complete. Focus on how it felt to be listened to/not listened to; to be an active listener/disinterested. Link comments to workplace as appropriate

5 Wrap up discussion on problems associated with communications.

K5000665

THE TEN COMMANDMENTS OF GOOD LISTENING

1. Stop talking!
You cannot listen if you are talking. Polonius (Hamlet):
"Give every man thine ear, but few thy voice."
2. Put the talker at ease.
Help him/her feel that s/he is free to talk. This is often called a "permissive environment."
3. Show the other person that you want to listen.
Look and act interested. Do not read your mail while s/he talks. Listen to understand rather than to reply.
4. Remove distractions.
Don't doodle, tap or shuffle papers. Will it be quieter if you shut the door?
5. Empathize with the other person.
Try to put yourself in the other person's place so that you can see his/her point of view.
6. Be patient.
Allow plenty of time. Do not interrupt. Don't start for the door or walk away.
7. Hold your temper.
An angry person gets the wrong meaning from words.
8. Go easy on argument and criticism.
This puts the other person on the defensive. S/he may "clam up" or get angry. Do not argue: even if you win, you lose.
9. Ask questions.
This encourages the other person and shows you are listening. It helps to develop points further. Use reflective questions.
10. Stop talking.
First and last.

Facilitator's Instructions

UTAH COPPER'S FRESH START PROGRAM

Exercise Process Guidelines

10:45 to 12:00 TREATING PEOPLE RIGHT

OBJECTIVE

At the conclusion of this segment the participants will have experienced a sense of what it will take to be treated "right," and conversely, what they will need to do in return. By testing the building blocks of "fairness, justice, and equity" in the context of the new UC philosophy, employees will understand what needs to be done to make the philosophy work.

Time

- 25 Three questions are posted:
- 1) What do employees need to experience to feel they are being treated "right"?
 - 2) What can the company expect in return?
 - 3) What does all this have to do with the new UC philosophy?
- Participants in these small groups are instructed to brainstorm the answers to the question. After a 25 minute brainstorming period one member of each group will report the result of their group's efforts. Groups are instructed to choose the most important response to both question 1 and question 2. These items will be recorded and sent to Burgess Winter for review.
- 25 Report out (each group representative takes a maximum of 6-7 minutes to report on the group's findings.)
- 5 Facilitator wrap-up - makes commitment that most important item from each list will be forwarded to Burgess Winter for his review prior to the afternoon session.
- 20 This section will be underscored by excerpts from the Tom Peters video tape, "A Passion for Excellence." This will demonstrate treating people right.

KS000667

Checklist

1. Write questions on flip chart prior to session.
2. Make sure markers and flip charts are provided for each small group.
3. Collect lists to be given to typist for Burgess review.

Equipment Required

Flip charts.
Video player and monitor.
Video: Tom Peter's "A Passion for Excellence."

Support Material

Discussion Notes.
Flip chart, paper and felt tip markers.

Facilitator's Instructions

UTAH COPPER'S FRESH START PROGRAM

Exercise Process Guidelines

1:00 - 2:15 PERFORMANCE IMPROVEMENT AND INDIVIDUAL
RESPONSIBILITY (Exercise)

OBJECTIVE

At the conclusion of this segment the participants will have experienced analyzing and evaluating a real issue as a team and proposing a solution. Because the focus of the exercise is on how relatively simple it is to handle complex issues and build team spirit and commitment, the participants should conclude the exercise with a personal commitment to teamwork and a willingness to be responsible for what needs to be done.

Time

5 Discussion: Performance Improvement - a method for problem-solving, decision-making, generating new ideas and getting people to take responsibility and be accountable for their performance. Facilitator introduces task:

Group will be organized to arrive at an innovative solution for increasing safety awareness in the workplace. The group will be encouraged to develop a program that each group member can support and even champion. One group member will present program to the entire class and the facilitator will call upon two others, at random, to reiterate, reinforce, or defend the program.

45 Groups work on task.

25 Groups report back on the results of their discussion. Facilitator will call two participants from each group to support the group leader.

Checklist

Prepare chart showing task.

Equipment Needed

None.

KS0006f9

UTAH COPPER'S
FRESH START PROGRAM

Discussion Outline

1:00 - 2:15 PERFORMANCE IMPROVEMENT AND INDIVIDUAL
 RESPONSIBILITY

Discussion

Time

5

Typical Targets for Performance Improvement

IF WE HAVE THIS

WE LOOK FOR THIS

Problems

Solutions

Issues

Answers

Requirement to do something better!

Ideas

Want or need to change

Alternatives

Want people to take
charge of their work

Make them
responsible

45

Problem solving exercise (See Exercise Process
Guidelines for details)

Make certain the group is instructed on need for full
participation by all members. The goal is to have each
participant accept responsibility for fully
participating.

