(E.D.Pa. 1973). We have noted that the president and secretaries of both corporations are the same persons. Any such factor which tends to show too close or too direct a relationship between two corporations increases the likelihood of piercing the corporate veil. *Commonwealth v. Pro-Pak Inc.,* 65 D&C2d 494, 496 (Dauphin 1974).

Where there are two corporate entities which are merely instrumentalities of each other or closely entwined, the courts in piercing the corporate veil will hold each legally accountable for the acts and responsibilities of the other. P.L.E. Corporations §4, pp. 103-4; C.J.S. Corporations §7(e), pp. 383-385; *Publicker Industries v. Roman Ceramics,* 603 F.2d 1065, 1069 (3d Cir. 1979).

ORDER OF COURT

July 20, 1984, in the Preliminary Objections filed in the above matter, IT IS ORDERED,

(1) that the demurrer of Evelyn Yohe is sustained and the suit against her is dismissed.;

(2) that the demurrer of University Hill Improvement Company, Inc. is overruled;

(3) that the demurrer of University Hill, Inc. is overruled;

(4) that the amended complaint is not specific enough in alleging facts relating to the deterioration of the water line;

(5) that the amended complaint is not specific enough in alleging the cost of replacing the water line;

(6) that the portions of the complaint alleged to be impertinent will not be stricken.

IT IS FURTHER ORDERED that the plaintiff is given twenty (20) days from this date to file an amended complaint as to University Hill Improvement Company, Inc. and University Hill, Inc.

TURNER V. LETTERKENNY FEDERAL CREDIT UNION, C.P. Franklin County Branch, No. 1982 - 66

Employment - Wrongful Discharge - At Will Employee

1. The doctrine of an employee at will allowed an employer to terminate employment for any reason or no reason absent a statutory or contractual provision to the contrary.

2. An exception to the general rule exists if the termination is intended to harm the employee or there is no plausible reason for discharge, and a clear mandate of public policy was violated.

3. Public policy concerning employee termination can be determined by balancing the employee's interest in making a living, the interest of the public in proscribing abusive discharges and the employers' interest in running the business efficiently and profitably.

Frederic G. Antoun, Esq., Counsel for Plaintiff

George F. Douglas, Jr., Esq., Counsel for Defendant

OPINION AND ORDER

KELLER, J., August 14, 1984:

The complaint in trespass and assumpsit was filed on March 4, 1982. The causes of action alleged by the plaintiff in his five count complaint:

> Count I - In Assumpsit - Predicated on the theory that an oral year-to-year employment contract existed between plaintiff and defendant-Credit Union.
>
> Count II - In Assumpsit - Predicated on the theory that the conditions of plaintiff's employment required he be given notice of grounds for termination and an opportunity to respond.
>
> Count III - In Trespass - On the theory of wrongful discharge by reason of the intentionally damaging and defammatory method selected by the defendant for terminating plaintiff.
>
> Count IV - In Trespass and Assumpsit - On the theory that defendants violated the public policy against dis-

charging an employee in an abusive manner so as to harm or damage his professional reputation.

Count V - In Trespass - On the grounds that the defendants intentionally sought to discredit the plaintiff in the eyes of prospective employers.

On February 28, 1983, counsel for the defendants filed and presented their motion for summary judgment. The defendants' answer and new matter and the plaintiff's reply to new matter were filed on May 11, 1982, and June 2, 1982, respectively. Many affidavits and depositions in support of and in opposition to the motion for summary judgment were filed by the parties, and argument on the motion was heard on June 27, 1983. This Court's Opinion and Order of October 14, 1983, sustained the motions for summary judgments as to Counts I, II, III and V, but denied the motion as to Count IV on the grounds that an issue of fact as to whether the defendants' manner of discharging the plaintiff was abusive and thus violative of public policy had been raised and must be resolved by a finder of fact.

A third Pre-Trial Conference in the case was held on December 19, 1983, and inter alia it was agreed that:

1. The case would be tried by jury.

2. The jury would be selected at 9:30 a.m. on January 10, 1984.

3. The trial would commence at 9:00 a.m. on February 7, 1984, and was estimated to take four days.

4. The trial would be bifurcated.

5. The plaintiff would contend he was entitled to go to the jury on the issue of liability, if he proved that he was discharged; that the discharge was executed in an abusive, i.e., extremely offensive manner, and that there was no plausible reason for the discharge and/or abusive manner. To the contrary, the defendant would contend that the plaintiff must show a clear mandate of public policy was violated, i.e., there must be a discharge for an illegal reason to establish the cause of action of wrongful discharge.

The jury was selected and the trial commenced as scheduled in the Pre-Trial Conference Order. On February 9, 1984, the jury returned a verdict on the liability issue in favor of the plaintiff. Evidence was received on the issue of damages and on February 10, 1984, the jury returned a verdict for the plaintiff for compensatory damages in the amount of $50,000 and punitive damages in the amount of $30,000.

Parenthetically, it should be noted that notwithstanding the fact that plaintiff named the Board of Directors of Letterkenny Federal Credit Union as a group, and also identified them individually, it was stipulated and agreed by counsel for the parties that plaintiff's claim and suit was solely against Letterkenny Federal Credit Union. The jury was informed of this fact and the verdicts are deemed to be only against the Credit Union.

Timely motions for judgment n.o.v. and for a new trial were filed on February 17, 1984. In each of the motions, the defendants asserted that the Court erred in charging on punitive damages to which specific objections had been made. Counsel for the parties exchanged briefs and arguments were heard on May 3, 1984. Counsel for the defendant neither briefed nor argued the issue of punitive damages and we, therefore, consider it to be abandoned. From a careful review of the defendant's excellent and comprehensive 15-page brief, we conclude that the sole issue raised by the defendant's post-trial motions is whether there is a non-statutory cause of action for an employer's termination of an at-will employment relationship if there has been no violation of a clear mandate of public policy by the termination.

Professor Clyde W. Summers of the University of Pennsylvania Law School in *The Contract of Employment and the Rights of Individual Employees: Fair Representation and Employment at Will,* Fordham Law Review (1984) noted that under the English common law and as adopted by the American Courts, contracts of employment were presumed to be for the term of a year or some lesser definite period. In 1877, H.G. Wood in *Master and Servant* announced without benefit of supporting authority the doctrine of employment at-will, and in a relatively few years this doctrine which had no foundation in legal precedent became the dominant authority. Professor Summers observed:

> "The important point here is that judicial acceptance of the employment at will doctrine effectively eliminated for most workers all rights as to the future from the contract of employment, and thereby drained it of all substantial content. Prior to adoption of Wood's rule, almost all employment was for a term-presumptively for a year or for the period of wage payment. Both the employer and employee were bound; each had continuing contractual rights and duties of legal and practical substance. Employment at will was legally possible, but only where the parties explicitly so agreed, and this was the exception. The customary employment relationship was based on a contract of employment which established terms governing the continuing relationship between the employer and the employee.
>
> "When employment is at will, contractual rights and duties largely disappear or become empty shells, for rights and duties arising out of a continuing relationship can have little substance when either party can terminate the relationship at any moment for any or no reason. The only legal obligation of the employer is to pay for work performed in the past. Even this has limited substance, for any attempt by the worker to insist on this right will guarantee that he will have no work in the future. The treatise writers, though theoretically incorrect, were substantially right when they stated, 'There is in truth no contract of hiring at all.' The presumption, as expressed by Wood and endorsed later by the courts, that employment was at will had the effect of stripping most workers of legal protection of a contract of employment. They ceased to have legal rights in employment: their only right was to be paid for work performed at the rate unilaterally established by the employer, and this was always subject to change as to any future work."

