

BEFORE THE AMERICAN ARBITRATION ASSOCIATION

WASHINGTON FEDERATION OF STATE EMPLOYEES)
 (Merle Pender Demotion),)
)
 Union,)
 and)
)
 WASHINGTON STATE EMPLOYMENT SECURITY)
 DEPARTMENT,)
)
 Employer.)
)

No. 75 390 00177 13

ARBITRATOR’S OPINION AND AWARD

I. INTRODUCTION

This matter was heard on September 23, 2013 in Port Angeles, Washington. Gregory M. Rhodes of Younglove & Coker, PLLC, represented the Union. Courtlan P. Erickson, Assistant Attorney General, represented the Employer.

II. PROCEDURAL HISTORY

- a. Union and Employer signed a collective bargaining agreement (CBA) (Exh. E1).
- b. Merle Pender was demoted in October 2012. The Union grieved the demotion (Exh. E2).
- c. Following Employer’s grievance response (Exh. E3), the matter was referred to arbitration.
- d. Written briefs were submitted.

III. POSITION OF THE PARTIES

Employer

Pender became a WorkSource Specialist (WSS) 4 in January 2012 when his WSS 6 position was abolished during layoffs. As a WSS 4, Pender did not perform satisfactorily. Despite coaching, an oral reprimand and a written reprimand, Pender’s performance still did not improve. Due to Pender’s lack of improvement, its negative impact on coworkers, a partner agency and

customers, in October 2012 Pender was demoted from his WSS 4 position to a WSS 2 position, where his performance would not directly impact the partner agency or customers.

Union

The CBA requires just cause to demote Pender. Employer conceded that the discipline was based on alleged deficiencies between July 31 and September 12, 2012. However, during that period Pender had no actual contact with his supervisor. Pender did receive five emails from his supervisor during that period documenting tasks that were allegedly not performed or were incomplete. Pender thought he had either done the tasks or he completed the tasks as instructed. Employer failed to show what the alleged deficiencies meant or to prove that the allegations were true. The testimony of Pender's supervisor did not explain the allegations or why they were true. Employer did not meet its burden of proof to support the demotion.

Issues

The parties gave the Arbitrator an agreed statement of issues as follows:

1. Did the Employer have just cause for its disciplinary demotion of Merle Pender, effective October 12, 2012?
2. If not, what is the appropriate remedy?

IV. EVIDENCE AT THE ARBITRATION HEARING

1. *Jessie Duvall testified* that she is a senior human resource consultant with the Employment Security Department (ESD) (Tr. 15). She worked with ESD for five years. Her workforce development area included the Port Angeles, Bremerton and Port Hadlock offices of the Workforce and Career Development Division (Tr. 16).
2. In 2002, Pender was promoted from a WSS 4 to a WSS 6 position, in which he supervised WorkFirst program counselors (Tr. 22-24; Exh. E12). Pender's WSS 6 position was later abolished for budgetary reasons (Tr. 19, 22, 23-26; Exh. E15, E16, E17, E18, E19). Pender, who was considered to have the necessary skills and abilities, was then made a WSS 4 under the supervision of John Greenway (Tr. 26-27; Exh. E11).
3. Greenway set out his expectations by giving Pender a Performance and Development Plan (Tr. 29-30; Exh. E10). However, performance deficiencies by Pender led to a performance meeting in February 2012 (Tr. 31; Exh. E9). Continued performance deficiencies by Pender led to an oral reprimand in April 2012 (Tr. 32; Exh. E7); a written reprimand in August 2012, which Duvall was involved in writing (Tr. 32, 33; Exh. E6); and the issuance of a pre-disciplinary letter (Tr. 34-35; Exh. E5). Duvall attended the

pre-disciplinary meeting (Tr. 35-37). By letter dated October 12, 2012, Pender was demoted from a WSS 4 to a WSS 2 (Tr. 36; Exh. E4).

