

1992

West Valley City Fraternal Order of Police Lodge
#4, a non-profit Utah corporation, and Jim Crowley
v. Dennis Nordfelt, West Valley Chief of Police, and
West Valley Civil Service Commission : Brief of
Appellant

Utah Court of Appeals

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Jerrald D. Conder; Peter L. Rognlie; Conder & Wangsgard; Attorneys for Appellants.

J. Richard Catten; Assistant City Attorney; Attorneys for Appellees.

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Priority Classification 16

Jerrald D. Conder, Esq.
Peter L. Rognlie, Esq.
CONDER & WANGSGARD
4059 South 4000 West
West Valley City, Utah 84120
Attorneys for Appellants

AUG 24 1992

IN THE UTAH COURT OF APPEALS

WEST VALLEY CITY FRATERNAL)	
ORDER OF POLICE LODGE #4, a)	
non-profit Utah corporation,)	
and JIM CROWLEY,)	
)	
Plaintiffs/Appellants,)	
)	
-vs-	)	Appellate No. 920276-CA
)	
DENNIS NORDFELT, West Valley)	
Chief of Police, and WEST	)	Priority Classification 16
VALLEY CIVIL SERVICE)	
COMMISSION,)	
)	
Defendants/Appellees.)	

BRIEF OF APPELLANTS

Appeal from final order entered in the Third Judicial District Court in and for Salt Lake County, the Honorable Leslie A. Lewis, presiding.

J. Richard Catten, Esq.
Assistant City Attorney
3636 South 2700 West
West Valley City, Utah 84119
Attorneys for Appellees

Jerrald D. Conder, Esq.
Peter L. Rognlie, Esq.
CONDER & WANGSGARD
4059 South 4000 West
West Valley City, Utah 84120
Attorneys for Appellants

LIST OF ALL PARTIES INVOLVED IN THE
PROCEEDING

West Valley City Fraternal Order of Police Lodge #4	Plaintiff/Appellant
Jim Crowley	Plaintiff/Appellant
William Salmon	<u>Proposed co-plaintiff</u> via Motion for Joinder
David N. Shopay	<u>Proposed co-plaintiff</u> via Motion for Joinder
Dennis Nordfelt	Defendant/Appellee
West Valley City Civil Service Commission	Defendant/Appellee

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STATEMENT OF JURISDICTION

Jurisdiction for the Utah Court of Appeals to hear this appeal is conferred by Utah Code Ann., §78-2a-3(2) (b) (1991).

STATEMENT OF ISSUES PRESENTED FOR REVIEW

A. Did the trial court err in granting defendants' Rule 12(b)(1) motion to dismiss with respect to plaintiff F.O.P. because it based that ruling on erroneous factual findings and incorrect conclusions of law and because it applied the appellate standing test? The trial court's findings of fact that underlie its ruling are reviewed under the "clearly erroneous" standard. Utah Rule of Civil Procedure 52(a) (1987); Christensen v. Munns, 812 P.2d 69, 73 (Utah Ct.App. 1991); Horton v. Gem State Mut. of Utah, 794 P.2d 847, 849 (Utah Ct.App. 1990); Mountain States Broadcasting Co. v. Neale, 783 P.2d 551, 553 (Utah Ct.App. 1989). In order to successfully challenge the trial court's findings of fact, plaintiffs must first marshall the evidence supporting the findings and then demonstrate that the findings are nonetheless clearly erroneous. West Valley City v. Magestic, 818 P.2d 1311, 1315 (Utah Ct.App. 1991); Christensen v. Munns, 812 P.2d 69, 73 (Utah Ct.App. 1991); Mountain States Broadcasting Co. v. Neale, 783 P.2d 551, 553 (Utah Ct.App. 1989). The trial court's conclusions of law with respect to subject matter jurisdiction are reviewed independently for correctness and no deference is given to the trial court. Rimensburger v. Rimensburger, 190

U.A.R. 48, 48, _____ P.2d _____ (Utah Ct.App. 1992); Lopez v. Career Service Review Board, 188 U.A.R. 19, 20, _____ P.2d _____ (Utah Ct.App. 1992); Berube v. Fashion Centre, Ltd., 771 P.2d 1033 (Utah 1989). F.O.P., as an association, had standing to bring this action under Utah Restaurant Association v. Davis County Board of Health, 709 P.2d 1159 (Utah 1985); Society of Professional Journalists v. Bullock, 743 P.2d 1166 (Utah 1987). Assuming, arguendo, that F.O.P. did not meet the traditional standing criteria, F.O.P. should have been granted standing under the alternative standing tests enunciated in Jenkins v. Swan, 675 P.2d 1145 (Utah 1983); accord, Jenkins v. State, 585 P.2d 442 (Utah 1978); Kennecott Copper Corp. v. Salt Lake County, 702 P.2d 451 (Utah 1985). The appellate standing test does not apply in this case. Society of Professional Journalists v. Bullock, 743 P.2d 1166, 1172 (Utah 1987).

B. Did the trial court err in granting defendants' Rule 12(b)(1) motion to dismiss with respect to plaintiff Crowley because it based that ruling on erroneous factual findings and incorrect conclusions of law? The trial court's findings of fact that underlie its ruling are reviewed under the "clearly erroneous" standard. Utah Rule of Civil Procedure 52(a) (1987); Christensen v. Munns, 812 P.2d 69, 73 (Utah Ct.App. 1991); Horton v. Gem State Mut. of Utah, 794 P.2d 847, 849 (Utah Ct.App. 1990); Mountain States Broadcasting v. Neale, 783 P.2d 551, 553 (Utah

Ct.App. 1989). An appellant may demonstrate the clear error of factual findings only after marshalling the evidence that supports the finding. West Valley City v. Majestic, 818 P.2d 1311, 1315 (Utah Ct.App. 1991); Christensen v. Munns, 812 P.2d 69, 73 (Utah Ct.App. 1991); Mountain States Broadcasting Co. v. Neale, 783 P.2d 551, 553 (Utah Ct.App. 1989). The trial court's conclusions of law are accorded no deference and are reviewed for correctness. Rimensburger v. Rimensburger, 190 U.A.R. 48, 48, ____ P.2d ____ (Utah Ct.App. 1992); Lopez v. Career Service Board, 188 U.A.R. 19, 20, ____ P.2d ____ (Utah Ct.App. 1992); Berube v. Fashion Centre, Ltd., 771 P.2d 1033 (Utah 1989). Crowley has standing in this action because he satisfied the traditional standing test by demonstrating, through the Corrected Amended Complaint and affidavits of record that he suffered a distinct and palpable injury caused by defendants that gave him a personal stake in the outcome of this action. Jenkins v. Swan, 675 P.2d 1145 (Utah 1983).

C. Did the trial court err when it determined that it did not have subject matter jurisdiction over this action and therefore denied plaintiffs' and proposed co-plaintiffs' motion for joinder because it was moot? Joinder of co-plaintiffs in an action is permissive under Utah Rule of Procedure 20 and within the trial court's discretion. Denial of the motion for joinder, as with other discretionary matters is reviewed under an abuse of

discretion standard. Seftel v. Capital City Bank, 767 P.2d 941 (Utah Ct.App. 1989) (indispensable parties under Rule 19); Tolman v. Salt Lake County, 818 P.2d 23 (Utah Ct.App. 1991). Joinder was not a moot issue in this case because plaintiffs had standing and the trial court had subject matter jurisdiction.

DETERMINATIVE AUTHORITIES

STATUTES:

Utah Code Ann., §10-3-1002 (1977):

The classified civil service shall consist of all places of employment now existing or hereafter created in or under the police department and the fire department of each city of the first and second class, and the health department in cities of the first class, except the head of the departments, deputy chiefs of the police and fire departments and assistant chiefs of the police department in cities of the first and second class, and the members of the board of health of the departments. No appointments to any of the places of employment constituting the classified civil service in the departments shall be made except according to law and under the rules and regulations of the Civil Service Commission. The head of each of the departments may, and the deputy chiefs of the police and fire departments and assistant chiefs of the police department shall, be appointed from the classified civil service, and upon the expiration of his term or upon the appointment of a successor shall be returned thereto.

Utah Code Ann., §10-3-1003 (1977):

In each city of the first and second class there shall be a civil service commission, consisting of three members appointed by the board of commissioners. Their term of office shall be six years, but they shall be appointed so that the term of office of one member shall expire on the 30th day of June of each even-numbered year. If a vacancy occurs in the civil service commission, it shall be filled by appointment by the board of city commissioners for the unexpired term.

Utah Code Ann., §10-3-1007 (1977):

All applicants for employment in the classified civil service shall be subject to examination, which shall be public, competitive and free. Examinations shall be held at such times and places as the civil service commission shall from time to time determine, and shall be for the purpose of determining the qualifications of applicants for positions. Examinations shall be practical and shall fairly test the fitness in every respect of the persons examined to discharge the duties of the positions to which they seek to be appointed, and shall include tests of physical qualifications and health.

Utah Code Ann., §10-3-1010 (1983):

The civil service commission shall provide for promotion in the classified civil service on the basis of ascertained merit, seniority in service and standing obtained by competitive examination, and shall provide, in all cases where practicable, that vacancies shall be filled by promotion from the members of the next lower rank as submit themselves for the examination and promotion. The civil service commission shall certify to the appointing power the names of not more than five applicants having the highest rating for each promotion.

Utah Code Ann., §52-4-1 (1977): (Please see Addendum for text)
Utah Code Ann., §52-4-3 (1977): (Please see Addendum for text)
Utah Code Ann., §52-4-4 (1977): (Please see Addendum for text)
Utah Code Ann., §52-4-5 (1977): (Please see Addendum for text)

PROCEDURAL RULES:

Rule 20, Utah Rules of Civil Procedure (1987): (Please see Addendum for text)

Rule 65B, Utah Rules of Civil Procedure (1988): (Please see Addendum for text)

RULES:

Rule I-6, W.V.C.C.S.P.P.M. (1988):

Any proposed amendments, additions or deletions to the West Valley City Civil Service Commission Rules and

Regulations shall be recommended to the Council by the City Manager after being submitted for consideration and adoption by majority vote of the Commission. The Council must disapprove the proposed amendment within 60 days from the date of submission of the proposed amendment, or it is automatically approved.

Rule II-12, W.V.C.C.S.P.P.M. (1988):

All examiners selected by the Commission shall conduct examination under the supervision of the Personnel Officer and in accordance with such methods as the Commission shall prescribe. All examinations shall be impartial, fair and practical, and designed to test the relative qualifications and fitness of applicants to discharge duties of the particular position which they seek to fill. No question in any examination shall relate to the political, racial or religious convictions or affiliations of the applicant.

Rule III-1, W.V.C.C.S.P.P.M. (1988):

The Commission shall provide for promotion in the Civil Service on the basis of ascertained merit, seniority in service and standing obtained by competitive examination, and shall provide, in all cases where practicable, that vacancies shall be filled by promotion from the members of the next lower rank as submit themselves for the examination and promotion. The Commission shall certify to the Chief from an eligibles list the names of not more than 5 applicants having the highest rating for each promotion.

STATEMENT OF THE CASE

A. NATURE OF THE CASE.

This appeal is taken from the final orders entered by the Honorable Leslie A. Lewis dismissing the action for lack of standing pursuant to the Motion to Dismiss filed by defendants and denying the Motion for Joinder for reasons of mootness.

B. COURSE OF PROCEEDINGS.

Plaintiffs/appellants, West Valley City Fraternal Order of Police Lodge No. 4 ("F.O.P.") and Jim Crowley ("Crowley") originally brought this action against defendants/appellees, West Valley Civil Service Merit Commission ("Commission") and Chief Dennis Nordfelt ("Nordfelt"), to set aside the results of the promotion examination process, including the written examination administered on July 20, 1989, utilized by the West Valley City Police Department ("Department") to determine which candidates from the Department would be eligible for promotion to the rank of sergeant. During the course of the proceedings, plaintiffs and additional F.O.P. members, David Shopay ("Shopay") and William Salmon ("Salmon"), filed a joint motion to join the action as co-plaintiffs [R. 216, 217, 330, 333]. Specifically, plaintiffs challenge the Court's Ruling [R. 428-430] and the Findings of Fact, Conclusions of Law, Decision and Order [R. 431-437], both entered on March 26, 1992. A handful of pleadings, including the trial court's original ruling, preceeded the March 26, 1992 orders challenged by this appeal; they are, in chronological order:

(a) Court's [Initial] Ruling - signed 11/15/91 [R. 411-413];

(b) Findings of Fact, Conclusions of Law, Decision and Order - submitted by defendants on or about 11/23/91 (does not

appear in Record);

(c) Plaintiffs' Objections to Defendants' Proposed Findings of Fact, Conclusions of Law, Decision and Order - filed by plaintiffs 12/6/91 [R. 422-427];

(d) Defendants' Response to Plaintiffs' Objection to Defendants' Proposed Findings of Fact, Conclusions of Law, Decision and Order - filed by defendants 12/18/92 [R. 414-419];

(e) (Second Draft) Findings of Fact, Conclusions of Law, Decision and Order - submitted by defendants on or about 12/18/91 (does not appear in Record); and

(f) Notice to Submit for Decision - filed by plaintiffs 2/19/92 [R. 420-421].