In *Geary v. United States Steel Corp.,* 456 Pa.171, 319 A. 2d 174 (1974), the Supreme Court of Pennsylvania stated:

> "...No court in this Commonwealth has ever recognized a non-statutory cause of action for an employer's termination of an at-will employment relationship." (At p. 174)
>
> "The Pennsylvania law is in accordance with the weight of authority elsewhere. Absent a statutory or contractual provision to the contrary, the law has taken for granted the

power of either party to terminate an employment relationship for any or no reason." (At p. 175)

Thus, it would seem the denial of the existence of such a cause of action was indeed written in granite. However, that same court in the same case concluded its opinion stating:

> "It may be granted that there are areas of an employee's life in which his employer has no legitimate interest. An intrusion into one of these areas by virtue of the employer's power of discharge might plausibly give rise to a cause of action, particularly where some recognized facet of public policy is threatened. The notion that substantive due process elevates an employer's privilege of hiring and discharging his employees to an absolute constitutional right has long since been discredited. But this case does not require us to define in comprehensive fashion the perimeters of this privilege, and we decline to do so. *We hold only that where the complaint itself discloses a plausible and legitimate reason for terminating an at-will employment relationship and no clear mandate of public policy is violated thereby, an employee at will has no right of action against his employer for wrongful discharge."* (Italics ours.) (At pp. 184, 185)

We note in Justice Roberts' dissenting opinion:

> "The majority admits, as it must, that precedents barring a cause of action for wrongful discharge are 'scant' and that 'economic conditions have changed radically' since the date of the only Pennsylvania case on point. *Henry v. Pittsburgh & L.E.R.R.,* 139 Pa. 289, 21 A. 157 (1891). Unlike the majority, I believe the time has surely come to afford unorganized employees an opportunity to prove in court a claim for arbitrary and retaliatory discharge." (At pp. 187, 188)

In *Yaindl v. Ingersoll-Rand Co. Standard Pump-Aldrich Division,* 281 Pa. Super. 560, 422 A. 2d 611 (1980), the Superior Court of Pennsylvania was called upon to consider what remedies were available to an employee-at-will who has been discharged by his employer in an appeal from an order granting summary judgment. Judge Spaeth, now President Judge, speaking for a unanimous panel stated:

"It has for many years been said that as a general principle, an employer 'may discharge an employee with or without cause, at pleasure, unless restrained by some contract.' *Henry v. Pittsburgh & Lake Erie Railroad Co.,* 139 Pa. 289, 297, 21 A. 157 (1891). While this right has been significantly circumscribed by Congress and the General Assembly (for example, in legislation proscribing racial and sexual discrimination in employment), it is still true that '[i]n general, there is no non-statutory cause of action for an employer's termination of an at-will employment relationship.' *Reuther v. Fowler & Williams, Inc.,* 255 Pa. Super. 28, 31, 386 A. 2d 119, 120 (1978). Recently, however, Pennsylvania has joined the growing number of states recognizing that when the discharge of an employee-at-will threatens public policy, the employee may have a cause of action against the employer for wrongful discharge. *Geary v. United States Steel Corp.,* 456 Pa. 171, 319 A. 2d 174 (1974); *Hunter v. Port Authority of Allegheny County,* 277 Pa. Super. 4, 419 A. 2d 631 (1980); *Reuther v. Fowler & Williams, Inc.,* supra. *The basis of this limited, nonstatutory cause of action is an appreciation of the fact that the employer's interest in running his business efficiently, profitably, and as he sees fit is not absolute; important as it is, it exists in the context of, and must sometimes yield to, other interests, including the interest of the employee in making a living and the interest of the public in seeing to it that the employer does not act abusively and a proper balance between the employer's and the employee's interests is preserved. Geary v. United States Steel Corp.,* supra; *Monge v. Beebe Rubber Co.,* supra; *Percival v. General Motors Corp.,* 400 F. Supp. 1322 (E.D. Mo. 1975), aff'd 539 F. 2d 1126 (8th Cir. 1976); *Blades, Employment at Will v. Individual Freedom: On Limiting the Abusive Exercise of Employer Power,* 67 Colum. L. Rev. 1404 (1967); Comment, 14 Rutgers L. Rev. 624 (1960).

. . .

"The precise extent to which the employer's interest in running his business is limited by considerations of public policy cannot be stated but must be worked out on a case-by-case basis. Thus in *Geary* the Supreme Court expressly declined 'to define in comprehensive fashion the perimeters' 'of the employer's interest,' 465 Pa. at 184, 319 A. 2d at 180, instead only deciding that in the case before it, no action for wrongful discharge would lie because the complaint itself, in the majority's view, disclosed that the employer had a plausible and legitimate reason for discharging the employee-at-will, and the discharge violated

no clear mandate of public policy. *In the course of reaching this decision, however, the Court recognized that the legitimacy of the employer's reason for discharging an employee-at-will might depend upon the employer's motive and manner of effecting the discharge.* The Court particularly relied upon the decision of the United States Supreme Court in *American Bank & Trust Co. v. Federal Reserve Bank,* 256 U.S. 350, 41 S. Ct. 499, 65 L. Ed. 983 (1921), which it stated as follows:" (At pp. 570, 571, 572, 573) (Italics ours)

We have reviewed with great care the excellent briefs submitted by counsel and find therein cited two Pennsylvania Supreme Court cases, six Pennsylvania Superior Court cases, three cases from courts of common pleas, and fourteen federal cases from Pennsylvania District Courts and the Third Circuit Court of Appeals. We do not find *Cummings v. Kellogg Nut Company,* 368 Pa. 448 (1951), *Richardson v. Charles Cole Memorial Hospital,* Pa. Super. , 466 A. 2d 1089 (1983), *Beidler v. W.R. Grace, Inc.,* 461 F. Supp. 1013 (1978), *Fleming v. Mack Trucks, Inc.,* 508 F. Supp. 917 (1981); *Martin v. Wilkes Barre Publishing Co.,* 567 F. Supp. 304 (1983), *Ruch v. Strawbridge & Clothier, Inc.,* and 567 F. Supp. 1078 (1983) have any applicability to the case at bar. *Hunter v. Port Authority of Allegheny Co.,* 277 Pa. Super. 4, A. 2d (1980) is also inapplicable to the instant case because plaintiff's suit was predicated upon defendant's denial of public employment as a result of plaintiff's conviction of aggravated assault 13 years before, and despite a gubernatorial pardon. However, *Hunter* is instructive in that it appears to represent a determination by the Superior Court of Pennsylvania that it is contrary to public policy to deny public employment on the basis of a prior conviction for which a pardon had been granted unless the conviction is reasonably related to the person's fitness to perform the job sought or to some other legitimate government objective.