4. Duvall was not aware of any other past ESD employee with performance deficiencies similar to Pender's (Tr. 38). Employer considered courses of action to assist Pender but, due to his deficiencies putting the program at risk, the decision was made to remove Pender from his WSS 4 position and demote him to a WSS 2 (Tr. 21, 38-39). John Greenway had provided training to Pender. Duvall witnessed some of that training. Pender had received formal training in the past (Tr. 44, 56).
5. Duvall attended the Step 3 grievance meeting. Although Pender was given the chance to speak, he said nothing (Tr. 41-42).
6. ***John Greenway testified*** that he was a WSS 6 supervisor for the ESD. He previously was a WSS 4 (Tr. 60). In 2012, he supervised the Port Angeles and Port Hadlock offices (Tr. 61).
7. The WorkFirst program within the ESD was a partnership of agencies to help Temporary Assistance for Needy Families program clients get back to work and become self-sufficient. States receive federal funding for documenting hours of participation for ESD customers looking for a job (Tr. 62).
8. Pender's WSS 6 position description was almost identical to Greenway's. Both Pender and Greenway had supervised WSS 4 WorkFirst Counselors (Tr. 64-66; Exh. E12). Greenway described the SKIES, EJAS and CATS systems, which WSS 6 working supervisors were expected to know (Tr. 66-70). Greenway described the WorkFirst handbook, desk manual, and Career Scope program. The handbook and manual broke down every piece of the job in great detail. As a WSS 4, Pender had access to both, had attended training, and implemented (and was responsible for making sure staff were complying with) Career Scope when he was a supervisor (Tr. 71-74).
9. Greenway testified about Pender's duties as a WSS 4 (Tr. 68; Exh. E11). When Greenway realized Pender was struggling, Greenway made efforts to help Pender catch up by relieving Pender of the second office caseload, providing individual coaching, providing telephone support, and emailing weekly a list of discrepancies with Pender's caseload and asking Pender if he had questions (Tr. 76-79, 106, 110-111, 115, 118-120). Greenway guided Pender through computer tasks (Tr. 78-79).
10. Greenway prepared Performance Improvement Plans with directives to Pender (Tr. 79-81; Exh. E8, E9). Pender's performance did not significantly improve (Tr. 80-81, 83, 91). Greenway issued an oral reprimand to Pender (Tr. 81; Exh. E7) and, still later, a written reprimand for continued performance deficiencies (Tr. 82-83; Exh. E6). Pender received more training than anyone else (Tr. 92-100, 117, 124; Exh. U5). Greenway

arranged for Pender to job shadow with and get help from coworkers (Tr. 84, 100). Yet every area that Greenway repeatedly coached on and that Pender was trained in still suffered. Those areas included communicating with partners, documenting services, providing services, providing assessments, documenting actual hours, creating activity planners, and doing evaluations.

11. Greenway kept a contemporaneous communication log for each employee he supervised (Tr. 86, 116-118; Exh. E14). The number of services Pender provided to customers was much lower than other WSS 4s, even though Pender had a smaller caseload (Tr. 88-89). Another person with no knowledge of WorkFirst was fully up to speed in less than a month and had received less training than provided to Pender (Tr. 92-93). Greenway concluded that no additional training would help (Tr. 98). Greenway brainstormed with Pender's union representative but they could not come up with anything they had not already tried to help Pender (Tr. 101). Greenway could not understand why Pender had not improved (Tr. 100).

12. An agency partner expressed concerns about not receiving communications about customers' participation (Tr. 84-85). Greenway was concerned that an agency partner had stopped referring customers because they were not able to track their progress and may have started sending customers to other programs. Greenway's program depended on revenues connected with agency referrals. Greenway was also concerned about the customers, who were persons in poverty with children trying to become self-sufficient, not being provided with services by Pender (Tr. 89-91).

13. Greenway asked Pender if there was anything more that would help (Tr. 102-103). Pender responded to Greenway's coaching by commonly saying that he did not quite get it before but did now (Tr. 102). Pender also responded that he was going to get things done or had done so. However, upon review, Greenway found that was not the case (Tr. 100-101). Pender's performance deficiencies were growing rather than shrinking (Tr. 122). At one point Pender said Greenway's case review findings were not justifiable but Pender could not say why (Tr. 101-102). Greenway provided Pender with information about the employee assistance program in case there were issues Pender did not want to disclose (Tr. 102).

14. *Patricia Busse testified* that she is an administrator and worked with the Department of Social and Health Services (DSHS) for 27 years. She knew Pender because her office partners with the WorkFirst program (Tr. 126-127). If persons with minor children appeared ready to go to work, Busse's office referred them to the ESD (Tr. 127). Much of the funding from the federal government turns on customer participation rates (Tr. 129-130, 132).