C. DISPOSITION AT TRIAL COURT:

In the Court's Ruling (R. 428-430] and the Findings of Fact, Conclusions of Law, Decision and Order [R. 431-437] the trial court granted defendants Rule 12(b)(1) motion to dismiss based on the conclusion that plaintiffs F.O.P. lacked standing to bring the action and therefore the court did not have subject matter jurisdiction over the action and denied the motion for joinder of additional co-plaintiffs reasoning that, absent subject matter jurisdiction, the motion was moot.

D. STATEMENT OF FACTS:

F.O.P. is and was an association whose membership consisted of police officers and staff employed by the West Valley City

Police Department ("Department") [R. 113, 186, 337]. Crowley and proposed co-plaintiffs, Salmon and Shopay, are and were employed by the Department and were F.O.P. members (R. 113, 331, 334, 337]. A major purpose of F.O.P. is to ensure fair and equal treatment of all lodge members in their employment, including promotions [R. 338].

The Commission is the body appointed pursuant to the provisions of Utah Code Ann., §10-3-1003 (1977), and charged with the responsibilities of supplying classified civil service lists to the Department and of administering the merit civil service rules and regulations, as they apply to the Department and its employees, according to Part 10, Chapter 3, Utah Municipal Code (§§10-3-1001, et seq.) [R. 114, 192, 337]. Nordfelt is, and at the time of the events in question was, Chief of the Department [R. 113, 175].

On or about June 6, 1989, Nordfelt, by written memorandum [R. 6-7, 105-106] announced that a promotion examination was to be held to establish a roster from which an immediate opening and future promotions to the position of sergeant would be made [R. 6-7, 105-106, 114].

Approximately one month later, the West Valley City Personnel Office issued a memorandum that, like the June 6, 1989, memorandum, stated only those candidates receiving the top fifteen scores on the written exam would advance to participate

in the "assessment center" portion of the promotion examination [R. 6-7, 8-9, 107-108, 114]. That memorandum also, by implication, indicated that "promotability" was also a part of the promotion examination process and stated that the "assessment center" and "promotability" would each be weighted 40% of the promotion examination and the written examination would be weighted 20% of the promotion examination [R. 9, 108].

Several F.O.P. members, including Crowley, Shopay and Salmon, participated in the promotion examination process and sat for the July 20, 1989 written exam [R. 331, 334, 338]. Of the approximately 40 officers who sat for the written examination, all were F.O.P. members [R. 337].

Although the trial court dismissed this action for lack of standing and did not address the merits of plaintiffs' allegations [R. 429, 436-457], the interjection of a brief summary of plaintiffs' claims may provide a useful backdrop before which additional jurisdictional facts may be presented: Plaintiffs' Corrected Amended Complaint alleged two principal improprieties occurred in the design and administration of the promotion examination and that those improprieties violated provisions of Utah Code Ann., §§10-3-1001 through 1013 (1977, as amended), the Utah Open and Public Meetings Act and provisions of the West Valley City Civil Service Policy and Procedures Manual ("W.V.C.C.S.P.P.M.") [R. 113-118, 331-332, 334-335, 338].

First, plaintiffs alleged that defendants failed to include seniority in service as one of the criteria to be considered in the promotion process, thus violating Utah Code Ann., §10-3-1010 (1983) and its similarly worded counterpart, Rule III-1, W.V.C.C.S.P.P.M. (1988) [R. 6-9, 113-118, 332, 335, 339]. This allegation was initially brought to the attention of the Commission by letter dated August 23, 1989, by Department officers who were also F.O.P. members [R. 10-12, 116, 332, 335, 339]. They requested the Commission to review the promotion evaluation process and declare it invalid [R. 11, 116]. The Commission's rules and regulations did not provide method or means by which Department officers could object to or seek review of improprieties in the promotion examination process [R. 117, 332, 335, 339]. Without conducting a formal hearing or convening a meeting to consider the allegations contained in the officers' August 23, 1989 letter, two Civil Service Commissioners, Guy Kimball and Don Meyers, signed a letter dated October 4, 1989, summarily dismissing the issues raised by the officers [R. 113, 116]. A copy of that October 4, 1989 letter was delivered to an F.O.P. representative on November 2, 1989 [R. 116]. Plaintiffs allege the two Civil Service Commissioners' actions violated Utah Code Ann., §§52-4-1 et seq. (1977, as amended) [R. 116-118, 332, 335, 358]. Second, plaintiffs alleged that defendants illegally

waived the requirement that promotions be made from the next lower rank, thus violating, for a second time, both Utah Code Ann., §10-3-1010 (1983) and Rule III-1, W.V.C.C.S.P.P.M. (1988), requiring, as applied to the Department, promotions to sergeant to be made from the next lower rank, Police Officer II ("P.O. II") [R. 110, 117-118, 293-295, 331-332, 334-335, 338]. The waiver of the next lower rank requirement was initiated by Chief Nordfelt on June 6, 1989, the same date the promotion examination was announced by Nordfelt, by memorandum addressed to the Commission requesting that". . . the restriction in the Civil Service requirements stating that officers applying for the position of Sergeant be of P.O. II rank, be waived." [R. 110, 117, 293-295]. Within the rank and grade system utilized by the Department, the Police Officer I ("P.O. I") rank is lower than the P.O. II rank, and P.O. I officers are thus not eligible for promotion to sergeant [R. 292, 337]. Nordfelt's October 6, 1989 letter was hand-delivered to Guy Kimball, Chairman of the Commission [R. 117, 294]. On or about that same day, Guy Kimball signed the letter and marked it "approved" [R. 110, 117, 294-295]. The next lower rank requirement was thereby waived by a single Commissioner and without the Commission having held a formal hearing or convened a meeting to deliberate the issue [R. 117-118, 294-295, 338]. Thus, officers of P.O. I rank were

improperly allowed to participate in the promotion exam process to the detriment of the candidates of P.O. II rank [R. 117-118, 331, 334, 338]. Plaintiffs allege Chairman Guy Kimball's action violated §52-4-1 et seq. (1977, as amended) and Rule I-6, W.V.C.C.S.P.P.M. (1988) [R. 116-118, 332, 335, 338]. In addition to the two principal improprieties giving rise to this action, plaintiffs made two related claims. They alleged that on or about October 4, 1989, when the two Commissioners, by letter [R. 13], summarily dismissed the officers' complaints, the Commission consisted of only two members, and thus was not legally constituted as required by Utah Code Ann., §10-3-1003 (1977) [R. 117], and they alleged the promotion examination process also violated Utah Code Ann. §10-3-1007 (1977) and Rule II-12 W.V.C.C.S.P.P.M. (1988) because some candidates were not allowed equal access to the study materials [R. 10-13, 117].

Approximately September 2, 1989, a roster was established pursuant to the procedures and weighting set forth in the July 7, 1989 memorandum, and appointments to the position of sergeant were made [R. 8-9, 114, 186].

Crowley had been a Department officer since July, 1980, and had held the P.O. II rank since approximately 1981 [R. 113, 337]. At the time of the 1989 promotion examination he enjoyed nine years' seniority [R. 338]. His seniority was not considered in the promotion examination process [R. 6-9, 338]. Crowley sat for

the written exam portion of the evaluation process but failed, by one point, to achieve one of the top fifteen scores [R. 7, 8-9, 185, 338]. For that reason he was not allowed to participate in the other portion of the process [R. 7, 8-9, 107-108, 114, 185, 338]. Crowley believes he would have been allowed to participate in the other portions of the evaluation process if his seniority had been considered [R. 115-116, 338]. Had Crowley been informed of Nordfelt's request to waive the next lower rank requirement, he would have objected, individually, and on behalf of F.O.P. to the waiver request [R. 110, 116, 338]. Crowley signed the August 23, 1989 letter to the Commission in which several Department officers and F.O.P. members objected to the improprieties that marred the promotion examination [R. 116, 339]. Crowley is entitled to the protections and benefits conferred by the rules and regulations that comprise West Valley City's merit service system and state law [R. 114, 337].

Shopay had been a Department officer since November, 1980 [R. 331]. At the time of the 1989 promotion examination he held the P.O. II rank, had eight years' seniority in the Department and met all other announced requirements [R. 6-7, 331]. His seniority was not considered in the promotion examination process [R. 6-9, 113-118, 331]. Shopay completed the entire promotion examination process and earned a position on the promotion roster [R. 331]. Shopay had more Department seniority than any

candidate assigned a higher position on the promotion roster [R. 331]. By affidavit, Shopay alleged that even without consideration of his seniority he would have earned a higher position on the roster, the fourth position, if he had not been forced to compete with the P.O. I officers who were improperly allowed to participate in the promotion examination [R. 331-332].

Salmon had been a Department officer since December, 1982 and was a P.O. II when he participated in the promotion examination [R.334]. He met all of the announced eligibility requirements [R. 6-7, 334]. He had six and one-half years' seniority with the Department, but it was not considered in the promotion process [R. 6-9, 113-118, 334]. Salmon completed the entire promotion examination process and earned a position on the roster [R. 334]. Three of the officers who preceded him on the roster held only the P.O. I rank [R. 334]. By affidavit, Salmon alleged that even without consideration of his seniority he would have earned a more favorable position, ninth, on the roster if he had not been forced to compete with P.O. I officers [R. 334-335].

As Department officers, both Shopay and Salmon were entitled to the protections and benefits of the W.V.C.C.S.P.P.M. rules and regulations and state law in conjunction with the design and administration of the promotion examination [R. 114, 192, 331, 334].

As of the date of this appeal, neither Shopay, Salmon or Crowley has been promoted to the rank of sergeant [R. 186].

SUMMARY OF ARGUMENTS

The dismissal, with respect to F.O.P., of this action because of the association's lack of standing was based on erroneous facts and incorrect legal conclusions. Although some support for the challeged findings may be found if the only factual examination made is of defendants' affidavits, a thorough review of the record proves the court's findings were clearly erroneous. That having been done, the facts contained in plaintiffs' pleadings and affidavits and elsewhere in the record provide a proper factual basis for the determination that F.O.P. had standing under the association standing test. The trial court also erroneously required F.O.P. to satisfy the "appellate standing" test. That test simply did not apply to F.O.P. in this action. However, assuming that it was applicable, once the trial court's erroneous findings of fact are ferretted out, F.O.P. can meet the test. The trial court's factual findings, the incorrect determination of F.O.P.'s standing and the resulting dismissal with respect to F.O.P. should be overturned.

Plaintiffs' claims with respect to Crowley are similar and factually related to the F.O.P. arguments. Some of the trial court's findings bearing on Crowley are clearly erroneous. When the record is properly viewed and Crowley's allegations and

plaintiffs' affidavits are considered, ample factual support for Crowley's standing under the traditional standing test is apparent. The court's rulings, factual and legal, with respect to Crowley and his dismissal from the action should be reversed.

The trial court's erroneous determinations that F.O.P. and Crowley lacked standing fostered an additional error. The trial court ruled that because plaintiffs lacked standing the court had no subject matter jurisdiction and the motion for joinder to add proposed co-plaintiffs Shopay and Salmon was therefore moot. Clearly, plaintiffs did have standing, and the motion was not moot. The trial court's determination of mootness should be reversed and the motion for joinder should be granted.

ARGUMENTS

I. INTRODUCTION

Plaintiffs appeal the trial court's dismissal of this action for lack of subject matter jurisdiction based on defendants' Utah Rule of Civil Procedure 12(b)(1) motion to dismiss which asserted neither F.O.P. nor Crowley was possessed of sufficient standing to bring this action.

A motion to dismiss is appropriate only where it clearly appears that the plaintiff or plaintiffs would not be entitled to relief under the facts alleged or under any state of facts they could prove to support their claim. ... In determining whether the trial

court properly granted the motion, we must accept the factual allegations in the complaint as true and consider all reasonable inferences to be drawn from those facts in a light most favorable to the plaintiff. ...

Prows v. Department of Financial Insts., 822 P.2d 764, 766 (Utah 1991) (12(b)(6) motion, citations omitted); West v. Thompson Newspapers, 188 U.A.R. 31, 32, ___ P.2d___ (Utah Ct.App. 1992); see also, Olson v. Park-Craig-Olson, Inc., 815 P.2d 1356, 1360 (Utah Ct.App. 1991). "The courts are a forum for settling controversies, and if there is any doubt about whether a claim should be dismissed for the lack of a factual basis, the issue should be resolved in favor of giving the party an opportunity to present its proof." Colman v. Utah State Land Board, 795 P.2d 622, 624 (Utah 1990).

The Utah Supreme Court commented on the function of the standing doctrine in Utah in Terracor v. Utah Board of State Lands, 716 P.2d 796, 798-99 (Utah 1986):

The doctrine of standing is intended to assure the procedural integrity of judicial adjudications by requiring that the parties to a lawsuit have sufficient interest in the subject matter of the dispute and sufficient adverseness that the legal and factual issues which must be resolved will be thoroughly explored. Unlike federal law where standing doctrine is related to the "case or controversy" language of Article III of the United States Constitution, our standing law arises from the general precepts of the doctrine of separation of powers found in Article V of the Utah Constitution. Under Utah law, the doctrine of standing operates as a gatekeeper to the courthouse, allowing in only those cases that are fit for judicial

resolution. . . . Thus, the doctrine of standing limits judicial power so that there will not "be a significant inroad on the representative form of government, cast[ing] the courts in the role of supervising the coordinate branches of government . . . [and converting] the judiciary into an open forum for the resolution of political and ideological disputes about the performance of government." . . . For this reason, this Court will not lightly dispense with the requirement that a litigant have a personal stake in the outcome of a specific dispute. . . . Nevertheless, it is difficult to make useful, all-inclusive generalizations that determine whether standing exists in any given case, since the issue often depends on the facts of each case. (citations omitted)

Once the facts have been fully presented by the plaintiff, a three-step examination is used to determine an individual plaintiff's standing to sue. The first step is concerned with the traditional standing criteria of the plaintiff's personal stake in the controversy. The plaintiff must have suffered "some distinct and palpable injury that gives him a personal stake in the outcome of the legal dispute." Jenkins v. Swan, 675 P.2d 1145, 1148 (Utah 1983); accord, Society of Professional Journalists v. Bullock, 743 P.2d 1166, 1170 (Utah 1987); Terracor v. Utah Board of State Lands, 716 P.2d 796, 799 (Utah 1986).