It has often been said that the glory and continuing viability of the common law lies in its ability to adjust to the circumstances and needs of the time. The development of the common law on the legal relationship of employer and employee is a classic example of the adaptability of the law to the requirements of society. As Professor Summers observes in *The Contract of Employment and the Rights of Individual Employees:* supra, Blackstone stated the rule: "If the hiring be general, without any particular time limit, the law continues to be a hiring for a year. . .", Blackstone,

Commentaries P. 425. However, shortly after the publication of *Master and Servant* by H.B. Wood in 1877, the majority of jurisdictions in the United States adopted the rule that an at-will employee's employment may be terminated at any time for any or no reason.

This judicial reversal of course has been justified on various socio-economic and political-philosophical bases. Dolores Jacobs Kramer in *The Employment-at-Will Rule: The Development of Exceptions and Pennsylvania's Response,* Vol. 21, No. 2 The Duquesne Law Review 477 (1983) noted:

> "The early courts adopting his (Wood's) rule offered little rationale to support it. As such, it has been inferred from the socio-economic times from which it sprang. Later three major theories developed to explain and support the rule: freedom of contract, freedom of enterprise and mutuality of obligation." (At p. 480).

Mark R. Kramer in *The Role of Federal Courts in Changing State Law: The Employment at Will Doctrine in Pennsylvania,* University of Pennsylvania Law Review (1984) observed:

> ". . . America seems to be alone among industrialized nations to have such a doctrine. Its acceptance is attributed to the Supreme Court's unwillingness to interfere with 'liberty of contract' or with the employer's fifth amendment property right in the employee's labor. There was perceived a mutuality between the employee's freedom to quit without notice and the employer's ability to discharge. The doctrine was, at times, justified by characterizing the employment relation as a unilateral offer by the employer, accepted continuously by the employee's labor, but capable of withdrawal at any time." (At p.).

Kramer reports in *The Role of Federal Courts in Changing State Law. . .*, supra, that *Geary,* supra, is not only the only recent indication of how the Pennsylvania Supreme Court views the employment at-will doctrine, but also that "it was among the first five cases in the country to admit even the possibility of an exception." (At p. and footnote 116).

Whatever else may be said about *Geary,* supra, it is the seminal case in Pennsylvania. All consideration of the existence of an

exception to the doctrine that in Pennsylvania an employer "may discharge an employee with or without cause, at pleasure, unless restrained by some contract. . ." *Henry v. Pittsburgh & Lake Erie Railroad Co.,* 139 Pa. 289, 297 (1891), must begin with *Geary.* To determine the present status of the employment at-will doctrine, and the identified exceptions to it, we will consider the applicable cases cited by counsel which we find represents the existing body of decisional law in Pennsylvania on the subject.

Geary v. U.S. Steel Corp., supra, came before the Supreme Court of Pennsylvania on an appeal from the sustaining of a demurrer. In a four-to-three decision the court's majority reaffirmed the "at-will doctrine" but recognized the radical change in economic conditions since 1891 and suggested via dicta that a cause of action might lie if the discharge was effected with the intent to harm the employee (at pages 178, 179) or if there was no plausible and legitimate reason for discharge and a clear mandate of public policy was violated by the discharge. (At pages 184, 185). The majority of the Court concluded the plaintiff's pleadings failed to place him within either category and declined to define the perimeters of the employer's privilege of hiring and discharging his employees.

Parenthetically, we note that the dicta of the majority above referred to suggest to us a willingness on the part of our highest court to move away from the absolute finality of the "at-will doctrine" in an appropriate case and by inference invites a case-by-case analysis by the lower and intermediate state and federal courts.

Keddie v. Pennsylvania State University, 412 F. Supp. 1264 (M.D. Pa. 1976). The plaintiff sought declaratory injunctive relief for denial of tenure and termination of employment on various grounds including wrongful discharge in an abusive manner. After hearing the court denied the relief requested and as to the wrongful discharge count concluded plaintiff was not terminated for the specific purpose of causing harm or to achieve a goal proscribed by public policy or for any other ulterior purpose.

O'Neill v. ARA Services, 457 F. Supp. 182 (E.D. Pa. 1978). On a motion to dismiss plaintiff's complaint which alleged breach of an employment contract of indefinite duration and wrongful discharge to conceal employer's wrongful acts, the court granted the

motion and held Pennsylvania does not recognize the tort of wrongful discharge where no specific intent to harm the employee or a discharge contrary to public policy is alleged.

LeKich v. I.B.M., 469 F. Supp. 485 (1979). On a motion for summary judgment, plaintiff's complaint inter alia alleging wrongful discharge was dismissed on the grounds that the plaintiff had knowingly breached company policy by making numerous long-distance telephone calls without paying for them. The district court held:

> "The only limitation on this right to dismiss at will is that the discharge not violate a 'clear mandate of public policy.' To police this limitation the court intimated that a 'plausible and legitimate reason for terminating an at-will employment relationship' should be required. We do not take this suggestion to be authority for substituting of our judgment for the merits of the dismissal for that of the employer. Rather, we read the 'plausible and legitimate' language of *Geary* as requiring a judgment that the termination was not illegitimate in the sense of being contrary to public policy. . . . A discharge may be for good reason or for no reason, but not for an illegitimate reason." (At p. 488).

Reuther v. Fowler & Williams, Inc., 255 Pa. Super. 28, 386 A. 2d 119 (1978). On appeal from the trial court's refusal to take off a compulsory nonsuit, the Superior Court vacated and remanded citing *Geary,* supra, and holding that ". . . the Commonwealth recognizes a cause of action for damages resulting when an employee is discharged for having performed his obligation of jury service."(At p. 33). The court concluded that it was a question for the jury whether the plaintiff was discharged for failing to seek excusal from jury duty or because he had been discourteous and inconsiderate in failing to notify his employer he would definitely be away from his post for a week, which would be a plausible and legitimate reason for discharge.

Perks v. Firestone Tire Co., 611 F. 2d 1363 (1979 3rd Cir.). The Third Circuit Court of Appeals reversed the lower court's granting of defendant's motion for summary judgment where the plaintiff alleged wrongful discharge for refusal to submit to a polygraph test, and the defendant alleged the discharge was the result of plaintiff violating company policy. The appellate court concluded

a Pennsylvania employer is barred by statute from requiring a polygraph test as a condition of employment and consequently it would be a violation of a recognized facet of public policy to permit a discharge for failure to submit to such a test. Therefore, an issue of fact existed barring the grant of a summary judgment.

Yaindl v. Ingersoll-Rand Co. Standard Pump-Aldrich Division, 281 Pa. Super. 560, 422 A. 2d 611 (1980). On appeal from the granting of summary judgment the Superior Court sustained the motion on the wrongful discharge count on the grounds that the evidence did not establish the violation of any clear public policy which was threatened by the discharge, and it did rid the defendant of a disruptive employee. The court discussed the analogy between the causes of action of wrongful discharge and intentional interference with the performance of a contract, and concluded the factors that must be weighed by the court in determining whether a discharge was wrongful are:

> (1) The nature of the actor's (employer's) conduct.
> (2) The actor's (employer's) motive.
> (3) The interest of the other (employee) with which the actor's (employer's) conduct interferes.
> (4) The interest sought to be advanced by the actor (employer).
> (5) The social interests in protecting the freedom of action of the actor (employer) and the contractual interests of the other (employee) (At p. 574).