15. Busse's staff told her the ESD was not reporting when referred persons did not show up. If a person did not show up, Busse's staff needed to call to find out why the person

did not show up. If there was not a good reason then the person could be sanctioned by their money being reduced (Tr. 130-131). Busse reported to the ESD problems she saw (Tr. 131-132; Exh. E13, E4, bottom of page 3). To Busse's knowledge, once a month went by, data errors could not be corrected (Tr. 133).

16. **Margaret Hess testified** that she is employed by Washington State Employment Security as an administrator with WorkSource Kitsap County (Tr. 134). She was with the ESD since 1994 (Tr. 135). In 2011, she became area director (Tr. 135). Hess knew Pender since 2006 because they were on the same management team (Tr. 137-138).

17. Pender's position description accurately described his job duties when he was a WSS 6. Supervisors were expected to know the WSS 4 duties well enough to be able to perform them as needed (Tr. 139-140; Exh. E12). After Pender became a WSS 4, John Greenway expressed concerns to Hess about Pender's performance (Tr. 142). Greenway kept Hess informed about Pender on a need-to-know basis (Tr. 156). Hess and Greenway could not understand why Pender could not do the job of a WSS 4. She had not run into a comparable performance situation during her entire career (Tr. 145). Hess wanted Greenway to document performance issues and help Pender perform his job (Tr. 143-144).

18. Hess signed the written reprimand given to Pender (Tr. 144; Exh. E6). Pender's performance did not improve after the written reprimand (Tr. 144). Hess signed the pre-disciplinary letter to Pender (Tr. 144-145; Exh. E5). She had grave concerns about the integrity of the program and clients not being served and at risk of losing their grants because data was not in the system (Tr. 145, 148-149, 152). Hess signed the letter demoting Pender from a WSS 4 to a WSS 2 (Tr. 146; Exh. E4). She went to see Pender to understand what was going on and to give him the benefit of any doubt (Tr. 146-148). Pender denied that anything in his personal life was affecting his performance. His responses were disjointed, confusing, and he did not appear to take any responsibility for what was happening. Pender stated that he had not been given training and DSHS was using him as a scapegoat (Tr. 147). Hess believed Pender had the training needed to succeed as a WSS 4 and was given sufficient opportunity to improve his performance (Tr. 150-152, 154-155). Before demoting Pender, Hess considered his long work history with the ESD and considered other levels of discipline (Tr. 150). Pender was not demoted to a WSS 3 because that level was still responsible for performance-based programs (Tr. 151-152).

19. **Merle Pender testified** that he worked for the ESD for 31 years (Tr. 160). He started with the ESD as an Interviewer 1 (Tr. 164) and worked his way up to WorkSource Specialist 6 (Tr. 168). In late 2011 he was notified that his position was being eliminated (Tr. 168). He then went to a WSS 4 position in Port Angeles (Tr. 170).

20. Before becoming a WSS 4, Pender had not learned all of the ins and outs or nuts and bolts of the SKIES program and the CATS system (Tr. 170-171). Pender had supervision and management duties of the office so he depended on Phil Libott with respect to the details of the SKIES program and the CATS system (Tr. 171). Pender did not attend all the same trainings as the WSS 4s he supervised (Tr. 171-172). He did attend trainings on the basics of the Career Scope program (Tr. 172). Pender kind of knew how to put information into SKIES (Tr. 197). He knew about most of that stuff and had a good idea but had not really done it a lot because he worked with Phil Libott (Tr. 198). When Pender was a WSS 6, he and persons he supervised were part of the pilot program for implementing Career Scope (Tr. 194). Pender was given a desk manual and knew he could look at it in the computer (Tr. 173). Pender was paired with a coworker for review sessions (Tr. 174-175, 180). John Greenway spent time with Pender discussing SKIES procedures and documentation (Tr. 176). Pender asked Greenway about going to training. Greenway said he would train Pender (Tr. 181). At times, Greenway showed Pender on the computer how a specific process was to be done (Tr. 193, 197-200). Greenway stayed with Pender until Greenway felt satisfied that Pender could do the process (Tr. 193-194, 201).