One who is adversely affected by governmental actions has standing under [the traditional criterion of the plaintiff's personal stake in the controversy]. One who is not adversely affected has no standing. . . . There must also be some causal relationship alleged between the injury to the plaintiff, the governmental actions and the relief requested . . . If the plaintiff satisfies this requirement, he will be granted standing and no further inquiry is required. (citation omitted, emphasis added)

Jenkins v. Swan, 675 P.2d, at 1150.

If a plaintiff cannot satisfy the first step, standing may nonetheless be granted if no one else has a greater interest in the outcome of the dispute and the issue is not likely to be raised at all unless the plaintiff is granted standing. Jenkins v. Swan, 675 P.2d at 1150; Kennecott Copper Corp. v. Salt Lake County, 702 P.2d 451, 454 (Utah 1985).

The third possibility for granting standing is available when, in unique cases, the issues are of such great public importance that they ought to be decided in furtherance of the public interest. Jenkins v. Swan, 675 P.2d at 1150. Jenkins v. State, 585 P.2d 442, 443 (Utah 1978).

Under Utah law, an association such as F.O.P. may be granted standing to represent its members when "(i) the individual members of the association have standing to sue; and (ii) the nature of the claim and of the relief sought does not make the individual participation of each injured party indispensable to proper resolution of the cause. ..." Utah Restaurant Association v. Davis County Board of Health, 709 P.2d 1159, 1163 (Utah 1985) (quoting Worth v. Sedlin, 422 U.S. 490, 511, 95 S.Ct. 2197, 2211, 45 L.Ed.2d 343 (1975)); See also, Society of Professional Journalists, 743 P.2d at 1175.

II. THE TRIAL COURT ERRED IN RULING
F.O.P. DID NOT HAVE STANDING TO
BRING THIS ACTION.

A. THE TRIAL COURT'S FINDINGS OF FACT ARE CLEARLY ERRONEOUS.

Plaintiffs' attack on the trial court's conclusion that F.O.P. lacked standing is, in initial part and of necessity, directed at the erroneous and incomplete findings of fact that underlie and give pseudosupport to the dismissal of F.O.P.'s claims. The factual analysis of the standing issue should extend beyond the nominal facts necessary under notice pleading to any additional relevant facts offered by the plaintiff.

. . .[I]t is within the Court's power to allow or require the plaintiff to supply, by amendment to the complaint or by affidavits, further particularized allegations of fact deemed supportive of plaintiff's standing.

Worth v. Sedlin, 422 U.S. 490, 491, 45 L.Ed.2d, 343, 95 S.Ct. 2197 (1975). The findings relative to the initial examination of F.O.P.'s standing that plaintiffs contend are not supported by substantial evidence and are unequivocally contradicted by the facts presented by plaintiffs are, using the numbers assigned by the trial court:

2. One year of service with the West Valley City Police Department was required in order to be eligible for promotion to Sergeant [R. 432].

3. The requirements for promotion to Sergeant required that applicants hold the rank of Police Officer within the West Valley City Police Department [R. 432].

4. Within the rank of Police Officer, all grades (P.O.I, P.O.II and P.O.III) were eligible for promotion to Sergeant with no preference being given to the members of any one grade [R. 432].

10. Members of the FOP did not suffer distinct, particularized and palpable injury related to the conduct of Defendants [R. 433].

11. Plaintiff FOP did not present its claims to the Civil Service Commission prior to the commencement of this lawsuit [R. 433].

The trial court apparently relied solely upon the affidavits¹ filed by defendants [R. 175-190] in conjunction with their Motion to Dismiss on February 20, 1991. It is equally apparent that the trial court completely disregarded the affidavits supplied by plaintiffs [R. 229-232, 330-369], despite their being specifically incorporated into plaintiffs' Reply Memorandum in Support of Plaintiffs' Motion for Joinder [R. at 341] and Plaintiffs' Supplemental Memorandum in Opposition to Defendants' Motion to Dismiss [R. at 345].

Finding of fact number 2 is supported, by inference, only by the requirement that candidates "must be off probation" [R. 6]. There is no evidence in the record indicating that the probationary period was one year. Moreover, it does not establish that seniority was properly considered in the process.

¹All six of defendants' affidavits fail to meet the requirements of U.R.C.P., 56(e), which states, in pertinent part: "Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. ..." (emphasis added)

The June 6, 1989 Memorandum issued by Nordfelt stated candidates must have four years of police service [R. 6]. The October 4, 1989 letter signed by Commissioners Guy Kimball and Don Meyers confirmed that fact [R. 13]. There is no evidence directly indicating one year of service with the Department was required, and Finding number 2 is therefore clearly erroneous. Crowley, Salmon and Shopay, all of whom are F.O.P. members, have alleged their seniority was not considered [R. 114-118, 331, 334, 338], and a requirement that all candidates have one year of service with the Department is not adequate consideration of seniority. Furthermore, if officers with only one year of service were allowed to participate in the promotion exam, that fact would support plaintiffs' claims that F.O.P. members and Crowley were made to compete against ineligible candidates.

Finding of fact number 3 is similarly misleading and lacking in support. It was only after the next lower rank requirement was waived by Nordfelt and Guy Kimball that P.O. I officers were allowed to participate [R. 110, 117, 293-295]. Both state and local law, however, provided that only officers of the next lower rank, P.O. II, be allowed to compete for the promotion [R. 117-118, 293-295][R. 110, 117-118, 293-295; and see, Utah Code Ann., §10-3-1010 (1983) and Rule III-1, W.V.C.C.S.P.P.M. (1988)]. Finding number 3 only reflects the state of events after the

illegal waiver was obtained. Candidates were required by law to hold the P.O. II rank.

The trial court's fourth finding is also erroneous for the reason that, even if read with the other findings, it omits mention of the change in eligibility that occurred and the time it occurred. Like finding number 3, it is supported only by examination of the time after the next lower rank requirement was improperly waived [R. 110, 117, 293-295]. Finding number 4 is contradicted by, and the trial court's findings omit, the overwhelming evidence that only P.O. II officers were eligible for promotion to sergeant [R. 110, 117, 293-195]. This error in the court's findings foreclosed the possibility of concluding that plaintiffs were injured when P.O. II officers competed against a field enlarged because P.O. I officers were allowed to participate. Finding number 4, however, to the extent it implies no preference was given based on seniority, is correct, as discussed above in regard to finding number 2.

Finding number 10 states conclusions that can only be reached by turning a blind eye to plaintiffs' pleadings and affidavits, and it is supported by defendants' denials, not by substantial evidence. Collecting the evidence that supports the conclusions is largely a search for negative proof. There is some evidence that some F.O.P. members benefitted as a result of the inform design and administration of the promotion

examination process. Larry Moody and Stephen Shreve only administered the promotion examination [R. 178, 189]. Charles Illsley was promoted to sergeant on September 2, 1989, Guy Dodge was also promoted to sergeant, and Craig Gibson was scheduled to be promoted to sergeant on July 1, 1991 [R. 114, 181, 183, 186]. Finding number 10 nevertheless ignores and is contradicted by the allegations contained in plaintiffs' pleadings and affidavits. All of the candidates, including Crowley, Shopay and Salmon, who participated in the process were F.O.P. members [R. 331, 334, 337-338]. Plaintiffs alleged that defendants failed to include seniority as a criterion to be considered in the promotion process, thus violating Utah Code Ann., §10-3-1010 (1983) and Rule III-1, W.V.C.C.S.P.P.M. (1988) [R. 6-9, 113-118]. Crowley, Salmon and Shopay were not given consideration for their seniority and alleged the results they received on the promotion examination were negatively affected as a result [R. 331-332, 334-335, 337-338]. Plaintiffs also alleged that P.O. I officers were impermissably allowed to participate [R. 110, 117-118, 331-332, 334-335, 338]. Thus, all P.O. II officers, including F.O.P. members Crowley, Salmon and Shopay competed against ineligible candidates [R. 118, 186, 331-332, 334-335, 338]. Crowley alleged that he would have objected to the Department's request to waive the P.O. II requirement, had it not been made privately and without his knowledge [R. 338].

Shopay and Salmon alleged they would have earned higher positions on the promotion roster if they had not been forced to compete with P.O. I officers [R. 331-332, 334]. Plaintiffs further alleged that they were not afforded the protection of state law and Commission rules and regulations due them [R. 117-118, 331-332, 334-335, 338]. Furthermore, plaintiffs alleged they were injured by the actions of an illegally constituted Commission when the two members summarily dismissed the officers' claims [R. 13, 117] and by Nordfelt when some candidates taking the written exam were not allowed equal access to the study materials [R. 10-13, 117]. Insofar as the conclusions stated in finding number 10 may be considered to be findings of fact, they are clearly erroneous.

Finding number 11 is supported by the affidavit of Cory Ervin supplied by defendants [R. 184-186]. Cory Ervin stated:

5. As custodian of the records and Secretary to the Commission, I have no record, nor do I have any knowledge, of Commission receiving any request, appeal, or other communication from the organization known as "West Valley City Fraternal Order of Police Lodge #4" regarding the 1989 sergeant's examination, except in connection with the above-encaptioned lawsuit.

6. . . . I have no record, nor do I have any knowledge of the Commission sending any information, ruling, or other communication regarding the 1989 sergeants' examination, except information supplied in connection with the above-encaptioned lawsuit.

[R. 186]. Finding number 11 is erroneous because it ignores plaintiffs' allegation that the Commission was notified, by

letter dated August 23, 1989, of a variety of objections voiced by Department officers who were also F.O.P. members [R. 10-12, 110, 116, 332, 335, 339]. It also ignores the allegation that the Commission's rules and regulations did not provide a process by which Department officers could object to or seek review of improprieties in the promotion examination process [R. 117, 332, 335, 339]. The October 4, 1989 letter signed by Commissioners Guy Kimball and Don Meyers [R. 13, 116] also contradicts finding number 10, as does Crowley's statement that he would have, if he had been aware of the waiver that was obtained, objected, on behalf of F.O.P. and individually, to the P.O. I officers' participation [R. 338]. Clearly plaintiffs made substantial efforts to present the claims known to them at that time to the Commission. The trial court's finding belies those facts and is not supported by substantial evidence.

B. F.O.P. HAS STANDING TO BRING THIS ACTION IN ITS REPRESENTATIVE CAPACITY.

F.O.P. clearly meets both criteria of the test enunciated in Utah Restaurant Association v. Davis County Board of Health, 709 P.2d 1159, 1163 (Utah 1985). See also, Society of Professional Journalists v. Bullock, 743 P.2d 1166, 1170 (Utah 1987). In regard to the first criterion, the individual members' standing, all F.O.P. members are police officers or staff employed by the Department, subject to Nordfelt's and the Commission's actions,

and must comply with the demands of and enjoy the benefits of the merit civil service system. Thus, each F.O.P. member is injured when, as is alleged in this action, the merit system which governs the employment of each member is violated. The specific injuries alleged by F.O.P. have been recognized by the Utah Supreme Court in Hayward v. Pennock, 444 P.2d 59, 61, 21 Utah 2d 242 (1968):

The reasons for the adoption of a merit system are to protect employees and the public from the evils of the spoils system and to assure to each officer an orderly opportunity for promotion. The good officer thus has an incentive to remain in the service. When promotions cease to be made according to the rules adopted, then there is a tendency to engender a demoralizing influence in the ranks of men who, having cut themselves off from all other occupations, must find their comfort in the hopes they have of anticipated promotions made according to the rules of the commission.

It is axiomatic that each F.O.P. member is sufficiently "injured" for standing purposes, when he or she has lost the protection of the merit system that should govern his or her chosen employment, is demoralized by that loss and can no longer rely on the protection of state law in order to be informed about the Commission's actions that affect his or her employment. Considering the facts alleged by plaintiffs, the trial court's ruling suggests that F.O.P. members, who are merit employees, do not have an interest in and cannot be injured by acts of the Nordfelt and the Commission that directly and adversely affect their present and future employment and their possibility of promotion.

All of the participants in the promotion examination process were F.O.P. members. Although not all F.O.P. members actively vied for a position on the promotion roster, it is not strictly necessary that all individual F.O.P. members be possessed of standing. Utah Restaurant Association, 709 P.2d at 1160, 1163 ("some of" or "a substantial number" of the association's individual members were subject to the permit fee complained of). Thus, all F.O.P. members may be said to have suffered an injury, individually, and the members who actually participated in the evaluation process have a greater and more direct injury because their seniority was not considered, they were forced to compete against improperly authorized P.O. I candidates, the Commission was not legally constituted when the two Commissioners summarily dismissed their complaints and some candidates were not allowed equal access to the study materials. The F.O.P. members who took the written exam and, being among the final fifteen candidates, participated in the remainder of the promotional examination include Shopay and Salmon. Their common injuries, closely related to one of the purposes² for F.O.P.'s existence, are more than sufficient to give F.O.P. standing in its representative capacity.