25

Groups report back. The leader will be the primary
spokesman but two others will be called at random to
support the leader.

Defendant's Exhibit 154

NOTICE TO ALL EMPLOYEES

Any organized endeavor, whether it be in the home, industry, or government, requires reasonable rules as guides to conduct, so that people may better get along with others in achieving objectives. To this end, the general rules of conduct outlined below will apply to all employees of the Utah Copper Division.

These rules supersede those in effect prior to this date.

GENERAL RULES OF CONDUCT

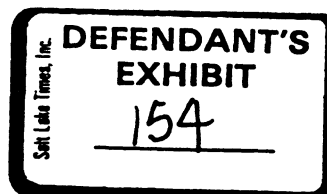
The following actions are prohibited:

1. Insubordination.
2. Damage, destruction or misuse of company property or that of another employee by willful intent or neglect.
3. Theft, hiding, unauthorized possession of, or borrowing of company property.
4. Fighting, horseplay or causing a disturbance.
5. Carrying or having firearms on company property without written management authorization.
6. Gambling, playing cards or playing other games.
7. Consuming, possessing or being under the influence of any drugs producing states of intoxication in any degree such as alcoholic liquor, amphetamines, barbiturates, hallucinogens, marijuana, opiates, etc.
8. Excessive tardiness or absenteeism.
9. Willfully falsifying company records or making false statements.
10. Disclosure of confidential company information to unauthorized persons.
11. Sleeping, loafing, malingering or reading literature not related to the job during working hours.
12. Soliciting funds, canvassing employees or circulating petitions or literature without written management authorization.
13. Taking pictures without written management authorization.
14. Engaging in personal work during working hours.
15. Failure to comply with reasonable instructions or failure to perform reasonable work assignments.
16. Failure to comply with established safety rules and regulations or operating procedures.
17. Leaving the job (work place) during working hours without supervisory permission.
18. Interfering with the work of others.
19. Entering company property during off-duty hours without proper authorization.

The foregoing is not all-inclusive, but is representative of the conduct expected of employees. Violation of rules is cause for appropriate discipline.


B. B. SMITH
General Manager

April 4, 1974



KS002142

Defendant's Exhibit 155

NOTICE TO ALL EMPLOYEES

Any organized endeavor, whether it be in the home, industry, or government, requires reasonable rules as guides to conduct, so that people may better get along with others in achieving objectives. To this end, the general rules of conduct outlined below will apply to all employees of the Utah Copper Division.

These rules supersede those in effect prior to this date.

GENERAL RULES OF CONDUCT

The following actions are prohibited:

1. Failure to comply with established safety rules and regulations or operating procedures.
2. Insubordination.
3. Damage, destruction or misuse of company property or that of another employee by willful intent or neglect.
4. Theft, hiding, or unauthorized possession of company property.
5. Fighting, horseplay or causing a disturbance.
6. Carrying or having firearms on company property without written management authorization.
7. Gambling, playing cards or playing other games.
8. Consuming, possessing or being under the influence of any drugs producing states of intoxication in any degree such as alcoholic liquor, amphetamines, barbiturates, hallucinogens, marijuana, opiates, etc.
9. Excessive tardiness or absenteeism.
10. Willfully falsifying company records or making false statements.
11. Disclosure of confidential company information to unauthorized persons.
12. Sleeping, loafing, malingering or reading literature not related to the job during working hours.
13. Soliciting funds, canvassing employees or circulating petitions or literature without written management authorization.
14. Taking pictures without management authorization.
15. Engaging in personal work during working hours.
16. Failure to comply with reasonable instructions or failure to perform reasonable work assignments.
17. Leaving the job (work place) during working hours without supervisory permission.
18. Interfering with the work of others.
19. Entering company property during off-duty hours without proper authorization.
20. Immoral or indecent acts on company property.

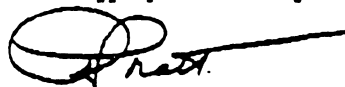
The foregoing is not all-inclusive, but is representative of the conduct expected of employees. Violation of rules is cause for appropriate discipline.

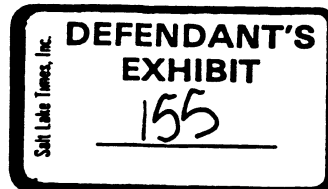

Signature

April 5, 1977

JUN 19 1979

Date


R. N. Pratt
General Manager



KS002146

Defendant's Exhibit 156

KENNECOTT MINERALS COMPANY
A Division of Kennecott Corporation
UTAH COPPER DIVISION

DEFENDANT'S
EXHIBIT
156

NOTICE TO ALL UTAH COPPER DIVISION EMPLOYEES:

SUBJECT: VIOLATIONS OF RULES OF CONDUCT

All employees of the Utah Copper Division are expected to know, and conduct themselves in a manner that conforms to standards of acceptable conduct. Common-sense behavior with due regard for the rights and property of others makes it possible for us to work together safely, harmoniously and productively.