The *Yaindl* court held that the right to earn a livelihood is a right guaranteed by Article I, Section 1 of the Pennsylvania Constitution which provides:

> "All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring and possessing and protecting property and reputation, and of pursuing their own happiness." (At page 583).

Rogers v. I.B.M., 500 F. Supp. 867 (Pa. M.D. 1980). The court sustained defendant's motion for summary judgment because plaintiff's wrongful discharge action simply asserted the employer acted intentionally, wrongfully and without justification and failed to establish any violation of public policy.

BAR NEWS ITEM

November 27, 1984

MEMORANDUM

FROM: George C. Eppinger, P.J.

TO: Attorneys practicing in Franklin County, Pennsylvania

RE: Appointment of attorneys in criminal and other cases

A plan has been recommended to the court by a committee of the bar to equalize the work of appointed lawyers in criminal cases and those accepting pro bono work in other cases. Under this plan, the Court Administrator will continue to keep the bar chart which records the time spent in this kind of work. However, the time spent on criminal work shall be recorded in one-half of the approved time while all the time expended in other cases shall be recorded.

The committee offered the plan because public defenders and district attorneys are not eligible for paid criminal appointments. It was felt that unless this one-half to one ratio was implemented, these lawyers would receive an inordinate amount of pro bono other work.

For the plan to be successful, every attorney should submit his or her time on a regular basis at least quarterly.

The chart will list the 25 most recent registered attorneys in Franklin County unless the Court determines otherwise. However, any attorney may volunteer to have his or her name placed on the chart for a fixed or indefinite period.

The attorney to receive the next "assignment" is the one whose recorded approved time is the least. A new attorney added to the chart shall be ranked with the person having the least recorded time.

A similar plan has been in operation since April, 1984, except that no distinction has been made between the time spent in criminal and in other matters.

The plan is supervised by the Court Administrator and other details are to be worked out by him.

Butler v. Negley House, Inc., 129 Pitts. L.J. 350 (1981). The defendant's demurrer to plaintiff's complaint alleging retalitory and wrongful discharge for making a claim under the Workmen's Compensation Act was overruled, for the Act represents a mandate of public policy to provide benefits to injured employees; and it would seriously undermine that policy if employers could discharge or threaten discharge to employees seeking workman's compensation.

Borenson v. Rohm & Hass, 526 F. Supp. 1230 (E.D. Pa. 1981). The court sustained defendant's motion for summary judgment in the wrongful discharge action because no violation of public policy was established and to the contrary it was determined plaintiff's position had been declared "surplus" and plaintiff was treated decently by the employer. Chief Judge Lord concluded *Yaindl*, supra, did not require a balancing test but rather considered the "various factors" assessed by Judge Spaeth as "merely further refinements on the original balance struck in *Geary* between the employer's right to run his own business and the employee's right to retain his employment." (At p. 1236). The court also held:

> "The court in *O'Neill* recognized an action for wrongful discharge under *Geary* in two situations: 1st in a case in which the employer's discharge is motivated by a specific intent to harm the employee, and 2nd, in a case in which the discharge violates a clear mandate of public policy. *O'Neill*, 457 F. Supp. at 186. Although *Geary* could be read in this manner, I prefer the interpretation adopted by a majority of the federal courts discussing this matter and by Judge Spaeth in *Yaindl* to the effect that the specific intent to harm exception is merely an example of when a discharge violates public policy. See *Yaindl*, 281 Pa. Super. at 573, 422 A. 2d at 618 n. 5." (*Borenson* 526 F. Supp. at 1232 FN 4).

Bruffet v. Warner Communications, Inc., 692 F. 2d 910 (3rd Cir. 1982). Plaintiff's complaint alleged wrongful discharge in that defendant did not offer permanent employment due to a controlled diabetic condition which constituted a violation of the clear public policy against discrimination on the basis of handicap and disability as set forth in the Pennsylvania Human Relations Act and the Federal Rehabilitation Act of 1973. The trial court granted defendant's motion to dismiss. On appeal the dismissal

was sustained on the grounds that the remedy sought by the plaintiff was provided under the carefully drafted procedures of the Pennsylvania Human Relations Act, and consequently no parallel common law remedy was needed or should be created.

Callahan v. Scott Paper Co., 541 F. Supp. 550 (E.D. 1982) defendant's motion to dismiss plaintiff's complaint charging wrongful discharge was granted where plaintiff asserted the discharge was in retaliation for his efforts to eliminate the employer's violation of anti-trust laws by exposure of and objection to unlawful price discounts and promotional allowances granted favored customers. The court by analogy to *Geary* concluded no clear mandate of public policy was violated and the matters objected to by plaintiff were generally entrusted to management and did not outweigh the employer's interest in preventing disruptions of its operations.

Cuccaro v. U.S. Steel Corp., 131 Pitts. L.J. 534 (1983). While off of the company premises, the plaintiff, a 14-year employee of defendant, was arrested and charged with possession of marijuana. Defendant decided to suspend plaintiff on the day of his arrest. When he reported to work the next day, he discovered the lock on his desk had been changed and all materials in his desk had been checked and removed. Two security men opened the desk and plaintiff was escorted out of the building in full view of his fellow employees. Plaintiff's supervisor told the assembled employees that plaintiff was terminated. The plaintiff sued alleging wrongful discharge because he had not had his hearing on the criminal charges at the time of termination, and the termination violated company rules and regulations. Motion for summary judgment was granted on the wrongful discharge count on the grounds that no issue of public policy was raised, and the facts alleged failed to support the count.

Molush v. Orkin Exterminating Co., 547 F. Supp. 54 (E.D. Pa. 1982). Motion to dismiss a complaint for wrongful discharge alleging plaintiff was compelled to take a polygraph test and then discharged due to the results of the test was denied. The court concluded a cause of action had been stated.

Harrison v. Fred S. James, P.A., Inc., 558 F. Supp. 438 (E.D. Pa. 1983). Summary judgment was granted as to plaintiff's count alleging wrongful discharge because the facts presented by plain-

IN THE COURT OF COMMON PLEAS OF THE 39TH JUDICIAL DISTRICT PENNSYLVANIA - FRANKLIN COUNTY BRANCH

In re: :
Registry of Attorneys :

ORDER OF COURT

December 5, 1984, the Supreme Court of Pennsylvania having decided in *Laffey v. Court of Common Pleas of Cumberland County,* 503 Pa. 103, 468 A.2d 1084 (1983), that County Courts of Common Pleas lack power to adopt rules governing admission to the bars of such courts,

IT IS ORDERED that Rules for Regulating the Practice in this Court Nos. 66 through 70 are repealed.