²Utah has not adopted, as have some courts, the additional requirement that the interests the association seeks to protect be relevant to the association's purpose. Society of Professional Journalists v. Bullock, 743 P.2d 1166, 1175 at n. 10 (Utah 1987).

The relief sought in this action will remedy the injuries suffered by individual F.O.P. members. The initial criterion of the Utah Restaurant Association test was met because each individual member had standing to sue for relief from a distinct, palpable injury to his or her present and future employment that adversely affected and will affect the individual.

F.O.P. also meets the second Utah Restaurant Association criterion, which focuses on whether the individual participation of each injured party is made indispensable by the nature of the claim and of the relief sought. Neither the claim nor the relief sought will require the participation as parties, as opposed to fact witnesses, of any F.O.P. members. See, Society of Professional Journalists, 743 P.2d at 1175 (Utah 1987). This action can be litigated solely by plaintiff F.O.P., and the fact that individual F.O.P. members may elect to participate as named parties is irrelevant to the second criterion. The relief F.O.P. seeks will benefit all of its members by remedying the injuries described above. Each member will benefit when the promotion examination process is declared null and void, the merit civil service system is restored, state law is adhered to, the candidates' seniority is considered, only officers of the next lower rank are allowed to participate and candidates are allowed equal access to the study materials. Any advantage improperly conferred upon those also were illegally promoted or placed on

the sergeant promotion roster will not nullify, for those so situated, the benefit of having the Nordfelt's and Commission's wrongs addressed.

Notably, the relief sought in this case does not include a request for monetary damages and, if granted, will benefit F.O.P. members as if they had each sued individually. See e.g., Utah Restaurant Association, 709 P.2d at 1163 (association held to have standing to seek declaratory and injunctive relief but not monetary damages on behalf of its members).

The bulk of the conflicts of interest shadow thrown by defendants and observed by the trial court is formed out of the incorrect notion that the status of the three F.O.P. members who gained unfair advantage from the improper and illegal design and administration of the promotion examination process somehow deprives F.O.P. of the standing it otherwise has. Correct analysis of the question sheds a different light. The suit by F.O.P. would have the same effect on the three "advantaged" officers named by defendants as would a suit brought by any other F.O.P. member individually. R.I. Chapter, Association of General Contractors v. Kreps, 450 F.Supp. 338, 346-47 at n.10 (D.Ct. R.I. 1978). In R.I. Chapter, the plaintiff brought an action seeking declaratory and injunctive relief challenging a minority business requirement of the Public Works Employment Act and the defendant raised the issue of plaintiff's standing, alleging a conflict

between the association and its minority members. The court held the plaintiff had standing to initiate the action as an association on behalf of its members even though some were minorities, reasoning that conflict among contract members competing over a particular project did not disallow the association's standing to assert rights of its injured member. In this case, no additional consequences can be realized just because F.O.P. brings the action.³ R.I. Chapter makes it clear that an association need not adequately represent the interests of any association members who receive advantage or benefit by the illegal or improper acts complained of and that absence of injury to some members or discrepancies between the injuries suffered by an association's members are not fatal to the association's standing.

Furthermore, the three "advantaged" F.O.P. members, under Utah Rule of Civil Procedure 24, would be free to intervene in the action to represent their own interests. Any discrepancy or incongruity between interests of individual F.O.P. members does not affect F.O.P.'s standing.

Alternatively, F.O.P. should be granted standing under either the second or third steps of the Jenkins v. Swan analysis.

³Defendants abandoned any reliance, by direct argument or inference, on the idea that proposed co-plaintiffs Shopay and Salmon are not real parties in interest under Rule 17(a) [R. 320-322].

As a practical matter, because of the cost of the litigation, no single injured police officer has an interest in the outcome of the case greater than the cumulative interest of F.O.P. The issues are therefore unlikely to be raised at all, much less pursued to conclusion, if the dismissal of this action is upheld, and for that reason F.O.P.'s standing should be recognized. Jenkins v. Swan, 675 P.2d 1145, 1150 (Utah 1983); Kennecott Copper Corp. v. Salt Lake County, 702 P.2d 451, 454-55 (Utah 1985). Plaintiffs also submit that the issues raised in this case, involving violations of seniority consideration and next lower rank requirements established by the Department's merit civil service system and state law, in conjunction with the other improprieties alleged, are sufficiently unique and important to the public that standing should be recognized under the third step of the Jenkins v. Swan standing analysis. Plaintiffs alleged and sufficiently demonstrated F.O.P.'s standing in this case. The trial court's ruling is incorrect and should be dismissed.

C. THE TRIAL COURT ERRED IN APPLYING THE APPELLATE
STANDING TEST TO DETERMINE WHETHER F.O.P.
HAD STANDING.

In the trial court, defendants asserted that plaintiffs' action was an attempt to obtain an extraordinary writ governed by Utah Rule of Civil Procedure 65B (1988) and Utah Supreme Court Rule 19 (1987). This assertion may have been fostered by

plaintiffs' allegation that "Plaintiffs have no other adequate or speedy remedy at law to provide the relief requested herein [R. 117 at para. 15]. Relying upon the general rule that under the doctrine of exhaustion of administrative remedies, "... persons aggrieved by decisions of administrative agencies may not, by refusing or neglecting to submit issues of fact to such agencies, by-pass them, and call upon the courts to determine ... matters properly determinable originally by such agencies," S&G, Inc., v. Morgan, 797 P.2d 1085, 1087 (Utah 1990)(citations omitted), defendant urged the trial court [R. 166-167, 225] to apply the appellate standing test:

...[W]e conclude that to demonstrate appellate standing, one using a petition for a writ as a vehicle to obtain appellate-type review of a trial court's ruling must show the following: (i) the petitioner had standing to proceed before the district court, (ii) the petitioner is challenging the district court's ruling adverse to him or her, and (iii) the petitioner appeared and presented his or her claims to that court. If the petitioner fails to establish any one of the standing requirements, this Court will not consider the claims.

Society of Journalists, 743 P.2d at 1172.

The trial court erroneously found [R. 433 at para. 11] and incorrectly concluded that F.O.P. "... failed, both on the face of the complaint and on the facts of the case, to meet its burden to establish that the F.O.P. presented its claims to the Civil Service Commission, and therefore does not have standing in this case [R. 435 at para. 9].

Plaintiffs' action, however, is not one brought in the nature of an extraordinary writ seeking temporary relief. Plaintiffs filed a direct action. Utah Code Ann., §78-3-4(1) (1988), provides, "The district court has original jurisdiction in all matters civil and criminal not excepted in the Utah Constitution and not prohibited by law." Utah Code Ann., §52-4-9(2) (1977), provides: "A person denied any right under this chapter may commence suit in a court of competent jurisdiction to compel compliance with or enjoin violations of this chapter... ." The trial court ruled incorrectly when it, in effect, added an extra hurdle to the factual and legal course F.O.P. ran to establish its standing.

Assuming, arguendo, that plaintiffs must satisfy the Society of Journalists appellate standing test, they plainly have done so. In Point I.B., supra, and Point II.B., ante, plaintiffs demonstrate that both F.O.P. and Crowley met their respective standing requirements. Defendants' argument that F.O.P. did not address its grievances to the Commission admits that the Commission would have been the proper venue for initial presentation of the claims. The fact that no formal mechanism existed to present such claims to the Commission is demonstrated by the statements of Crowley, Shopay and Salmon indicating the Commission's rules and regulations did not provide guidance regarding the process by which Departmental officers could object

to or seek review of improprieties in the promotion examination process [R. 117, 332, 335, 339]. Even though no procedures were in place to assist the presentation of the officers' claims, the Commission, had it been performing its duties properly, was the body before which the officers had standing. There is also no question that the officers received an adverse determination from the Commission. The October 4, 1989 letter signed by Guy Kimball and Don Meyers summarily dismissed their claims [R. 113, 116]. There can also be no doubt that the officers appeared, to the extent they were allowed, and presented their claims to the Commission in the August 23, 1989 letter [R. 10-12, 116, 332, 335, 339], as established at pp. 21-32, supra. The trial court's ruling that F.O.P. lacked standing is manifestly incorrect and should be reversed.

II. THE TRIAL COURT ERRED IN RULING
CROWLEY DID NOT HAVE STANDING TO
BRING THIS ACTION.

A. THE TRIAL COURT'S FINDINGS OF FACT CONCERNING CROWLEY
ARE CLEARLY ERRONEOUS.

In addition to the Crowley-related findings discussed by plaintiffs in Point II.A., the findings concerning plaintiff Crowley that plaintiffs contend are not supported by substantial evidence and are unequivocally contradicted by the facts

presented by plaintiffs' case are, using the number assigned by the trial court:

7. Plaintiff Jim Crowley did not receive the minimum required passing score on the written examination and, therefore, did not proceed further in the promotional process [R. 432].

8. Plaintiff Jim Crowley did not suffer a distinct, particularized and palpable injury related to the conduct of Defendants [R. 432].

Finding number 7 is supported by the Cory Ervin affidavit supplied by defendants that asserts "... Crowley did not receive a score of 75 or above..." [R. 185 at para. 4.d.] and describes Crowley's score as a "... below passing score..." [R. 185 at para. 4.e.]. From this evidence the trial court apparently made the conclusory finding that Crowley did not achieve the "minimum required passing score." But no "minimum" score was required. The memoranda issued by Nordfelt and the West Valley Personnel Office stated those candidates who received the top fifteen scores on the written exam would advance to the "assessment center" [R. 6-7, 8-9, 107-108, 114]. Finding 7 is clearly erroneous. The promotion examination announcements are better evidence of the procedure used than Cory Ervin's characterization of what any Commission records may indicate. The actual record Cory Ervin relies on is neither identified in nor supplied with his affidavit.

Finding number 8 states conclusions that find their support in the trial court's erroneous finding number 7, the fact Crowley did not obtain one of the top fifteen scores on the written exam and the fact he was not allowed to advance to the "assessment center" [R. 7, 8-9, 185, 338]. The trial court's misperception that a minimum passing score existed is the primary reason finding number 8 is erroneous. Crowley missed, by a single point, achieving one of the top fifteen scores on the written exam [R. 185, 338]. Crowley alleged two primary injuries suffered by him. First, he was improperly required to compete against additional candidates holding only the P.O. I rank [R. 113-118, 338]. It is without question that at least one of those P.O. I officers, Guy Dodge, scored higher than Crowley on the written exam [R. 118, 186], thus bumping him from the list of the top fifteen candidates. As a result, he was precluded from obtaining a position on the final sergeant promotion roster that was established after the "assessment center" and "promotability" portions were completed. Clearly, Crowley was injured. Second, Crowley alleged that seniority was not considered in the promotion process as required by law and that he was unfairly deprived of his approximately nine years of seniority [R. 6-9, 113-118, 339]. Seniority may be considered in myriad ways. There is no evidence in the record establishing precisely how seniority would have been considered in this promotion

examination had it been conducted according to law. Crowley states that if seniority had been considered, he would have been allowed to advance to the later stages of the promotion process [R. 338].⁴ Crowley's loss of an opportunity to compete for a promotion and his being required to compete with ineligible candidates are, despite the trial court's misunderstanding of the case, a distinct, particularized and palpable injury directly related to defendants' conduct. Crowley also alleged he was injured by the Commission being illegally constituted on October 4, 1989 and by candidates not being allowed equal access to study materials [R. 10-13, 117].

The trial court's findings numbers 2, 3, 4, 7, 8 and 10 are clearly erroneous and cannot support the incorrect ruling that Crowley lacked standing.

B. CROWLEY HAS STANDING TO BRING THIS ACTION.

It is clear that Crowley alleged and demonstrated for the trial court, as shown in sections II.A. and III.A. hereof, that he suffered adverse effects caused by Nordfelt's and the

⁴As a single illustrative example, even with the participation of the unqualified P.O. I candidates, it is possible that, based upon their seniority, candidates may have been given credit towards their ultimate score on the written exam. Such a method is logical at least to the extent that it would afford candidates credit for their seniority before the final fifteen were determined. Under such an arrangement Crowley would have needed a credit of only one point for his nine years seniority to make the final fifteen.

Commission's actions and that the relief requested will remedy those adverse effects. Thus, Crowley plainly has a solid factual basis for his standing to bring this action. Jenkins v. Swan, 675 P.2d 1145 (1983); accord, Kennecott Corp. v. Salt Lake County, 702 P.2d 451 (Utah 1985); Baird v. State, 574 P.2d 713 (Utah 1978).

Even if the trial court's erroneous finding that Crowley did not achieve the "minimum passing score" were true, Crowley would have standing. Crowley claimed that the entire evaluation process was invalid, should be declared null and void and was conducted contrary to established law.

It might be argued that so long as respondents failed the test, they would have no cause to complain because some unauthorized applicant passed it. Such, however, is not the case. If no one passed the test, the respondents would have another chance to take an examination, and if successful in the second examination, they would be considered for promotion. If the position was already filled by an ineligible man, there is no vacancy to which respondents can aspire, and there is no reason for giving another examination.
(emphasis added)

Hayward v. Pennock, 444 P.2d 59, 60, 21 Utah 2d 242 (1968). Regardless of an eligible candidate's performance in any part of the evaluation process, as a valid participant, he or she has a personal stake in having the process conducted under the civil service merit system utilized by the Department and the Commission and according to the laws of Utah. Crowley had

standing by virtue of his participation as a candidate in the promotional process that was alleged to have been improperly and illegally designed and administered and of the consequences he suffered thereby. See, e.g., Society of Journalists, 743 P.2d at 1176. Very simply put, Crowley was injured when he was not afforded a fair, equitable and legal opportunity for promotion. The factual allegations supporting his claims are plainly set forth in the pleadings and affidavits on record, and therefore the court erred in dismissing his claim for lack of standing. Plaintiff requests this Court to overturn that ruling and the dismissal of Crowley as a plaintiff in this action that resulted therefrom.