Following are some of the most common, but not all inclusive, violations of accepted rules of conduct, which can be cause for disciplinary action:

1. Failure to comply with established safety rules and regulations or operating procedures.
2. Insubordination.
3. Failure to comply with reasonable instructions or failure to perform reasonable work assignments.
4. Leaving the job (work place) during working hours without supervisory permission.
5. Interfering with the work of others.
6. Damaging, destroying, or misusing company property or that of another employee by willful intent or neglect.
7. Consuming, possessing or being under the influence of any drugs producing states of intoxication in any degree such as alcoholic liquor, amphetamines, barbiturates, hallucinogens, marijuana, opiates, etc.
8. Excessive tardiness or absenteeism.
9. Willfully falsifying company records or making false statements.
10. Sleeping, loafing, malingering or reading literature not related to the job during working hours.
11. Theft, hiding, or unauthorized possession of company property.
12. Fighting, horseplay or causing a disturbance.
13. Gambling, playing cards or playing other games.
14. Engaging in sexual harassment, sexual acts or lewd behavior on company property.
15. Engaging in personal work during working hours.
16. Entering company property during off-duty hours without proper authorization.
17. Carrying or having firearms on company property without written management authorization.
18. Disclosure of confidential company information to unauthorized persons.
19. Soliciting funds, canvassing employees or circulating petitions or literature without written management authorization.
20. Taking pictures without management authorization.

This notice supersedes all previous notices issued to employees regarding rules of conduct.

Signed

10-27-81

W. H. Jensen
General Manager

KS002147

October 9, 1980

DO NOT REMOVE - PERMANENT NOTICE.

Defendant's Exhibit 158

NOTICE TO ALL UTAH COPPER DIVISION EMPLOYEES:

GENERAL CODE OF CONDUCT

All employees of the Utah Copper Division are expected to use sound and prudent judgement in their approach to all employment-related matters. This approach requires employees to appropriately apply their skills, knowledge and training with due respect for the rights and property of others to promote a safe, productive and harmonious work environment. Employees who do not conform to this general code of conduct will be subject to discipline.

Violations of the general code of conduct include but are not limited to the following:

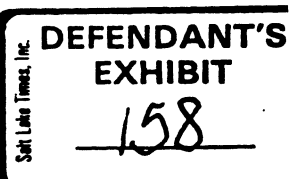
1. Failure to comply with established health and safety rules and regulations or operating procedures.
2. Insubordination; failure or refusal to comply with instructions, perform work assignments or complete the responsibilities of the job.
3. Bringing onto company property, posting or distributing literature which is libelous, defamatory, scurrilous, abusive or insulting; unauthorized distribution of literature during working time or in work areas; or unauthorized solicitation of employees during working time.
4. Leaving the job (work station) during working hours without supervisory permission.
5. Interfering with the work of others.
6. Damaging, destroying or misusing company property or that of another employee or person doing business with the company.
7. Bringing onto company property, having possession of, being under the influence of, using or consuming, transferring, selling or attempting to sell, any form of intoxicant, narcotic, depressant, stimulant, hallucinogen or any mind or perception-altering drug or substance (excepting only the taking of a prescribed drug under the direction of a physician) at any time during working hours, or on company property.
8. Unexcused, chronic or excessive tardiness, absenteeism or early departure from work.
9. Falsifying company records or making false statements or reports concerning company business.
10. Sleeping, loafing, malingering or unauthorized reading on the job.
11. Theft, concealment, or unauthorized possession of company property or that of another employee or others doing business with the company.
12. Fighting or threatened or actual violence against another employee whether on or off the job; gambling, playing cards or other games, horseplay, or other disorderly conduct on the job.
13. Harassment of other employees including but not limited to verbal and physical conduct or unwelcome advances with regard to or on the basis of sex or race, color, national origin or ancestry, age, religion, marital status, status as a Vietnam era or disabled veteran or handicapped person.
14. Engaging in non-job-related activities during working time.
15. Entering company property during off-duty hours without authorization.
16. Engaging in sexual acts or lewd behavior on company property.
17. Carrying or having firearms or other weapons on company property without written management authorization.
18. Unauthorized disclosure of confidential or proprietary information concerning company business, its customers, suppliers, employees or personnel associated with the company.
19. Unsatisfactory work performance.

This notice supersedes all previous notices issued to employees regarding conduct.


J. Burgess Winter
- Vice President & General Manager

October 27, 1986

DO NOT REMOVE - PERMANENT UNTIL FURTHER NOTICE



KS002149