21. Pender understood what KeyTrain was. He administered it to individuals so he did not understand why Greenway said Pender did not do it (Tr. 187). Pender understood what an activity planner was. He said he did that so he did not understand why Greenway said Pender was not getting activity planners done (Tr. 187). Pender admitted he often forgot to give someone an activity planner (Tr. 188). Pender felt he was getting things done and making progress (Tr. 177, 179). However, Greenway pointed out things that still had to be done (Tr. 177). Greenway was very patient with Pender and spoke of wanting to make Pender the best WSS 4 he could be and work with Pender slowly and bring him up to speed (Tr. 177-178). Pender called on Phil Libott and a coworker named Sylvia to answer questions (Tr. 178-180). Pender asked Greenway why Phil Libott was able to do things a certain way but when Pender tried doing things the same way he was told by Greenway that it could not be done that way because the labor markets were different (Tr. 189). Pender told Greenway that he thought he would be okay as long as Pender could get hold of Greenway when he needed to.

22. In the month before he was demoted, Pender received weekly emails from Greenway (Tr. 182; Exh. E4 Enclosures). The emails were detailed and clear as to what Greenway perceived to be lacking in the work Pender had done (Tr. 194). Pender did not have in person contact with Greenway during the last month before being demoted (Tr. 185-186). In response to the weekly emails, Pender told Greenway that he was constantly interrupted with customers coming into the office (Tr. 183-184). However, Pender understood that Greenway expected him to make necessary corrections within one week (Tr. 194). Greenway often called Pender (Tr. 200).

23. After the oral and written reprimands, Pender knew things were getting pretty serious (Tr. 179). He understood there were going to be further repercussions if his performance did not improve (Tr. 179). Pender was never told that he had not returned phone calls to persons (Tr. 190). Pender was totally shocked when he received the demotion letter because, based on his phone conversations with Greenway, Pender thought he was doing fine (Tr. 192-193).

24. ***Philip Libott testified*** that he was a WSS 4 and worked for the ESD for 35 years (Tr. 201-202). Pender was previously his supervisor (Tr. 202).

25. When Pender was transitioned into a WSS 4 position the expectations surrounding the Career Scope program changed dramatically (Tr. 204). There was a big change in the communication piece and strong emphasis on metrics and data entry. A lot had to be keyed into the different systems. While there always had been some of that, there was a renewed emphasis on SKIES (Tr. 205). There was increased scrutiny on what was entered, how it was phrased, and what areas of the assessment were covered (Tr. 206). There had always been the need to do a lot of data entry but a higher level of work was required with a higher level of scrutiny (Tr. 206-207). At first, Libott struggled to meet expectations (Tr. 207). For someone who had never been in the program or who had been in the program some time ago, it would have been difficult to meet the heightened expectations (Tr. 207).

26. When Pender was a WSS 6, there were times when Libott attended trainings on Career Scope and the SKIES programs that Pender did not attend (Tr. 208, 214). Libott had difficulty learning SKIES. For a long time SKIES was not required much for WorkFirst (Tr. 209). Libott went to trainings where the WorkFirst supervisor said they did not do anything in SKIES (Tr. 210). After the implementation of Career Scope, there was a big emphasis on getting SKIES entries in complete and timely (Tr. 210). If what was put in did not meet certain standards then a supervisor would write a corrective action. It became pretty detailed and focused (Tr. 210). A big reason for the change in focus on documentation was tied to pay points. Every initial assessment and person who entered employment meant money for the program (Tr. 210-211). Traditionally, WorkFirst had not operated with pay points (Tr. 211).

27. After Pender became a WSS 4, he often sought Libott's help. Pender was struggling but he seemed to be making an effort to try and get on top of things (Tr. 212). Libott was frustrated because he would tell Pender something a couple of different times but Libott did not know that Pender got it (Tr. 212-213). Libott opined that maybe that was because the context or reference point for Pender, based perhaps on a previous understanding of the program, was not there (Tr. 213).

28. Libott sometimes went to John Greenway for help. Libott found Greenway to be an effective coach and trainer (Tr. 214).

V. RELEVANT PROVISIONS OF THE CBA (Exh. E1)

**ARTICLE 27
DISCIPLINE**

- 27.1 The Employer will not discipline any permanent employee without just cause.
- 27.2 Discipline includes ... demotions,
- 27.7 **Pre-Disciplinary Meetings**
Prior to imposing discipline, except oral or written reprimands, the Employer will inform the employee and the Union Staff representative in writing of the reasons for the contemplated discipline, an explanation of the evidence, copies of written documents relied upon to take the action and the opportunity to view other evidence, if any. This information will be sent to the Union on the same day it is provided to the employee. The employee will be provided an opportunity to respond either at a meeting scheduled by the Employer, or in writing if the employee prefers....
- 27.9 The Employer has the authority to impose discipline, which is then subject to the grievance procedure set forth in Article 29....