IV. THE TRIAL COURT ERRED IN DENYING
THE MOTION FOR JOINDER.

Plaintiffs admittedly terse motion for joinder [R. 216-217] was initially supported by first affidavits filed by Shopay and Salmon [R. 229-232]. Later, Shopay, Salmon and Crowley filed their "second" affidavits to offer additional factual support for the joinder motion [R. 330-335].

Rule 20, Utah Rules of Civil Procedure (1987), provides, in pertinent part:

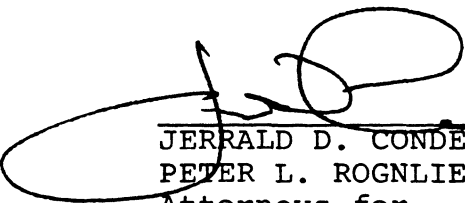
All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction occurrence, or series of transactions or occurrences and if any question of law or fact common to all of them will arise in the action. ...

The trial court denied the motion for joinder after determining "... that Plaintiff F.O.P. and Plaintiff Crowley did not have standing and the subsequent dismissal of their complaint renders William Salmon and David Shopay's Motion for Joinder moot [R. 435 at para. 12, 436]. Plaintiffs submit that because, as demonstrated in the preceeding sections of this brief, both F.O.P. and Crowley manifestly had standing to bring this action, the motion for joinder was not moot. Provided either F.O.P. or Crowley had standing, the motion for joinder was not moot and should have been granted based upon the Second Amended Complaint and from affidavits submitted by Shopay, Salmon and Crowley.

CONCLUSION

For the reasons stated above, plaintiffs/appellants request that the trial court's rulings with respect to F.O.P.'s and Crowley's standing be reversed, that the dismissal based on lack of standing and therefore subject matter jurisdiction be reversed and that the case be remanded back to the District Court for trial. In addition, plaintiff/appellants request that the trial court's denial of the motion for joinder based on mootness be reversed and the motion for joinder be remanded back to the District Court with direction to allow proposed co-plaintiffs Shopay and Salmon to join in the action.

RESPECTFULLY SUBMITTED the 24 day of August, 1992.




JERRALD D. CONDER
PETER L. ROGNLIE

Attorneys for
Plaintiffs/Appellants

CERTIFICATE OF SERVICE

I, PETER L. ROGNLIE, certify that on August 24th, 1992, I served four (4) copies of the attached Brief of Appellants upon J. Richard Catten, Assistant City Attorney, counsel for the appellees in this matter by mailing them to him by first-class mail with sufficient postage prepaid to the following address:

J. Richard Catten
Assistant City Attorney
3600 Constitution Blvd.
West Valley City, Utah 84119



Gerald D. Conder
Peter L. Rognlie
Attorneys for
Plaintiffs/Appellants

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Rule 20. Permissive joinder of parties.

(a) **Permissive joinder.** All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all of them will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all of them will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

(b) **Separate trials.** The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom he asserts no claim and who asserts no claim against him, and may order separate trials or make other orders to prevent delay or prejudice.

(4) in all other cases where an injunction would be proper in equity.

Rule 65B. Extraordinary writs.

(a) **Special forms of writs abolished.** Special forms of pleadings and of writs in habeas corpus, mandamus, quo warranto, certiorari, prohibition, and other extraordinary writs, as heretofore known, are hereby abolished. Where no other plain, speedy and adequate remedy exists, relief may be obtained by appropriate action under these rules, on any one of the grounds set forth in Subdivisions (b) and (c) of this rule.

(b) **Grounds for relief.** Appropriate relief may be granted:

(1) where any person usurps, intrudes into, or unlawfully holds or exercises a public office, civil or military, or a franchise, or an office in a corporation created by the authority of this state; or any public officer, civil or military, does or permits to be done any act which by the provisions of law works a forfeiture of his office; or an association of persons act as a corporation within this state without being legally incorporated; or any corporation has offended against any provision of the law, as it may have been amended, by or under which law such corporation was created, altered or renewed; or any corporation has forfeited its privileges and franchises by nonuser or has committed an act amounting to a surrender or a forfeiture of its corporate rights, privileges and franchises or has misused a franchise or privilege conferred upon it by law, or exercised a franchise or privilege not so conferred; or

(2) where an inferior tribunal, board or officer exercising judicial functions has exceeded its jurisdiction or abused its discretion; or

(3) where the relief sought is to compel any inferior tribunal, or any corporation, board or person to perform an act which the law specially enjoins as a duty resulting from an office, trust or station; or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled and from which he is unlawfully excluded by such inferior tribunal or by such corporation, board or person; or

(4) where the relief sought is to arrest the proceedings of any tribunal, corporation, board or person, whether exercising functions judicial or ministerial, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board or person.

(c) **Action by attorney general under Subdivision (b)(1) of this rule.** The attorney general may, and when directed so to do by the governor shall, commence any action authorized by the provisions of Subdivision (b)(1) of this rule. Such action shall be brought in the name of the state of Utah.

(d) **Action by private person under Subdivision (b)(1) of this rule.** A person claiming to be entitled to a public or private office unlawfully held and exercised by another may bring an action therefor. A private person may bring an action upon any other ground set forth in Subdivision (b)(1) of this rule, only if the attorney general fails to do so after notice. Any such action commenced by a private person shall be brought in his own name. Upon filing the complaint, such person shall also file an undertaking with sufficient sureties, in the same form required of bonds on appeal under the provision of Rule 73 and conditioned that such person will pay any judgment for costs or damages recovered, against him in such action.

(e) **Nature and extent of relief under Subdivision (b)(2) of this rule.** Upon the filing of a complaint seeking relief under Subdivision (b)(2) of this rule, the court may require notice to be given to the adverse party before issuance of the writ, or may grant an order to show cause why such writ should not be issued, or may grant the writ without notice. If the writ is granted, it shall be directed to the inferior tribunal, board, or officer, or to any other person having the custody of the record or proceedings, commanding such tribunal, board or officer to certify fully to the court issuing the writ, within a specified time, a transcript of the record and proceedings, describing or referring to them with sufficient certainty; and if a stay of proceedings is intended, requiring the party in the meantime to desist from further proceedings in the matter to be reviewed. The review by the court issuing the writ shall not be extended further than to determine whether the inferior tribunal, board or officer has regularly pursued the authority of such tribunal, board or officer.

(f) **Habeas corpus.** Appropriate relief by habeas corpus proceedings shall be granted whenever it appears to the proper court that any person is unjustly imprisoned or otherwise restrained of his liberty. If the person seeking relief is imprisoned in the penitentiary and asserts that in the proceedings which resulted in his conviction there was a substantial denial of his rights under the Constitution of the United States or under the Constitution of the state of Utah, or both, then the person seeking such relief shall proceed in accordance with Rule 65B(i). In all other cases, proceedings under this subdivision shall be conducted in accordance with the following provisions:

(1) The complaint seeking relief shall, among other things, state that the person designated is illegally restrained of his liberty by the defendant and the place where he is so restrained, if known (stating wherein and the cause or pretense thereof, according to the best information of the plaintiff, annexing a copy of any legal process or giving a satisfactory explanation for failing so to do); that the legality of the imprisonment or restraint has not already been adjudged upon a prior proceeding; whether another complaint for the same relief has been filed and relief thereunder denied by any court, and if so attaching a copy of such complaint and stating the reasons for the denial of relief or giving satisfactory reasons for the failure to do so.

(2) The complaint shall be filed in the court most convenient to the plaintiff.

(3) Upon the filing of the complaint the court shall, unless it appears from such complaint or the showing of the plaintiff that he is not entitled to any relief, issue a writ directed to the defendant commanding him to bring the person alleged to be restrained before the court at a time and place therein specified, at which time the court shall proceed in a summary manner to hear the matter and render judgment accordingly. If the writ is not issued the court shall state its reasons therefor in writing and file the same with the complaint, and shall deliver a copy thereof to the plaintiff.

(4) If the defendant cannot be found, or if he does not have such person in custody, the writ (and any other process issued) may be served upon any one having such person in custody, in the manner and with the same effect as if he had been made defendant in the action.

(5) If the defendant conceals himself, or refuses admittance to the person attempting to serve the writ, or if he attempts wrongfully to carry the person imprisoned or restrained out of the county or state after service of the writ, the person serving the writ shall immediately arrest the defendant, or other person so resisting, and bring him, together with the person designated in the writ, forthwith before the court before which the writ is made returnable.

(6) At the time of the issuance of the writ, the court may, if it appears that the person designated will be carried out of the jurisdiction of the court or will suffer some irreparable injury before compliance with the writ can be enforced, cause a warrant to issue, reciting the facts, and directing the sheriff to take such person and forthwith bring him before the court to be dealt with according to law.

(7) The defendant shall appear at the proper time and place with the person designated or show good cause for not doing so and must answer the complaint within the time allowed. The answer must state plainly and unequivocally whether he then has, or at any time has had, the person designated under his control and restraint, and if so, the cause thereof. If such person has been transferred, the defendant must state that fact, and to whom, when the transfer was made, and the reason or authority therefor. The writ shall not be disobeyed for any defect of form or misdescription of the person restrained or defendant, if enough is stated to show the meaning and intent thereof.

(8) The person restrained may waive his right to be present at the hearing, in which case the writ shall be modified accordingly. Pending a determination of the matter the court may place such person in the custody of such individual or individuals as may be deemed proper.

(g) **When counsel appointed for petitioner.** Any person filing a petition for habeas corpus may be appointed counsel whenever the district court, upon examination of the petition, determines that the petition is not frivolous and that such person is financially unable to obtain representation. If the petition for habeas corpus is frivolous, the district court shall, without further action, dismiss the petition.

(h) **When writ returnable.** Any alternative writ issued by a court or a judge thereof, may be made returnable, and a hearing thereon may be had, at any time as such court may in its discretion determine.

(i) **Postconviction hearings.**

(1) Any person imprisoned in the penitentiary or county jail under a commitment of any court, whether such imprisonment be under an original commitment or under a commitment for violation of probation or parole, who asserts that in any proceedings which resulted in his commitment there was a substantial denial of his rights under the Constitution of the United States or of the state of Utah, or both, may institute a proceeding under this rule.

Such proceedings shall be commenced by filing a complaint, together with a copy thereof, with the clerk of the court in which such relief is sought. The complainant shall also serve a copy of the complaint so filed upon the attorney general of the state of Utah if imprisoned in the state prison, or the county attorney of the county where imprisoned if in a county jail. Such service may be made by any of the methods provided for

service in Rule 4 of the Utah Rules of Civil Procedure, or by mailing such copy to the attorney general or county attorney by United States mail, postage prepaid, and by filing with the clerk of said court a certificate of mailing certifying under oath that a copy was so mailed to the attorney general or county attorney. Upon the filing of such a complaint, the clerk shall promptly bring the same to the attention of the presiding judge of the court in which such complaint is filed.

(2) The complaint shall state that the person seeking relief is illegally restrained of his liberty by the defendant; shall state the place where he is so restrained; shall state the dates of and identify the proceedings in which the complainant was convicted and by which he was subsequently confined and of which he now complains; and shall set forth in plain and concise terms the factual data constituting each and every manner in which the complainant claims that any constitutional rights were violated. The complaint shall have attached thereto affidavits, copies of records, or other evidence supporting such allegations, or shall state why the same are not attached.

The complaint shall also state whether or not the judgment of conviction that resulted in the confinement complained of has been reviewed on appeal, and if so, shall identify such appellate proceedings and state the results thereof.

The complaint shall further state that the legality or constitutionality of his commitment or confinement has not already been adjudged in a prior habeas corpus or other similar proceeding; and if the complainant shall have instituted prior similar proceedings in any court, state or federal, within the state of Utah, he shall so state in his complaint, shall attach a copy of any pleading filed in such court by him to his complaint, and shall set forth the reasons for the denial of relief in such other court. In such case, if it is apparent to the court in which the proceeding under this rule is instituted that the legality or constitutionality of his confinement has already been adjudged in such prior proceedings, the court shall forthwith dismiss such complaint, giving written notice thereof by mail to the complainant, and no further proceedings shall be had on such complaint.

(3) Argument, citations and discussion of authorities shall not be set forth in the complaint, but may be set out in a separate supporting memorandum or brief if the complainant so desires.

(4) All claims of the denial of any of complainant's constitutional rights shall be raised in the postconviction proceeding brought under this rule and may not be raised in another subsequent proceeding except for good cause shown therein.

(5) [Deleted.]

(6) Within ten days after service of a copy of the complaint upon him, the attorney general, or the county attorney, as the case may be, shall answer the complaint or otherwise plead thereto. Any further pleadings or amendments shall be in conformity with the Utah Rules of Civil Procedure.

(7) When an answer is filed, the court shall immediately set the case for a hearing within twenty days thereafter unless the court in its discretion determines that further time is needed.

Prior to the hearing, the state or county shall obtain such transcript of proceedings or court records as may be relevant and material to the case. The court, on its own motion, or upon the request of either party, may order a prehearing conference if good reason exists therefor; but such conference shall not be set so as to unreasonably delay the hearing on the merits of the complaint. The complainant shall be brought before the court for any hearing or conference.