IT IS FURTHER ORDERED that the Prothonotary shall maintain a Registry of Attorneys who have indicated their desire to maintain an office for the practice of law in Franklin County. The purpose of maintaining this registry is to maintain a long-standing tradition which recorded and preserved a list of lawyers practicing in Franklin County and to have available to the court a list of attorneys willing to accept court appointments.

The registry shall be signed by the registrant, who shall also indicate the place of his or her residence and the date the registry is signed.

Permission to sign the registry shall be granted by the Court upon application by the proposed registrant, which may be presented to the court by the registrant or any other attorney who is registered. The registry may be signed in the Prothonotary's office or in open court.

The application to sign the registry shall contain the following information concerning the applicant: Name and home address, address of place where applicant intends to maintain an office for the practice of law within the county, a certificate that the applicant has been admitted to the Bar of the Supreme Court of Pennsylvania, that the applicant is willing to accept positions on court committees and other appointments, whether the applicant desires to appear in open court to sign the registry, and whether the applicant desires to take an additional oath of office as an attorney in a public ceremony.

Public ceremonies will be held as often as they are required and all of the attorneys who are registered are invited and encouraged to attend such ceremonies, which shall be similar to those held previously when an attorney was admitted to the bar of this court.

The registry now being maintained in the office of the Prothonotary of Franklin County shall be continued. However, the column headed "date of admission" shall after this date by deemed to be "date of registration."

By the Court,

George C. Eppinger, P.J.

tiff established that there was no substance to plaintiff's assertion that he was discharged as a result of a specific intent to harm. The court specifically held: "Allegations of specific intent to harm may support a claim for wrongful discharge." (At p. 445).

Gurndon v. Defense Activities Federal Credit Union, 33 Cumb. Co. L.J. 529 (1983). At the request of a director of defendant, who was engaged in litigation against the defendant, the plaintiff, an at-will employee, reported "improprieties" she perceived were taking place in the office to him and subsequently when subpoenaed testified against defendant as to the alleged "improprieties". Approximately one month later she received her notice of termination which stated inter alia that her conduct had been detrimental to the best interests of the defendant and she had not respected the rules of confidentiality by divulging information to persons other than those to whom she was responsible. Plaintiff sued alleging wrongful discharge on the theories that defendant intended to harm her and violated the public policy encouraging witnesses to testify without fear of reprisal. At the close of plaintiff's evidence defendant's motion for a directed verdict was granted. On plaintiff's motions for judgment n.o.v. or a new trial, the court held that the plaintiff failed to establish any intent on the part of the defendant to harm plaintiff or that she was fired for testifying in court. To the contrary, the court concluded that the defendant had a legitimate interest in safeguarding the confidentiality of its operations and maintaining its internal administrative procedures, and it was ". . . clear that plaintiff was fired for totally disregarding the chain of command and for disloyalty to her employers." (At page 532).

Novosel v. Nationwide Ins. Co., 721 F. 2d 894 (3 Cir. 1983). On appeal from the granting of a motion to dismiss a complaint which alleged the plaintiff was discharged for his refusal to participate in defendant's lobbying efforts, and his privately stated opposition to the employer's political stand, the judgment and order of the lower court was vacated and the case remanded. The appellate court concluded the plaintiff had pleaded a cause of action for wrongful discharge and held:

> "This Court has recognized that the 'only Pennsylvania cases applying public policy exceptions have done so where no statutory remedies were available.' *Bruffett,* supra. 692 F. 2d at 919. Moreover, both *Reuther* and *Hunter*

allowed causes of action to be implied directly from the Pennsylvania Constitution. *Hunter* further noted that Pennsylvania courts allow direct causes of action under the Constitution regardless of legislative action or inaction. 277 Pa. Super. at 14 n. 6, 419 A. 2d at 636 n. 6, citing *Erdman v. Mitchell,* 207 Pa. 79, 56 A. 327 (1903). Given that there are no statutory remedies available in the present case and taking into consideration the importance of the political and associational freedoms of the federal and state Constitutions, the absence of a statutory declaration of public policy would appear to be no bar to the existence of a cause of action. Accordingly, a cognizable expression of public policy can be derived in this case from either the First Amendment of the United States Constitution or Article I, Section 7 of the Pennsylvania Constitution." (At pages 898, 899).

The Third Circuit Court also held: "In weighing these issues, a court should employ test factors set forth for wrongful discharge cases by the Pennsylvania Superior Court in *Yaindl*, supra. . . ." 281 Pa. Super. at 574, 422 A. 2d at 618, quoting Restatement (Second) of Torts §767 (1969) (At p. 901).

Joseph Cisco v. United Parcel Services, Inc., Pa. Super. , A. 2d (1984) (No. 1101 Phil. 1982). On appeal from the sustaining of a demurrer to a complaint alleging wrongful discharge, the order of the trial court was affirmed. The plaintiff, an at-will employee of defendant, was charged with theft and trespass as a result of a routine delivery in the course of his employment. While the charges were pending plaintiff resigned at the insistence of representatives of defendant. Despite plaintiff's acquittal, defendant refused to reinstate him. A complaint was filed alleging wrongful discharge for violation of the public policy that a criminal defendant is presumed innocent. Considering the Criminal History Record Information Act, 18 Pa. C.S.A. §9125(b) the Superior Court agreed in hiring situations the principle is an expression of public policy. However, under the facts of the case there was no violation of public policy and the defendant had a plausible and legitimate reason for discharge in that it was protecting its business reputation by discharging an employee accused of theft and trespass in connection with his employment, even though ultimately acquitted.

In the nature of an historical footnote it is appropriate to note that the "Unjust Dismissal Act," House Bill No. 1742, was

introduced in the General Assembly of Pennsylvania on June 30, 1981, and referred to the Committee on Labor Relations where it died. It has been suggested that the demise of the bill was in equal parts the result of the opposition of employer groups, the lack of support of organized labor, who didn't need it, and the lack of lobbying strength of unorganized at-will employees. House Bill 2104, "Unjust Dismissal Act," was introduced April 30, 1984, referred to the Labor Relations Committee on May 1, 1984, and has not moved as of this writing.

From our analysis of the Pennsylvania cases decided in the Commonwealth and Federal Courts, we feel we can reasonably conclude that at this time the common law in Pennsylvania on wrongful discharge actions by at-will employees is or probably is:

1. The general rule that an employer may terminate an at-will employee for any or no reason is no longer an absolute, *Geary,* supra, *Yaindl,* supra.

2. The right of an at-will employee to sue his employer for wrongful discharge has been established as an exception to the general rule in limited factual situations.

3. Pursuant to the dicta of the majority in *Geary,* supra, the state and federal intermediate appellate and trial courts have on an ad hoc basis addressed themselves to identifying the scope of the exception.

4. If an alternative statutory remedy for the wrongful discharge exists, a parallel common law remedy is unnecessary and an exception will not be found. *Bruffet v. Warner Communications, Inc.,* supra.

5. A discharge for attempted interference with the management policies and activities of an employer or for disregard of administrative procedures and disloyalty will not generate the creation of an exception. *Geary,* supra, *LeKich,* supra, *Yaindl,* supra, *Callahan,* supra, *Gurndon,* supra.