**ARTICLE 29
GRIEVANCE PROCEDURE**

- 29.3 **Filing and Processing (Except Department of Corrections)**
 - B. Processing
Step 5 – Arbitration:
 - D. Authority of the Arbitrator
 - 1. The arbitrator will:
 - a. Have no authority to rule contrary to, add to, subtract from, or modify any of the provisions of this Agreement;
 - b. Be limited in his or her decision to the grievance issue(s) set forth in the original written grievance unless the parties agree to modify it;
 - E. Arbitration Costs
 - 1. The expenses and fees of the arbitrator, and the cost (if any) of the hearing room, will be shared equally by the parties.

ARTICLE 35
MANAGEMENT RIGHTS

Except as modified by this Agreement, the Employer retains all rights of management, which, in addition to all powers, duties and rights established by constitutional provision or statute, will include but not be limited to, the right to:

- A. Determine the Employer's functions, programs, organizational structure and use of technology;
- B. Determine the Employer's budget and size of the agency's workforce and the financial basis for layoffs;
- C. Direct and supervise employees;
- D. Take all necessary actions to carry out the mission of the state and its agencies during emergencies;
- E. Determine the Employer's mission and strategic plans;
- F. Develop, enforce, modify or terminate any policy, procedure, manual or work method associated with the operations of the Employer;
- G. Determine or consolidate the location of operations, offices, work sites, including permanently or temporarily moving operations in whole or part to other locations;
- H. Establish or modify the workweek, daily work shift, hours of work and days off;
- I. Establish work performance standards, which include, but are not limited to, the priority, quality and quantity of work;
- J. Establish, allocate, reallocate or abolish positions, and determine the skills and abilities necessary to perform the duties of such positions;
- K. Select, hire, assign, reassign, evaluate, retain, promote, demote, transfer, and temporarily or permanently lay off employees;
- L. Determine, prioritize and assign work to be performed;
- M. Determine the need for and the method of scheduling, assigning, authorizing and approving overtime;
- N. Determine training needs, methods of training and employees to be trained;

- O. Determine the reasons for and methods by which employees will be laid-off; and
- P. Suspend, demote, reduce pay, discharge, and/or take other disciplinary actions.

VI. APPLICATION OF EVIDENCE AND RELEVANT AUTHORITY

1. Due process. The CBA provides that Employer will not demote an employee without just cause (CBA Articles 27.1, 27.2). Pender was entitled to a pre-disciplinary meeting. He could grieve the demotion (CBA Articles 27.7, 27.9).
2. Burden of proof. Under a “just cause” standard, employers are usually required to prove the elements of an offense for which an employee has been disciplined by a preponderance of the evidence. Elkouri & Elkouri, *How Arbitration Works* (6th ed., 2010 Cumulative Supp. at page 347) (other citations omitted).
3. Just cause. Although not without criticism, Arbitrator Daugherty’s “seven tests” for just cause is widely followed. Brand, et al., *Discipline and Discharge in Arbitration* (2d ed. 2008) at pages 33-34. The seven questions or tests posed by Arbitrator Daugherty were:
 - (a) Did the employer give the employee forewarning or foreknowledge of the possible or probable disciplinary consequences of the employee’s conduct?

Before he was demoted, Pender was given performance improvement plans, attended performance meetings, was given oral and written reprimands, received weekly emails from Greenway regarding deficiencies, and was summoned to a pre-disciplinary meeting (see Evidence At The Arbitration Hearing (Ev.) 3, 10, 18, 22 above). Pender understood that Greenway expected him to make the corrections necessary within one week (Ev. 22). After the reprimands, Pender understood things were getting pretty serious and there were going to be further repercussions if his performance did not improve (Ev. 23). Hess went to speak with Pender to understand what was going on and to give him the benefit of any doubt (Ev. 18). At the Step 3 grievance meeting, Pender was given the chance to speak but did not (Ev. 5). The Arbitrator finds and concludes that Employer gave Pender forewarning or foreknowledge of the possible or probable disciplinary consequences of his conduct.