If the court in which the complaint is filed determines that in the interest of convenience and economy, the hearing should be transferred to the district court having jurisdiction over the place of confinement of complainant, the court may enter a written order transferring such case and shall set forth in such order its reasons for so doing.

(8) In each case, the court, upon determining the case, shall enter specific findings of fact and conclusions of law and judgment, in writing, and the same shall be made a part of the record in the case.

If the court finds in favor of the complainant, it shall enter an appropriate order with respect to the judgment or sentence in the former proceedings and such further orders with respect to rearraignment, retrial, custody, bail or discharge as the court may deem just and proper in the case.

(9) If the complainant is unable to pay the costs of the proceedings, he may proceed in forma pauperis upon the filing of an affidavit to that effect, in which event the court may direct the costs to be paid by the county in which he was originally charged.

(10) Any final judgment entered upon such complaint may be appealed to and reviewed by the Supreme Court of Utah as an appeal in civil cases.

(Amended effective Jan. 1, 1985; March 1, 1986.)

Rule 66. Receivers.

(a) **Grounds for appointment.** A receiver may be appointed by the court in which an action is pending or has passed to judgment:

(1) In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim, or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff, or of any party whose right to or interest in the property or fund, or the proceeds thereof, is probable, and where it is shown that the property or fund is in danger of being lost, removed or materially injured.

(2) In an action by a mortgagee for the foreclosure of his mortgage and sale of the mortgaged property, where it appears that the mortgaged property is in danger of being lost, removed or materially injured; or that the conditions of the mortgage have not been performed and that the property is probably insufficient to discharge the mortgage debt.

(3) After judgment, to carry the judgment into effect.

(4) After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or in proceedings in aid of execution when an execution has been returned unsatisfied, or when the judgment

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band, wife, son, daughter, sister, brother, uncle, aunt, nephew, niece, first cousins, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law or daughter-in-law, is retained in office by any of said officials shall be regarded as a separate offense. 1953

52-3-3. Penalty.

Any person violating any of the provisions of this chapter is guilty of a misdemeanor. 1953

52-3-4. Exception in towns.

In towns, this chapter shall not apply to the employment of uncles, aunts, nephews, nieces or cousins. 1953

CHAPTER 4

OPEN AND PUBLIC MEETINGS

Section

- 52-4-1. Declaration of public policy.
- 52-4-2. Definitions.
- 52-4-3. Meetings open to the public — Exceptions.
- 52-4-4. Closed meeting held upon vote of members — Business — Reasons for meeting recorded.
- 52-4-5. Purposes of closed meetings — Chance meetings and social meetings excluded — Disruption of meetings.
- 52-4-6. Public notice of meetings.
- 52-4-7. Minutes of open meetings — Public records — Recording of meetings.
- 52-4-8. Suit to void final action — Limitation — Exceptions.
- 52-4-9. Enforcement of chapter — Suit to compel compliance.

52-4-1. Declaration of public policy.

In enacting this chapter, the Legislature finds and declares that the state, its agencies and political subdivisions, exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly. 1977

52-4-2. Definitions.

As used in this chapter:

(1) "Meeting" means the convening of a public body, with a quorum present, whether in person or by means of electronic equipment, for the purpose of discussing or acting upon a matter over which the public body has jurisdiction or advisory power. This chapter shall not apply to chance meetings. "Convening," as used in this subsection, means the calling of a meeting of a public body by a person or persons authorized to do so for the express purpose of discussing or acting upon a subject over which that public body has jurisdiction.

(2) "Public body" means any administrative, advisory, executive, or legislative body of the state or its political subdivisions which consists of two or more persons that expends, disburses, or is supported in whole or in part by tax revenue and which is vested with the authority to make decisions regarding the public's business. "Public body" does not include any political party, group, or caucus nor any conference committee, rules or sifting committee of the Legislature.

(3) "Quorum" means a simple majority of the membership of a public body, unless otherwise defined by applicable law, but a quorum does not include a meeting of two elected officials by

themselves when no action, either formal or informal, is taken on a subject over which these elected officials have jurisdiction. 1987

52-4-3. Meetings open to the public — Exceptions.

Every meeting is open to the public unless closed pursuant to Sections 52-4-4 and 52-4-5. 1977

52-4-4. Closed meeting held upon vote of members — Business — Reasons for meeting recorded.

A closed meeting may be held upon the affirmative vote of two-thirds of the members of the public body present at an open meeting for which notice is given pursuant to Section 52-4-6; provided, a quorum is present. No closed meeting is allowed except as to matters exempted under Section 52-4-5; provided, no ordinance, resolution, rule, regulation, contract, or appointment shall be approved at a closed meeting. The reason or reasons for holding a closed meeting and the vote, either for or against the proposition to hold such a meeting, cast by each member by name shall be entered on the minutes of the meeting.

Nothing in this chapter shall be construed to require any meeting to be closed to the public. 1977

52-4-5. Purposes of closed meetings — Chance meetings and social meetings excluded — Disruption of meetings.

(1) A closed meeting may be held pursuant to Section 52-4-4 for any of the following purposes:

- (a) discussion of the character, professional competence, or physical or mental health of an individual;
- (b) strategy sessions with respect to collective bargaining, litigation, or purchase of real property;
- (c) discussion regarding deployment of security personnel or devices; and
- (d) investigative proceedings regarding allegations of criminal misconduct.

(2) This chapter shall not apply to any chance meeting or a social meeting. No chance meeting or social meeting shall be used to circumvent this chapter.

(3) This chapter shall not prohibit the removal of any person who willfully disrupts a meeting to the extent that orderly conduct is seriously compromised. 1977

52-4-6. Public notice of meetings.

(1) Any public body which holds regular meetings that are scheduled in advance over the course of a year shall give public notice at least once each year of its annual meeting schedule as provided in this section. The public notice shall specify the date, time, and place of such meetings.

(2) In addition to the notice requirements of Subsection (1) of this section, each public body shall give not less than 24 hours' public notice of the agenda, date, time and place of each of its meetings.

(3) Public notice shall be satisfied by:

(a) posting written notice at the principal office of the public body, or if no such office exists, at the building where the meeting is to be held; and

(b) providing notice to at least one newspaper of general circulation within the geographic jurisdiction of the public body, or to a local media correspondent.

(4) When because of unforeseen circumstances it is necessary for a public body to hold an emergency

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Barbara Schue

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CORRECTED
AMENDED COMPLAINT

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Case No. 89-0907667

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4. Defendant, West Valley Civil Service Commission is the commission appointed pursuant to the provisions of Section 10-3-1003 Utah Code Annotated, 1953 and charged with the responsibility of administering the Civil Service Laws as they apply to West Valley City and its employees.

5. On or about June 6, 1989 an announcement for the position of sergeant was posted by the West Valley Police Department. A copy of said announcement is attached hereto marked Exhibit 1 and incorporated herein as though fully set forth.

6. On or about July 7, 1989 a memorandum was issued by the West Valley personnel office setting forth the dates of the written test, assessment center and weights to be considered for promotability. A copy of said memorandum is attached hereto marked Exhibit 2 and incorporated herein as though fully set forth.

7. On or about September 2, 1989 appointments were made to the position of sergeant pursuant to the procedures and weighting set forth in Exhibit 2.

8. Pursuant to the provisions of Section 10-3-1010 Utah Code Annotated, 1953 the Civil Service Commission is directed among other things to provide for promotion on the basis of seniority in service.

9. The rules and regulations of the Civil Service Commission together with the procedures adopted to provide for

promotion to sergeant failed as required by law, to consider seniority in service as a basis for promotion.

10. Section 10-3-1002 Utah Code Annotated, 1953 states:

" No appointments to any of the places of employment constituting the classified civil service in the departments shall be made except according to law and under the rules and regulations of the Civil Service Commission.

11. On or about August 23, 1989 certain members of the West Valley Police Department requested the commission to review alleged improprieties regarding the promotional examination for the position of sergeant. All of the signators to said request are members of plaintiff, Fraternal Order of Police Lodge #4. A copy of said request is attached hereto marked Exhibit 3 and incorporated herein as though fully set forth.

12. On or about October 4, 1989 without conducting a formal hearing or convening a meeting to consider the complaints set forth in Exhibit 3, two members of the Civil Service Commission prepared a letter summarily dismissing the complaints of the individual officers. A copy of said letter was delivered to a representative of the West Valley Fraternal Order of Police on November 2, 1989. A copy of said letter is attached hereto marked Exhibit 4 and incorporated herein as though fully set forth.

13. On or about October 4, 1989 the West Valley Civil Service Commission was not legally constituted as required by the provision of 10-3-1003 Utah Code Annotated, 1953.

14. The conduct of the examination for sergeant examination violated the provision of Section 10-3-1007 Utah Code Annotated, 1953 and Rule II-12 of the West Valley Civil Service Policy and Procedures.

15. Plaintiffs have no other adequate or speedy remedy at law to provide the relief requested herein.

SECOND CAUSE OF ACTION

16. The Provision of Section 3-1 of the Civil Service Policy and Procedures Manual requires a promotion to be filled from the next lower rank.

17. On or about June 6, 1989, defendant Dennis Nordfelt through his agents approached the chairman of the civil service commission, Guy Kimball and requested that particular requirements be waived.

18. Said request was in a letter generated in the office of Chief Dennis Nordfelt hand delivered to Guy Kimball.

19. On or about the same day, June 6, 1989 defendant Guy Kimball, Chairman of the Civil Service Commission signed the aforementioned letter and marked it "approved".

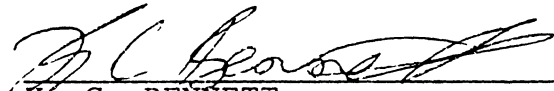
20. This action was taken in violation of the Utah Open and Public Meetings Act and in violation of Rules of the West Valley Civil Service Policy and Procedures Manual Section I-6.

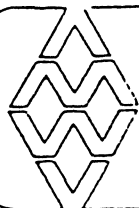
21. This request by Chief of Police and its approval by the Civil Service Commission was done with the intent to allow Guy Dodge, as a person otherwise unqualified, to sit for the exam.

22. By and through the actions of Chief Nordfelt and the Civil Service Commission, Guy Dodge was allowed to sit for the exam and did in fact receive the Sergeants Promotion.

WHEREFORE, Plaintiffs demand that the Court enter an order nullifying the test results and promotion made pursuant thereto and directing the West Valley Civil Service Commission to conduct a new examination pursuant to their own rules and regulations and as required by law with specific orders to consider seniority in service as a basis for promotability.

DATED this 13 day of Feb, 1991.


K. C. BENNETT
Attorney for Plaintiffs



West Valley City



POLICE DEPARTMENT

June 6, 1989

MEMORANDUM

TO: All Police Officers Eligible for Promotional Examination - Sergeant

FROM: Chief's Office *Dennis Nordyke*

RE: Promotional Examination

This memorandum is to notify officers that there will be a promotional examination for an immediate Sergeant's position and to establish a roster. Passing grade for all tests will be set at 75%.

All qualified and interested candidates need to apply by submitting a to/from to Assistant Chief Shreeve indicating their interest and outlining qualifications no later than ~~5:00 PM~~ ~~Wednesday, June 16, 1989~~ NOON, ON MONDAY, JUNE 19, 1989.

QUALIFICATIONS:

- Must have four years of police service (plus two additional years police experience if substituting for college).
- Must have two years of college (two years police experience can be substituted).
- Must be off probation.
- Must have above average performance evaluation.

WRITTEN EXAMINATION:

All qualified candidates will be given two text books to study from 30 days prior to the written examination. This examination will consist of management concepts taken from this reference material, and will be the **ONLY** material needed to study for this examination. There will be no questions from the criminal code or the policy manual on the exam.

Promotional Examination/Sergeant
June 6, 1989
Page 2

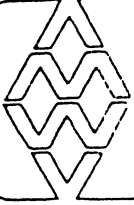
Candidates may pick up their text books from Lt. Moody or Assistant Chief Shreeve on June 19th and 20th only.

The written examination will be given on Thursday, July 20, 1989.

ASSESSMENT CENTER:

Only the top 15 candidates (with a passing score) on the written examination will be invited to attend a two-day assessment center. **The assessment center will be July 25th and 26th, 1989.**

Times and places for both the written examination and assessment center will be announced later.



West Valley City

PERSONNEL OFFICE

July 7, 1989

MEMORANDUM

TO: All Candidates for Promotional Examination - Sergeant
FROM: Personnel Office *CE*
RE: Promotional Examination

This memorandum is to notify officers who have applied to take this promotional examination for an immediate Sergeant's position of the times and location of the examination.

WRITTEN TEST: July 20, 1989 - Granger High School Cafeteria, 3690 South 3600 West - 9:00 a.m. Two and one half hours will be allowed for the written test.

ASSESSMENT CENTER: The top 15 candidates from the written test will be eligible to participate in the Assessment Center.

The Assessment Center will be held July 25 and 26, 1989 - P.O.S.T., 4501 South 2700 West - 8:00 a.m.

Promotional Examination/Sergeant
June 6, 1989
Page 2

Candidates may pick up their text books from Lt. Moody or Assistant Chief Shreeve on June 19th and 20th only.

The written examination will be given on Thursday, July 20, 1989.

ASSESSMENT CENTER:

Only the top 15 candidates (with a passing score) on the written examination will be invited to attend a two-day assessment center. The assessment center will be July 25th and 26th, 1989.