6. If the facts of the case establish the discharge of an at-will employee either:
   (a) without plausible or legitimate reason and in violation of a recognized public policy; or
   (b) abusively and with intent to harm, *O'Neill,* supra, *Yaindl,* supra, *Harrison,* supra,

an exception to the general rule will be identified and the action for wrongful discharge permitted.

7. In determining whether a discharge is wrongful the following factors must be weighed:
   (a) The nature of the employer's conduct.
   (b) The employer's motive.
   (c) The interest of the employee with which the employer's conduct interferes.
   (d) The interest sought to be advanced by the employer.
   (e) The social interests in protecting the freedom of the employer and the contractual interests of the employee. *Yaindl,* supra, *Borenson,* supra, *Novosel,* supra.

8. The discharge of an employee arrested and charged with a violation of the criminal law will not establish an exception as a violation of public policy—particularly where the crime is reasonably related to the employee's fitness to perform his duties or adversely impacts upon the business reputation of the employer. *Cisco,* supra, *Cuccaro,* supra.

9. Discharge of an employee for performing his citizen's duty of serving on a jury is in violation of a recognized public policy and will constitute an exception to the general rule and will justify an action for wrongful discharge. *Reuther,* supra.

10. Discharge of an employee for refusal to take a polygraph test or taking such a test and failing it is in violation of public policy enunciated by statute and will constitute an exception to the general rule. *Perks,* supra, *Molush,.* supra.

11. Discharge of an employee for making a claim under the Workmen's Compensation Act is in violation of a well-recognized public policy and will raise an exception to the general rule. *Butter,* supra.

12. The discharge of an employee for refusal to participate in the employer's lobbying efforts and for private opposition to the employer's political stand violates the United States and Pennsylvania Constitutional guarantees of political and associational freedoms and justifies an action for wrongful discharge. *Novosel,* supra.

The case at bar does not clearly fall within either of those cases excluded from the exceptions or those presently identified as exceptions. We must, therefore, analyze the testimony and exhibits presented to determine whether the evidence reasonably brings the case within the parameters identified as exceptions to the general rule. In that analysis it is appropriate to observe that:

(a) In the pleadings the defendant after denying the existence in the Chambersburg Area and the Commonwealth of Pennsylvania of a policy against (1) discharging an employee in an abusive manner, (2) discharging an employee in such a manner so as to unjustly cause him harm and/or damage to his professional reputation, and (3) terminating an employee in bad faith (Answer: Paragraphs 81, 82 and 83); alleges in response to plaintiff's allegation that his discharge was accomplished in a manner which constituted bad faith (Complaint: Paragraph 84):

> "Denied. The plaintiff's termination was effected by the defendant's in good faith and came only after long, sincere, diligent, and time-consuming efforts on the part of the defendant to get the plaintiff to improve his relationship with the employees, the Board, the members of the Credit Union, and keeping current and accurate records and information from the accounting department, and in delegating authority to other employees." (Answer: Paragraph 72 is incorporated by paragraph 84.)

(b) In New Matter the defendant alleged inter alia plaintiff's unsatisfactory rating for his relationship with employees; that during 1981 twenty of the twenty-six fulltime employees resigned because they could not tolerate working with the plaintiff; and that financial data which was the plaintiff's responsibility was lagging as much as three months at Board meetings. (Answer: Paragraphs 112, 113, 114 and 116).

(c) In opening and closing arguments the defendant contended that it was justified in discharging the plaintiff and consequently there was no bad faith determination.

(d) The defendant sought to prove that the plaintiff was terminated for the reasons alleged in paragraph 72 of its answer and in new natter, supra; thus, the issue of good faith versus bad

Administratrix, of the estate of Norman D. Wadel, also known as N.D. Wadel, late of the Village of Scotland, Greene Township, Franklin County, Pennsylvania, deceased.

WEAVER First and final account, statement of proposed distribution and notice to the creditors of the Valley Bank and Trust Company, executor of the estate of Carl H. Weaver, late of the Borough of Chambersburg, Franklin County, Pennsylvania, deceased.

Glenn E. Shadle
Clerk of Orphans' Court of
Franklin County, Pennsylvania
12-7, 12-14, 12-21, 12-28

The Mayor and Town Council of the Borough of Chambersburg	)	In the Court of Common Pleas of the 39th Judicial District, Penna. Franklin County Branch
vs.	)	D.S.B. 1984-884
Florence E. Timmons	)	

NOTICE
WRIT OF SCIRE FACIAS

The Commonwealth of Pennsylvania to Florence E. Timmons, 140 Brumbaugh Avenue, Chambersburg, Pennsylvania 17201:

WHEREAS, The Mayor and Town Council of the Borough of Chambersburg on the 24th day of July, 1984, filed its claim in our Court of Common Pleas of Franklin County; at D.S.B. No. 1984-844, for the sum of $753.01, with interest at the rate of 10% per annum from the 24th day of July, 1984, for utility service (as authorized by 53 P.S. 7107) together with an attorney's collection fee of 5%, against the property situate at 140 Brumbaugh Avenue, Chambersburg, Pennsylvania, owned by you.

AND WHEREAS, we have been given to understand that said claim is still due and unpaid, the unpaid balance being $753.01, with interest thereon at 10% per annum from July 24, 1984, which amount remains a lien against the said property;

NOW, you are hereby notified to file an affidavit of defense to said claim, if defense you have thereto, in the office of the Prothonotary of our said Court within fifteen (15) days after the service of this writ upon you. If no affidavit of defense be filed within said time, judgment may be entered against you for the whole claim and the property described in the claim to be sold to recover the amount thereof.

WITNESS the Honorable George C. Eppinger, President Judge of our said Court this 4th day of December, 1984.

Raymond Z. Hussack, Sheriff
Franklin County, Pennsylvania
12-28-84, 1-4-85, 1-11-85

LEGAL NOTICES, cont.

faith discharge and the public policy governing termination of employees was squarely raised by the defendant.

The evidence presented would reasonably lead to the following conclusions:

1. The plaintiff was hired as Manager of the defendant on an at-will basis on September 1, 1976.

2. When the plaintiff was hired the assets of the defendant Credit Union were approximately $6,100,000. It had approximately 6,000 members, 8 employees, including the plaintiff, and there was one building located on the grounds of Letterkenny Army Depot.

3. At the end of 1981, the Credit Union also had offices at Fort Ritchie, Maryland and in the Borough of Chambersburg. There were between 24 and 26 full-time employees and 2 to 3 part-time employees. The assets were in excess of $21,000,000 and there were more than 12,000 members.

4. The plaintiff had instituted many successful and innovative programs.

5. The plaintiff maintained an office in his home and worked on the business of the Credit Union after hours almost each day.

6. The plaintiff was active in community and church affairs.

7. During the month of December 1981, nothing unusual occurred at the Letterkenny Federal Credit Union involving the plaintiff. At the Board of Directors' meeting held on December 23, 1981, the plaintiff was present and described it as a cordial meeting.