- (b) Was the employer’s rule or managerial order reasonably related to the orderly, efficient, and safe operation of the company’s business?

Federal funding for the program depended on employees documenting the hours of participation by customers. Due to Pender’s performance deficiencies, an agency partner expressed concerns and may have stopped referring customers to the program (Ev. 7, 12, 14). Employer became concerned about the customers and the risk of customers being sanctioned by having their monies reduced (Ev. 12, 15, 18). The Arbitrator finds and concludes that Employer’s rule or

managerial order was reasonably related to the orderly, efficient, and safe operation of Employer's business.

- (c) Did the employer, before administering discipline to an employee, make an effort to discover whether the employee violated or disobeyed a rule or order of management?

The Arbitrator incorporates his statements in (a) above. The Arbitrator finds and concludes that Employer, before demoting Pender, made an adequate effort to discover whether Pender violated Employer's rules or orders.

- (d) Was the employer's investigation conducted fairly and objectively?

Greenway tried in a number of ways to help Pender improve his performance (Ev. 3, 8, 9, 10, 13). Greenway compared Pender to other new employees and considered the number of services provided by Pender compared to other employees (Ev. 11). Employer considered courses of action to assist Pender (Ev. 4). Greenway brainstormed with Pender's union representative about ways to help Pender (Ev. 11). Hess wanted Greenway to document performance issues and help Pender perform his job (Ev. 17). Hess was involved or monitored Pender's performance deficiencies and attempts to help Pender. She spoke with Pender in an effort to understand and give him the benefit of any doubt (Ev. 18). The Arbitrator finds and concludes that Employer's investigation was conducted fairly and objectively.

- (e) At the investigation did the "judge" obtain substantial evidence or proof that the employee was guilty as charged?

Employer's witnesses testified about their expectations, efforts, and conclusions (Ev. 3, 10, 11, 12, 13, 15, 18). The Arbitrator finds and concludes that Employer obtained substantial evidence or proof that Pender's performance was deficient, had not satisfactorily improved despite the efforts made and assistance given, and was a risk to or jeopardized the program and customers (Ev. 7, 12, 14, 15, 18).

- (f) Has the employer applied its rules, orders, and penalties even-handedly and without discrimination to all employees?

Duvall was not aware of any other past ESD employee with performance deficiencies similar to Pender's (Ev. 4). Pender received more training than anyone else (Ev. 10). Greenway compared Pender's performance and number of services to other employees (Ev. 11). Hess had not run into a comparable performance situation during her entire career (Ev. 17). Before demoting Pender, she considered his long work history with ESD and considered other levels of discipline (Ev. 18). The Arbitrator finds and concludes that Employer applied its rules, orders, and penalties even-handedly and without discrimination to all employees.

- (g) Was the degree of discipline administered by the employer reasonably related to (i) the seriousness of the employee's proven offense and (ii) the record of the employee's service?

The Arbitrator incorporates his statements in (b) above. Employer considered courses of action to assist Pender but, due to Pender's deficiencies putting the program at risk, the decision was made to demote Pender (Ev. 4). Greenway concluded that no additional training would help (Ev. 11). Hess considered Pender's long work history with ESD and considered other possible levels of discipline. She decided to demote Pender to a WSS 2, rather than a WSS 3, because the latter level was still responsible for performance-based programs (Ev. 18). Pender worked for ESD for 31 years. He worked his way up from an Interviewer 1 to a WSS 6 (Ev. 19). Before 2012, his job evaluations could be described as satisfactory overall or good in some areas (Exh. U1, U2, U3, U4). The Arbitrator finds and concludes, particularly in view of Employer's Article 35 Management Rights, that the demotion of Pender was reasonably related to Pender's performance deficiencies and in consideration of Pender's record of service.

VII. AWARD

1. The grievance is denied.
2. The fees and expenses of the arbitrator shall be shared equally by the parties (CBA Article 29.3.E).

Dated this 30 day of January 2014.



John Eberhart
Arbitrator

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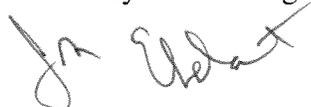
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Certificate of Service:

I certify that a copy of this document was emailed, on the 30 day of January 2014 to:

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A handwritten signature in black ink, appearing to read "John Eberhart", written over a horizontal line.

John Eberhart