Times and places for both the written examination and assessment center will be announced later.

WEIGHTS FOR PROMOTABILITY TESTING ARE AS FOLLOWS:

Assessment	40%
Promotability	40%
Written	20%

00009

August 23, 1989

West Valley City
Civil Service Commission

Dear Commissioners:

We the undersigned police officers of West Valley City wish to submit this letter outlining our concerns over certain improprieties regarding the recent promotional examination for the position of sergeant.

On August 15, 1989 at a meeting of the membership of West Valley Lodge #4 of the Fraternal Order of Police, Chief Nordfelt responded to a list of allegations regarding the test. In his response Chief Nordfelt verified several of our concerns as fact, and as being improper. However, it appears that the police administration does not intend to take any action in this matter.

A copy of our entire list of concerns as presented to Chief Nordfelt is attached for consideration. However, we would like to address some of the issues we feel are of particular concern; one of which did not come to light until after the initial list was compiled.

First, as confirmed by Chief Nordfelt, one of the officers who participated in the test was assigned to pick up the shipment of books from which the test was derived. This officer surmised what the books were for, and noted that he already owned a copy of one of them. After obtaining the title of the second book he purchased a copy of it also. The titles of these two books were denied to all the other participants in the test until exactly thirty days before the test was given.

We would like to note here that several officers scheduled to take the test were going to be out of town on the date the books were to be given out and were refused access to the books even one day early. Some of these officers were forced to wait days, even weeks before gaining access to the study materials; thus cutting short their time to prepare for the test. This situation gave one officer an unfair advantage over all other participants. These circumstances were brought to the attention

Civil Service Commission
August 23, 1989
Page 2

of the administration, however, they chose to ignore it and allowed the officer to take the test. That officer's ultimate position on the promotional list is number two.

Second, Salt Lake police supervisors were permitted to give input as to the promotability of one officer currently assigned to the Metro Narcotics Unit. However, other officers who have been assigned to the unit were not afforded the same opportunity.

In another promotability related issue the spouse of one of the test participants were permitted to evaluate the promotability of her spouse's competition.

Finally an issue that had not come to our attention until after the initial list of concerns was compiled. The concern is that seniority was not considered in the testing process. This is in violation of state statute (10-3-1010 UCA).

In conclusion the undersigned police officers of West Valley City request that the commission look into these allegations. We further believe that given the circumstances described herein, the exam in question should be considered invalid.

Respectfully,

<u>Grant W. Elby</u>	<u>Mike Duran</u>	<u>John A. Co</u>
<u>Tracy Cowley</u>	<u>William M. Scott</u>	<u>John Cowley</u>
<u>Ed B. ...</u>	<u>Fred A. ...</u>	<u>...</u>
<u>Kevin Nudd</u>	<u>Ken ...</u>	<u>...</u>
<u>Joe ...</u>	<u>...</u>	<u>...</u>
<u>...</u>	<u>W. ...</u>	<u>...</u>
<u>...</u>	<u>Michael B. Wells</u>	<u>...</u>
<u>...</u>	<u>D. ...</u>	<u>...</u>

cc: Chief Nordfelt

~~John J. ...~~
John Van Koozeckland
Kent R. Stewart
Doris A. Stealy
LaMar & Co

WEST VALLEY CITY CIVIL SERVICE COMMISSION
2470 South Redwood Road
West Valley City, Utah

GUY W. KIMBALL, Chairman

October 4, 1989

The Civil Service Commission has reviewed the petition received from several police officers, and the response to the petition submitted from the Police Administration. While we recognize there were some areas of concern for the candidates participating in the sergeant test and assessment center, it appears that the administration of the testing process was proper and valid.

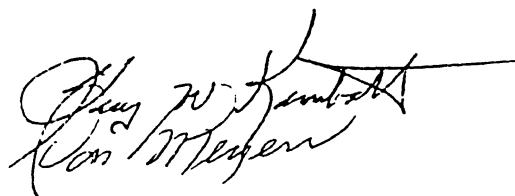
In response to the first concern regarding issuance of study material, since all applicants were able to purchase both books if they desired, it does not appear that one officer had a significant advantage over others. The Commission feels, however, that Police Administration should not use possible candidates to handle test materials prior to a test.

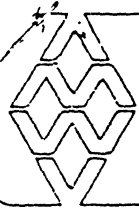
The second concern pertaining to promotability rating was evaluated by the Personnel Department. The issue of using supervisors from Salt Lake Metro to evaluate Charles Illsley appears to be relevant based on the amount of time he spends under their supervision opposed to West Valley City supervisors. The issue of Valleen Illsley being allowed to rate other candidates was evaluated by the Personnel Department. It appears there were no improprieties on ratings by Valleen Illsley.

The concern that seniority was not considered is incorrect. In order to apply for the sergeant exam candidates were required to have at least four years of police service. This meets the state statute (10-3-1010 UCA).

While the Commission regrets the contention this particular exam has created and would admonish Administration to use better judgement in the future, it appears that most of the concerns were addressed and answered sufficiently by Administration. There is concern over the fact that officers who had no involvement in the testing process signed the petition. The Commission feels that the protest of a test should be supported by those involved in the testing process, and not by individuals who have no direct knowledge of the facts.

This response should be posted and made available to the entire Police Department staff.

A handwritten signature in black ink, appearing to read "Guy W. Kimball", with a stylized flourish underneath.



West Valley City



POLICE DEPARTMENT

June 6, 1989

MEMORANDUM

TO: Civil Service Commission
FROM: Dennis J. Nordfelt, Police Chief
RE: Waiver for Sergeant's Test

The Police Department is considering offering a Sergeant's test to establish a promotional roster for that rank. As a result of this, we request that the restriction in the Civil Service requirements stating that officers applying for the position of Sergeant be of a POII rank, be waived.

The reason for this request is that a number of officers currently within the department who have time in grade to be a POII rank were not offered the opportunity to take this promotion due to financial restrictions. The Department believes that there are a number of people in this position that are qualified and capable to gain the rank of Sergeant. Therefore, since the reasons for these officers not reaching the rank of POII qualifying them for the Sergeant test is due to the Department's inability to offer such a position to them, we respectfully request that the Civil Service Board waive this restriction for the testing.

*Approved 6/6/89
Dennis J. Nordfelt*

**PLAINTIFF'S
EXHIBIT**

- 2470 South Redwood Road West Valley City, Utah 84119 Phone (801) 974-5468

00110

FILED
DISTRICT COURT

SEP 10 4 38 PM '91

BY CLERK

Jerrald D. Conder (#0709)
K. C. Bennett (#3700)
of CONDER & WANGSGARD
4059 South 4000 West
West Valley City, UT 84120
Telephone: (801) 967-5500

Attorneys for Plaintiffs and William Salmon and David Shopay

IN THE THIRD JUDICIAL DISTRICT COURT

SALT LAKE COUNTY, STATE OF UTAH

WEST VALLEY CITY FRATERNAL)	
ORDER OF POLICE LODGE #4, a)	
non-profit Utah corporation,)	
and JIM CROWLEY,	)	SECOND AFFIDAVIT OF
	)	DAVID N. SHOPAY
Plaintiffs,)	
)	
-vs-)	
	)	Civil No. 89-0907667 CV
DENNIS NORDFELT, West Valley)	
Chief of Police, and WEST)	
VALLEY CIVIL SERVICE	)	Judge Leslie A. Lewis
COMMISSION,)	
)	
Defendants.)	

COUNTY OF SALT LAKE :
:
STATE OF UTAH :

Plaintiff, David N. Shopay under oath deposes and says:

1. My name is David N. Shopay.
2. I have filed a Motion for Joinder requesting permission to join the action as a party plaintiff.

00330

3. All statements contained herein are based on my own personal knowledge.

4. I have been employed since November 10, 1980, as a West Valley City Police Officer and hold the rank of POII.

5. As a West Valley Police Officer, I am subject to the protections and rules and regulations of the West Valley Civil Service Merit Commission.

6. On the date the written Sergeants examination was given, I had 8 years of seniority, held the rank of POII and met all of the other announced eligibility requirements for promotion to sergeant.

7. I passed all aspects of the evaluation process and was placed on the promotion roster. I had more department seniority than anyone above me on the promotion roster.

8. I received no points or other consideration based on my seniority as compared to the seniority of other qualified candidates.

9. Of the individuals on the promotion roster ahead of me, three of those individuals held only the rank of POI prior to time of the evaluation process.

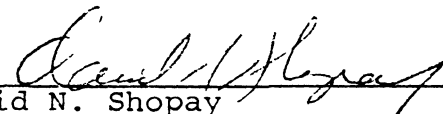
10. Had the Civil Service Merit Commission not violated the Open and Public Meetings Act, I would have been number 4 on the

promotion roster, even though seniority was not considered in the evaluation process.

11. I was not offered the protection I believe the merit system and the Civil Service Merit Commission is designed to provide me in the promotion process, even though I signed a letter to the commission objecting to the improper manner in which the evaluation process was conducted.

12. The rules and regulations of the West Valley Civil Service Merit Commission do not and did not provide me with any procedural rights to seek a meaningful hearing before the Commission, nor was such a hearing ever provided.

DATED this 10th day of September, 1991.

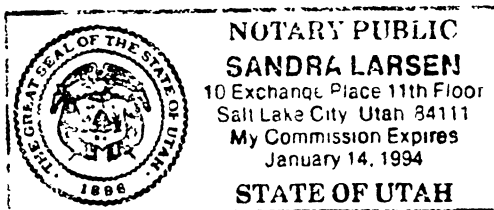


David N. Shopay

SUBSCRIBED AND SWORN to before me this 10th day of September, 1991.



NOTARY PUBLIC



FILED
DISTRICT COURT

SEP 10 4 38 PM '91

BY CLERK

Jerrald D. Conder (#0709)
K. C. Bennett (#3700)
of CONDER & WANGSGARD
4059 South 4000 West
West Valley City, UT 84120
Telephone: (801) 967-5500

Attorneys for Plaintiffs and William Salmon and David Shopay

IN THE THIRD JUDICIAL DISTRICT COURT

SALT LAKE COUNTY, STATE OF UTAH

WEST VALLEY CITY FRATERNAL
ORDER OF POLICE LODGE #4, a
non-profit Utah corporation,
and JIM CROWLEY,

Plaintiffs,

-vs-

DENNIS NORDFELT, West Valley
Chief of Police, and WEST
VALLEY CIVIL SERVICE
COMMISSION,

Defendants.

SECOND AFFIDAVIT OF
WILLIAM SALMON

Civil No. 89-0907667 CV

Judge Leslie A. Lewis

COUNTY OF SALT LAKE :
:
STATE OF UTAH :

Plaintiff, William Salmon under oath deposes and says:

1. My name is William Salmon.
2. I have filed a Motion for Joinder requesting permission to join the action as a party plaintiff.

00333

3. All statements contained herein are based on my own personal knowledge.

4. I have been employed since December 6, 1982, as a West Valley City Police Officer and hold the rank of POII.

5. As a West Valley Police Officer, I am subject to the protections and rules and regulations of the West Valley Civil Service Merit Commission.

6. On the date the written Sergeants examination was given, I had 6½ years of seniority, held the rank of POII and met all of the other announced eligibility requirements for promotion to sergeant.

7. I passed all aspects of the evaluation process and was placed on the promotion roster. I had more department seniority than 7 individuals above me on the promotion roster.

8. I received no points or other consideration based on my seniority as compared to the seniority of other qualified candidates.

9. Of the individuals on the promotion roster ahead of me, three of those individuals held only the rank of POI prior to time of the evaluation process.


10. Had the Civil Service Merit Commission not violated the Open and Public Meetings Act, I would have been number 9 on the

promotion roster, even though seniority was not considered in the evaluation process.

11. I was not offered the protection I believe the merit system and the Civil Service Merit Commission is designed to provide me in the promotion process, even though I signed a letter to the commission objecting to the improper manner in which the evaluation process was conducted.

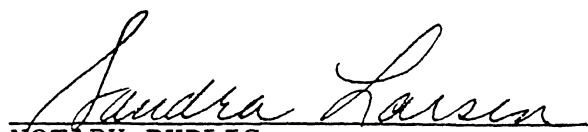
12. The rules and regulations of the West Valley Civil Service Merit Commission do not and did not provide me with any procedural rights to seek a meaningful hearing before the Commission, nor was such a hearing ever provided.

DATED this 10 day of September, 1991.

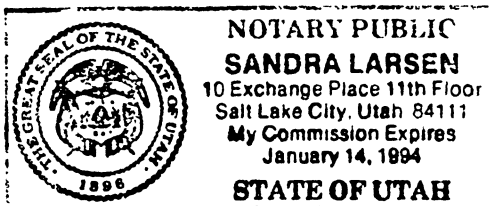


William Salmon

SUBSCRIBED AND SWORN to before me this 10th day of September, 1991.



NOTARY PUBLIC



FILED
DISTRICT COURT

SEP 19 4 38 PM '91

31 - - [Signature] - CLERK

Jerrald D. Conder (#0709)
K. C. Bennett (#3700)
of CONDER & WANGSGARD
4059 South 4000 West
West Valley City, Utah 84120
Telephone: (801) 967-5500
Fax (801) 967-5563

Attorney for Plaintiffs

IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

WEST VALLEY CITY FRATERNAL)	
ORDER OF POLICE LODGE #4, a)	
non-profit Utah corporation,	)	SECOND AFFIDAVIT OF
and JIM CROWLEY,	)	JIM CROWLEY
)	
Plaintiffs,)	
)	
-vs-)	
)	
DENNIS NORDFELT, West Valley)	
Chief of Police, and WEST	)	Civil No. 89-0907667 CV
VALLEY CIVIL SERVICE	)	Judge Leslie A. Lewis
COMMISSION,)	
)	
Defendants.)	