8. The plaintiff and his family were on vacation from Christmas until New Year's 1982.

9. On the morning of January 4, 1982, shortly after 7:00 a.m., the plaintiff and the Assistant Manager of the Credit Union entered the union office where they were met by William T. Grier, Jr., and Charles G. Hoover, Jr., President and First Vice-

President of the Board of Directors, respectively. President Grier accompanied the plaintiff to his office where he handed him an envelope and told him afte he had read the letter to turn in his badge, turn in his key, empty his desk and leave the Credit Union. The letter stated:

> "As the President of the Board of Directors it is my duty to inform you that the Board of Directors has voted to terminate your employment as Manager of the Credit Union. The vote of the Board of Directors was unanimous. Your termination is effective 7:30 o'clock A.M. January 4, 1982.
>
> "As an alternative to your termination by the Board of Directors, the Board voted to allow you to submit your resignation. If you choose to submit your resignation, your resignation should be dated prior to January 4, 1982, but should state that your resignation is effective 7:30 o'clock A.M. January 4, 1982. This resignation will be accepted by the Board of Directors, and in the event we are contacted by a prospective employer, they will be informed that your employment was terminated by your resignation. In the event that you choose not to submit your resignation, the action of the Board of Directors would have to be reported as the cause of your termination in the event we receive an inquiry from any prospective employer.
>
> "The Board has voted to give you 90 days of termination pay, which will include any accumulated annual leave or sick leave. In the event your accumulated annual leave and sick leave exceed 90 days, you will receive payment for your accumulated annual leave and sick leave but no other payment. In other words, if your annual leave and sick leave amount to 60 days, you will receive payment for 90 days. If, however, your accumulated annual leave and sick leave equal 92 days, you will receive only 92 days payment and no other payment. All other benefits that you have accumulated in the course of your employment, and to which you are entitled, will be honored."

10. The plaintiff observed that no reason for the termination was given in the letter and requested a reason from the Board President who first responded that he did not need a reason, but when pressed referred to the accounting problem and deteriorating Manager/Board relations.

11. The plaintiff had 10 minutes from the time he received the discharge letter until 7:30 when it became effective.

12. While the Board President was meeting with the plaintiff, Vice-President Hoover assembled all of the Credit Union employees in the lounge and told them at that time the plaintiff was being informed he was no longer manager of the Credit Union, that he did not wish to elaborate on it; and that he requested their support for Mr. McGrogan who would be the Acting Manager.

13. Prior to plaintiff's termination on January 4, 1982, he had enjoyed an excellent reputation for integrity and honesty. Almost immediately after the termination rumors from unidentified sources spread throughout the Chambersburg Area to the effect that the termination was the result of the plaintiff embezzling money at the Credit Union, that an F.B.I. investigation was being conducted, that he had been handcuffed, resisted arrest, and had been placed in jail. There was an almost immediate dramatic change in his reputation from one of integrity to having his integrity questioned, and being suspected of being an embezzler and a thief.

14. His stepdaughter requested him to stand with her at the school bus stop to prove to her classmates that he was not in jail.

15. He was requested to discontinue collecting funds for an anti-oil refinery group active in the area.

16. He was unable to find any employment in his field of endeavor or in the banking field in the Chambersburg Area despite strenuous efforts.

17. The Solicitor to the Board of Directors of the defendant was queried by a reporter from the local newspaper on the rumors that the plaintiff had been fired for embezzling funds, and that there was an F.B.I. investigation going on. The Solicitor informed the reporter that the rumors were incorrect and wrote a letter to him on January 26, 1982, confirming that the plaintiff was no longer Manager of the Credit Union, but advising that any rumors concerning his honesty were totally untrue, that there had been absolutely no dishonesty in the management of Credit Union funds, and there was no investigation by any law-enforcement

agency. The Solicitor's response was not published.

18. Plaintiff's pastor counselled with him at plaintiff's request, and described the plaintiff as going through a degree of mental trauma, of anguish, distress and anxiety.

19. Val McGrogan, Assistant Manager of defendant on January 2, 1982, and now General Manager of the York Borg Warner Credit Union, York, Pa., and a Director of the Pennsylvania Credit Union League, described the method selected by the defendant for terminating the plaintiff as abusive and foreseeably leading others, particularly those in the management of credit unions, to believe an embezzlement had occurred.

20. William T. Grier, Charles G. Hoover, Jr., and Adrienne E. Reeder, President, Vice-President and Treasurer of the defendant's Board of Directors, and Gaylord Peters, serving as an evaluation committee, prepared Manager Performance Appraisals for the years 1978, 1979 and 1980. Mr. Peters served on the Committee for the 1978 and 1979 appraisals. (Plaintiff's Exhibit 5; Defendant's Exhibits 2, 3 and 5.)

21. None of the members of the Evaluation Committee ever had any credit union or banking experience except as members of the defendant's Board.

22. The Evaluation Committee gave the plaintiff for 1978 three "below desired levels"; three "average or typical"; nine "above average"; and two "outstanding" ratings. For 1979 there were two "very disappointing"; two "below desired levels"; three "average"; seven "above average"; and three "outstanding" ratings. In the 1980 Appraisal there were two "very disappointing"; two "below desired levels"; four "average"; eight "above average"; and one "outstanding" rating. All of the "very disappointing" and "below desired levels" ratings were in the "Supervision and Personnel Management" category.

23. The Management Performance Appraisal forms are separated for ratings into Performance, Balance Sheet, Board Relations, Membership and Community Relations, Supervision and Personnel Management, Use of Management Tools, and Other Special or Specific Positive or Negative Factors. In all categories

other than Supervision and Personnel Management and Other Special or Positive or Negative Factors, the plaintiff's ratings with explanations ranged from good and average upward and the comments appeared to be very favorable and flattering.

24. In the Supervision and Personnel Management category, the need for more systematic policies and planning, mediocre selection and training of some personnel, major problems in employee attitudes and lack of leadership and team spirit, and failure to delegate authority where noted and critical comments were made.

25. In the "Other" category, each annual appraisal comments very favorably upon plaintiff's financial management and very unfavorably upon his relationship with his employees. The 1980 appraisal which was dated April 10, 1981, and presumably delivered to plaintiff on or about that date specifically states inter alia:

> ". . . His weakness lies in personnel management. His progress in this area needs improvement and is currently considered unsatisfactory."

26. The 1980 appraisal in the "Remarks" section under the sub-title "Employee Attitudes" states:

> "Relationship between employees and manager less than desirable. Manager professes that authority is delegated yet employees fail to perceive this occurring. Team spirit is lacking. Manager lacks ability to motivate without coercion. He lacks leadership ability in dealing with associates. Drastic improvement is needed immediately. His efforts in motivating employees is considered unsatisfactory.

27. None of the Management Performance Appraisal forms include any provision for an overall rating of the Manager's performance for the year being reviewed or define the ratings appearing on the forms.

28. Each of the Appraisal forms has at the bottom of the "Summary":

"I have had an opportunity to discuss and ask questions about my progress and performance.

Manager _____ Date _____

The plaintiff had not signed or dated this statement on any of the appraisal forms offered in evidence, and testified that despite his requests for appointments to discuss the appraisals none had been kept and he had never been given an explanation of the noted deficiencies or suggestions for correcting them and had not, therefore, signed the forms.