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

COMES NOW Jim Crowley who, after being sworn upon his oath,
deposes and says:

1. My name is Jim Crowley.
2. I am a plaintiff in the above-referenced action and a
citizen of Salt Lake County, State of Utah.

3. All statements made herein are based on my own personal knowledge.

4. I am employed as a police officer in West Valley City and have been so employed since July of 1980.

5. I attained the rank of POII in approximately 1981 and since that time have held that rank.

6. Presently I am a member of F.O.P. Lodge #4 and hold the positions of national trustee and lodge president.

7. F.O.P. Lodge #4 is comprised of two classes of membership, (a) certified peace officers, and (b) support staff employed by the West Valley City Police Department.

8. Only certified peace officers with a rank of POII were entitled to promotion to the rank of sergeant.

9. Of the 99 certified officers presently employed by the West Valley Police Department 89 are members of F.O.P.

10. Approximately 40 individuals participated in the sergeant promotion process and all were members of F.O.P. Lodge #4.

11. All members of F.O.P. Lodge #4, as well as all other certified police officers employed by the West Valley Police Department, are subject to the protection and requirements as well as the specific rules and regulations of the merit system and the West Valley Civil Service Merit Commission.

12. A major purpose of F.O.P. Lodge #4 is to ensure fair and equal treatment of all Lodge members in their employment, including the promotion process, for the benefit of all Lodge members.

13. I personally participated in the sergeants examination.

14. I failed to pass the written examination by 1 point and was not allowed to proceed to the next level of consideration. I did not receive any points or consideration because of my seniority.

15. Had the Commission considered seniority as required by state law, I believe I would have been allowed to continue in the promotion process

16. At the time of the examination I had 9 years seniority.

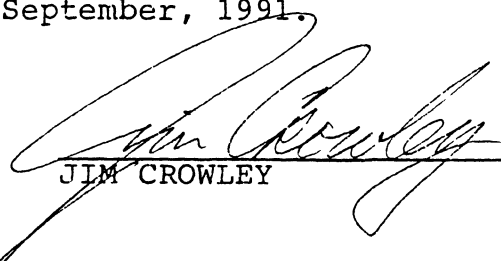
17. I further believe the entire testing and promotion process was invalid because of the illegal waiver of the POII requirement by the Commission in violation of the Open and Public Meetings Act and, further, that the Commission improperly failed to consider seniority in the promotion process.

18. Had I been aware of the department's request to waive the POII requirement, I would have attended the meeting as a representative of F.O.P., and individually, to object. Because no meeting was held, my right, as well as F.O.P.'s right, to object or be heard was violated.

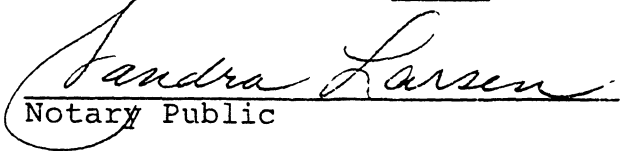
19. I signed a letter to the Commission objecting to the procedure followed in the sergeant's promotion evaluation process.

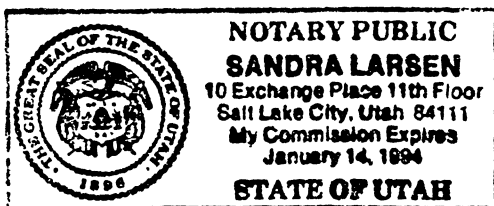
20. There is no process or procedure set forth in the rules and regulations of the Commission authorizing me or anyone else to appeal or seek a hearing before the Commission to object to the illegalities that occurred in the evaluation process.

DATED this 10th day of September, 1991.


JIM CROWLEY

SUBSCRIBED AND SWORN to before me this 10th day of September, 1991.


Notary Public



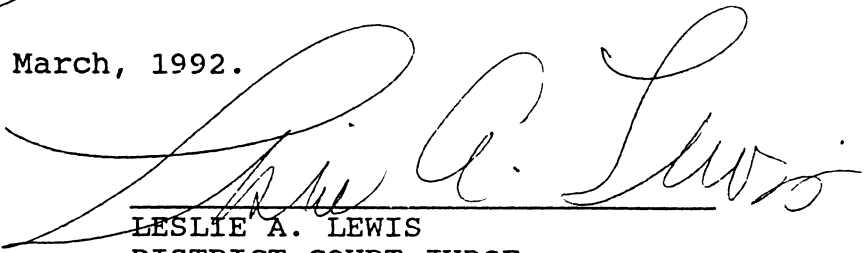
IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

WEST VALLEY FRATERNAL ORDER	:	COURT'S RULING
OF POLICE LODGE #4, a	:	
nonprofit Utah corporation,	:	CIVIL NO. 890907667
and JIM CROWLEY,	:	
	:	
Plaintiffs,	:	
	:	
vs.	:	
	:	
DENNIS NORDFELT, West Valley	:	
City Chief of Police, and	:	
WEST VALLEY CIVIL SERVICE	:	
COMMISSION,	:	
	:	
Defendants.	:	

A Notice to Submit, having been filed, pursuant to Rule 4-501, Code of Judicial Administration, in connection with defendants' Motion to Dismiss, defendants' Motion to Strike Plaintiffs' Supplemental Memorandum in Opposition to defendants' Motion to Dismiss, and plaintiffs' Motion for Joinder. The Court having reviewed the Motion, Affidavits in support and Reply Memorandum and the Memorandum in opposition, and the relevant law and being fully advised, finds good cause to rule as stated herein.

Defendants' Motion to Strike plaintiffs' Supplemental Memorandum in Opposition to defendants' Motion to Dismiss is denied. Defendants' Motion to Dismiss is granted. The Complaint in this matter is dismissed without prejudice. Plaintiffs' Motion for Joinder is Denied. Because the matter is dismissed for plaintiffs' lack of standing, and this is not an adjudication on the merits of this claim; the claim is dismissed without prejudice. On March 23, 1992, the Court signed defendants' proposed Findings of Fact, Conclusions of Law, Decision and Order (second draft). Pursuant to plaintiffs' Objection, the Court changed the Order on page 7 to read: "The Complaint in this matter is dismissed without prejudice."

Dated this 26th day of March, 1992.


LESLIE A. LEWIS
DISTRICT COURT JUDGE

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy
of the foregoing Court's Ruling, to the following,
this 27 day of March, 1992:

Jerrald D. Conder
K. C. Bennett
Attorneys for Plaintiffs
4059 South 4000 West
West Valley City, Utah 84120-4099

J. Richard Catten
Assistant City Attorney
Attorney for Defendants
3600 Constitution Boulevard
West Valley City, Utah 84119

Earline Matheson

EM
MAR 26 1992

E. Matheson

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH

WEST VALLEY FRATERNAL ORDER	:	
OF POLICE LODGE #4,	:	
a nonprofit Utah corporation,	:	FINDINGS OF FACT,
AND JIM CROWLEY,	:	CONCLUSIONS OF LAW,
	:	DECISION AND ORDER
Plaintiffs,	:	
	:	
vs.	:	
	:	
DENNIS NORDFELT, West Valley	:	
City Chief of Police, AND WEST	:	Civil No. 89-0907667
VALLEY CIVIL SERVICE	:	
COMMISSION,	:	Judge Leslie A. Lewis
	:	
Defendants.	:	

The Court, upon review of the pleadings, memoranda, affidavits, authorities and arguments of the parties, and being fully advised in the premises, hereby makes and enters the following Findings of Fact, Conclusions of Law, Decision and Order with respect to Defendants' Motion to Dismiss, Defendants' Motion to Strike Plaintiffs' Supplemental Memorandum in Opposition to Defendants' Motion to Dismiss, and the Motion for Joinder.

FINDINGS OF FACT

1. On or about July 20, 1989, West Valley City conducted a promotional examination for the position of Sergeant in the West Valley City Police Department.

2. One year of service with the West Valley City Police Department was required in order to be eligible for promotion to Sergeant.

3. The requirements for promotion to Sergeant required that applicants hold the rank of Police Officer within the West Valley City Police Department.

4. Within the rank of Police Officer, all grades (POI, POII and POIII) were eligible for promotion to Sergeant with no preference being given to the members of any one grade.

5. On or about March 28, 1991, FOP members William Salmon and David Shopay filed a Motion for Joinder as additional Plaintiffs in this action.

6. Plaintiff Jim Crowley participated in the written examination portion of the Sergeant promotional process.

7. Plaintiff Jim Crowley did not receive the minimum required passing score on the written examination and, therefore, did not proceed further in the promotional process.

8. Plaintiff Jim Crowley did not suffer a distinct, particularized and palpable injury related to the conduct of Defendants.

9. The Fraternal Order of Police Lodge #4 (FOP) is an association consisting of a majority of the officers of the West

Valley City Police Department, including both officers who participated in the Sergeant promotional process and officers who did not.

10. Members of the FOP did not suffer distinct, particularized and palpable injury related to the conduct of Defendants.

11. Plaintiff FOP did not present its claims to the Civil Service Commission prior to commencement of this lawsuit.

12. Members of the FOP were involved in formulating and conducting the Sergeant promotional process.

13. Members of the FOP would lose their promotion to Sergeant should Plaintiff FOP's action be successful.

14. Members of the FOP were deposed as adverse witnesses by Plaintiffs.

15. Defendant Dennis Nordfelt was a member of the FOP at the time the action was filed and until October, 1991.

16. On or about August 23, 1991, this matter was orally argued before the Court. Subsequent to that argument, Plaintiffs submitted a Supplemental Memorandum in Opposition to Defendants' Motion to Dismiss. Defendants thereupon filed a Motion to Strike Plaintiffs' Supplemental Memorandum.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Court hereby enters the following Conclusions of Law:

1. Plaintiffs appearing before the Court must have standing in order to bring a lawsuit.

2. The burden of establishing standing is upon the plaintiffs.

3. To establish standing, individual plaintiffs must show that they have personally suffered some distinct, particularized and palpable injury that is related to the defendant's conduct.

4. To establish standing, plaintiff associations must show that individual members of the association have suffered distinct, particularized and palpable injuries related to the defendant's conduct, thereby showing that individual members of the association have standing.

5. To establish standing, plaintiff associations must show that the action does not require individual participation of the members of the association. This standard is not met if conflicts of interest exist within and between the association and its members.

6. To establish standing, plaintiffs who challenge or seek review of the actions or orders of a lower commission must show that:

- a) the plaintiff had standing before the appropriate lower body;
- b) the plaintiff presented the claim to the lower body;
- c) a ruling by the lower body was adverse to the plaintiff.

7. Plaintiff Crowley has failed, both on the face of the complaint and on the facts of the case, to meet his burden to

establish that he suffered a distinct, particularized and palpable injury related to the conduct of Defendants, and therefore does not have standing in this case.

8. Plaintiff FOP has failed, both on the face of the complaint and on the facts of the case, to meet its burden to establish that individual members of the FOP suffered distinct, particularized and palpable injuries related to the conduct of Defendants, and therefore does not have standing in this case.

9. Plaintiff FOP has failed, both on the face of the complaint and on the facts of the case, to meet its burden to establish that the FOP presented its claims to the Civil Service Commission, and therefore does not have standing in this case.

10. Plaintiff FOP has conflicts within and between the association and its members that preclude the association from representing its members and requires the individual participation of the members of the association, and therefore does not have standing in this case.

11. Standing is an issue of subject matter jurisdiction.

12. The Court's determination that Plaintiff FOP and Plaintiff Crowley do not have standing and the subsequent dismissal of their complaint renders William Salmon and David Shopay's Motion for Joinder moot.

13. It is within the discretion of the Court to accept supplemental memoranda and affidavits provided by the parties.

DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, it is the decision of the Court that Plaintiff FOP and Plaintiff Jim Crowley have not established standing necessary to bring this lawsuit. Based upon the facts set forth in the complaint, and upon a close examination of the facts of the case, the Court finds that Plaintiff Jim Crowley has not personally suffered a distinct, particularized and palpable injury related to Defendants' conduct which would provide him with standing in this case. The Court further finds that Plaintiff FOP has not established that individual members of the FOP have suffered distinct, particularized and palpable injuries related to Defendants' conduct. The Court further finds that clear conflicts of interest exist within and between the FOP association and its members, which prevent it from meeting the established criteria for standing of an association. In addition, the Court finds that the FOP has failed to present its claims to the appropriate lower body, the Civil Service Commission.

It is the decision of the Court to accept Plaintiffs' Supplemental Memorandum in Opposition to Defendants' Motion to Dismiss.

It is the Decision of the Court to deny the Motion for Joinder since the Court has determined that Plaintiffs lack standing and the Court, therefore, lacks jurisdiction over the action.

ORDER


Based on the foregoing Findings of Fact, Conclusions of Law and Decision:

NOW THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that Defendants' Motion to Strike Plaintiffs' Supplemental Memorandum in Opposition to Defendants' Motion to Dismiss is denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants' Motion to Dismiss is granted, and that the complaint in this matter is dismissed without prejudice.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Motion for Joinder is denied.

MADE and ENTERED this 26th day of March, 1991.



Judge Leslie A. Lewis