29. Nothing of any of the Management Performance Appraisals suggested in any way that plaintiff's continued employment was contingent upon him improving his performance in any of the areas where deficiencies were noted.

30. The plaintiff received the 1980 appraisal on a Thursday afternoon and was told President Grier would meet with him on Monday to discuss it. The President of the Board did not keep that appointment nor did he keep between twenty and thirty subsequent appointments he made at plaintiff's request to discuss the appraisal. On August 31, 1981, plaintiff wrote to the Management Evaluation Committee concerning the 1980 evaluation, objecting to the failure to have a prior meeting, assuming the next scheduled meeting would also not be held, and objecting to the Committee's failure to grant him an increase in salary. (Defendant's Exhibit 1)

31. The plaintiff's letter of August 31, 1981, to the Evaluation Committee with copies to all members of the defendant's Board of Directors discloses no apprehension of termination of employment.

32. Neither the plaintiff nor the defendant offered any evidence that either the Evaluation Committee or the Board answered plaintiff's letter or that the Committee ever met with the plaintiff to discuss the 1980 appraisal.

33. The plaintiff had in prior years requested meetings with the Evaluation Committee, and such meetings had never been held.

34. Charles G. Hoover, Jr., did meet with the plaintiff once in

1980 to discuss certain areas of performance which he felt were not up to his expectations, and the plaintiff expressed his appreciation for the advice given him.

35. The employee turnover attributed to plaintiff's alleged abrasive mishandling of employees was not established by the defendant and only two of the numerous employees referred to by defendant testified on behalf of the defendant.

36. There was a difference of opinion among the employees who testified whether the plaintiff was a stern but fair supervisor who only demanded that his employees do their job well and trained them for better positions, or was an unreasonable and unfair supervisor who enjoyed publicly and privately embarrassing them.

37. The teller turnover at the Letterkenny Federal Credit Union was not unlike the national average teller turnover in the credit union business for the year 1981, and was explained as resulting from generally low compensation, substantial responsibilty for dealing with the cash of others, and long hours of standing in one place.

38. Despite the existence of a grievance procedure established by the Board of Directors and Management, employees felt free to register their personal complaints concerning their jobs and their supervisors with members of the Board of Directors. Board members apparently did not discourage this practice, acted upon the complaints, and thus fostered personnel problems between employees and management.

39. A problem had developed in the accounting department during the last quarter of 1980 due to the inability of the single full-time employee in that department to keep the bank reconciliations up-to-date which caused the financial statements distributed to the Board of Directors at the monthly meeting to be unsigned until the reconciliations were completed.

40. The plaintiff had recommended the hiring of additional employees for the Credit Union and specifically for the accounting department to handle the volume of accounting work. In the 1981 budget, the Board approved the hiring of additional employees but did not fund their hiring. The plaintiff made a second appeal

during 1981 for additional help for the accounting department which was also ignored.

41. The lack of personnel in the accounting department perpetuated and exacerbated the problem apparently referred to by the President of the Board at the time of termination, and also caused strained relations between the employee in the accounting department, who was not aware of the efforts being made by the plaintiff to secure assistance, and the plaintiff.

42. Despite testimony of board members' dissatisfaction with the plaintiff's performance, and testimony that such matters were discussed at board meetings, no references to such discussions were disclosed in the minutes of the Board of Directors.

43. Vice-President Hoover testified that Val McGrogan was hired on January 1, 1980, to handle day-to-day contact with the employees, correct morale problems, and put him between the employees and the plaintiff. Neither Mr. Hoover nor any other members of the Board went to Mr. McGrogan with employee complaints about the plaintiff or other matters of employee concern.

44. President Hoover called a special meeting of the Board of Directors to be held at his home in conjunction with a holiday social affair for December 17, 1981, because several unidentified Board members had indicated a need to discuss the situation because it was in their opinion getting to the point where something had to be done. The plaintiff was not invited to attend the special Board meeting. The meeting lasted for 45 minutes and apparently promptly moved from discussing the situation to advice of the Solicitor, and a unanimous decision to terminate the plaintiff's employment in the manner it was executed on January 4, 1982. The Board then enjoyed a social evening at the President's home.

45. The reason given for the precipitous discharge and removal of the plaintiff from the Credit Union premises was the Board's concern that the plaintiff would retaliate against the employees for his termination.

46. President Grier was the top civilian employee at Let-

terkenny Army Depot. All or almost all of the Board members were or had been employees of Letterkenny Army Depot.

47. The plaintiff and the Board President had been closely associated in the business of the Credit Union and socially when the plaintiff was first employed, but in later years they were described as bucking heads and a personality conflict apparently developed.

48. The plaintiff was described as tending toward a dictatorial approach to management in the Appraisals. President Grier was described as "dictatorial" by the former Assistant Manager.

49. Defendant's records established plaintiff was entitled to 79.22 days accumulated leave and sick leave as of January 4, 1982, and pursuant to the terms of his termination was paid for 90 days.

50. Evidence of a deteriorating relationship between the plaintiff and the defendant's Board of Directors was not introduced.

51. The activities and actions of identified and unidentified members of the Board of Directors directly contributed to the employee/manager problems identified by the defendant.

52. The failure of the defendant's Board of Directors to supply sufficient personnel for the accounting department rather than errors or omissions of the plaintiff created and perpetuated the accounting problems complained of by the defendant.

53. No legitimate and plausible reasons for the termination of the plaintiff were presented.

We gave extended consideration to the many and excellent arguments of counsel throughout all of the pre-trial proceedings and the trial, the decisional law previously referred to, and the evidence presented. From all of the factors, we concluded if the Supreme Court of Pennsylvania in *Geary,* supra, and the Superior Court of Pennsylvania in *Yaindl,* supra, meant an exception to the general rule could be found if:

(a) the employer intended to harm the employee; or

(b) if there was no plausible and legitimate reasons for discharge; and

(c) a clear mandate of public policy was violated, and

(d) the public policy could be found by a balancing of the interest of the employee in making a living, the interest of the public in proscribing abusive discharges and the employer's interest in running a business efficiently, profitably and as it sees fit;

then the liability phase of the case should be submitted to the jury. We endeavored to tailor our charge to the jury to explain the general rule and its operation, the development of exceptions, to exclude from consideration the public policy cases involving jury duty, polygraph tests and workman's compensation claims, and to incorporate the balancing test prescribed by *Yaindl.* In our opinion, we fairly and correctly explained the law to the jury and identified the issues which they would be required to resolve. The nature of the questions the jury submitted to the Court during their deliberations clearly demonstrate a comprehension of the law and the issues presented.

We, therefore, conclude there was no error of law in the charge and defendant's motion for judgment n.o.v. and for new trial will be refused.

ORDER OF COURT

NOW, this 14th day of August, 1984, the post-trial motions of Letterkenny Federal Credit Union for judgment n.o.v. and for a new trial are denied.

Exceptions are granted the defendant.

MURPHY, ET. AL., v. BAUMGARDNER OIL, ET. AL., C.P. Franklin County Branch, A.D. 1983-54

Trespass - Discovery - Sanctions

1. Rule 4005(a) implies an affirmative duty on the part of officers to search corporate and partnership records for all available information necessary to answer interrogatories.