



## Compliance Review

### Jefferson Co FPD 02

No. CR21-029

Report Date: November 1, 2022

#### *About the Review*

We have reviewed this Employer's compliance with laws and regulations of the retirement systems administered by the Department of Retirement Systems (DRS). We did not attempt to review the records of all employees, nor did we evaluate compliance with all laws relating to retirement matters. Compliance with the law is an employer responsibility. We reviewed for compliance in the following areas:

- **Eligibility**

To ensure that individuals required to be enrolled and reported as members of the retirement systems were reported, and that current members are eligible to be members of the retirement system. Evaluating eligibility correctly ensures that employees receive the correct service credit. Incorrect service credit can affect employees' future retirement benefits.

- **Retirees**

To ensure that retirees who have returned to work have been correctly reported. If an employer fails to report a working retiree, and that retiree works in excess of applicable post-retirement restrictions, the employer may be liable for any overpayment of retirement benefits.

- **Reporting**

To ensure compensation and hours were reported correctly. Retirement benefits are based on compensation and service credit. Reporting compensation differently than earned has the potential to create an incorrect benefit for the member.



## Compliance Review

### 1. Employees eligible for membership were not reported.

#### *Issue*

Two employees who worked in positions eligible for membership in the Public Employees' Retirement System (PERS) were not reported to the Department of Retirement Systems. The Employer did not correctly determine the eligibility of the position for membership in PERS and did not evaluate eligibility on an annual basis. This resulted in contributions not being paid to DRS and the employees not earning the service credit to which they were entitled.

One individual worked minimal hours as a contractor up to 2014. In January 2014 the worker increased their hours, was assigned additional duties, and began to be paid through payroll. The position's hours met PERS eligibility; however, the Employer did not begin to report the individual.

The U.S. Department of Labor has indicated that a fire protection district may pay its volunteers a sum not to exceed twenty percent of what it pays its paid firefighters for similar services. This is used by the Department of Retirement Systems in determining the classification of being a volunteer compared to an employee. One individual was paid more than what the Department of Labor deems a volunteer, but not enough to be eligible for LEOFF. However, the individual worked enough hours to be eligible for PERS.

Employers are responsible for making the initial determination of a position's eligibility for membership in a retirement system plan, for evaluating these positions for eligibility on a yearly basis, and retaining documentation of the determination. Performing annual evaluations allows the employer to identify changes in a position's eligibility status.

#### ***Recommendations and Required Actions***

The Employer must report the eligible employees back to the first date of eligibility.

In the future, the Employer must report individuals eligible for membership and evaluate positions for eligibility on an annual basis.

#### ***Citations and References***



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RCW 41.40.010(11)(a)  
WAC 415-108-680  
WAC 415-108-690

### ***District's Response***

See attached written response by Jefferson Co FPD 02 dated September 13, 2022 regarding the volunteer working for the district.

### ***Compliance Analyst's Remarks***

Governor Jay Inslee announced the upcoming rescission of all remaining COVID-19 emergency proclamations and state of emergency by October 31, 2022, which does not include the vaccination requirements. We reaffirm our conclusion: however, eligibility may be evaluated as of November 2022 based on the rescission of the Governor's proclamation.

## **2. Required written statements were not obtained.**

### ***Issue***

Written statements were not obtained from all new employees regarding prior retirement system membership or having retired from a Department of Retirement Systems plan.

Retirees are subject to post-retirement employment restrictions. If an employer fails to report a rehired retiree, and that retiree works in excess of applicable post-retirement restrictions, the employer will be liable for overpayment benefits.

### ***Recommendations and Required Actions***

In the future, required written statements must be obtained from all new employees.

### ***Citations and References***

RCW 41.50.139

## **3. Holiday banks were not reported correctly.**



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### ***Issue***

Cash outs for holiday pay tied to specific holidays is overtime and is reportable for LEOFF Plan 2. When hours in a holiday bank are cashed out, the compensation needs to be reported back in the month the holidays occurred.

Reporting hours and compensation differently than earned has the potential to overstate or understate a member's service credit and Final Average Salary (LEOFF).

The Employer incorrectly reported holiday leave bank cash outs as a lump sum in the month paid instead of reporting in the months where the holiday occurred for three employees.

### ***Recommendations and Required Actions***

Corrections must be made for employees within five years of retirement eligibility.

In the future, holiday bank cash outs must be reported as earned by calendar month.

### ***Citations and References***

WAC 415-104-360  
WAC 415-104-370  
DRS Notice 14-009

### ***District's Response***

See attached written response by Jefferson Co FPD 02 dated September 1, 2022 regarding holiday banks.

### ***Compliance Analyst's Remarks***

Article 23 of the 2019-2021 Collective Bargaining Agreement for Jefferson Co FPD 02 lists recognized holidays but also states that holiday hours are accrued on a monthly basis. Accrual of leave over time is only reportable when taken and not when cashed out, whereas cash outs based on designated holidays is considered overtime and reportable in the months the

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holidays occur. The District has incorrectly been reporting the compensation as lump sums and LEOFF members had contributions deducted from their pay. If the District chooses to identify this compensation as personal leave and does not report the compensation, it will impact the calculation of the benefit amount for retirees. We reaffirm our conclusion that the compensation was incorrectly reported as a lump sum; however, the District should stop reporting compensation they have identified as cash outs of personal leave.

#### **4. Hours were not reported correctly.**

##### ***Issue***

Hours reported to the Department did not match timesheets and payroll registers. The Employer did not report hours associated with compensation for overtime hours worked in addition to regular hours.

A member's retirement benefit is based on their hours and compensation. Missing or incorrectly reported hours and compensation have the potential to understate or overstate a member's service credit and Average Final Compensation. This can result in an incorrect pension benefit.

##### ***Recommendations and Required Actions***

The Employer must make corrections to report hours correctly where service credit was affected.

In the future, the Employer must report hours correctly.

##### ***Citations and References***

WAC 415-117-040(1)

##### ***District's Response***

See attached written response by Jefferson Co FPD 02 dated September 1, 2022 regarding overtime hours.

##### ***Compliance Analyst's Remarks***

After further discussions with the District, the District understands that all hours worked need to be reported. We reaffirm our conclusion.

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### 5. LEOFF Plan 2 Non-LEOFF Employer Compensation (NLEC) was not reported correctly.

#### *Issue*

LEOFF employers are responsible for funding both the employer and state contributions on LEOFF Plan 2 basic salary when the employer recovers the cost for services rendered to a non-LEOFF employer. In addition, the employer is to report Non-LEOFF Employer Contributions (NLEC) through the NLEC process in the Employer Reporting Application.

The Employer has fire fighters that were mobilized in the summer to fight wildfires for other entities. The Employer did not correctly report the NLEC through ERA.

#### *Recommendations and Required Actions*

The Employer must report compensation earned by LEOFF Plan 2 members for services rendered directly or indirectly to a non-LEOFF employer using Eservices NLEC procedures back to 2017.

#### *Citations and References*

RCW 41.26.450

DRS Notice 21-012

Chapter 5 - LEOFF Plan 2 Non-LEOFF Employer Compensation (NLEC) reporting.



September 13, 2022

WA Department of Retirement Services (Via Email)

Re: Review CR21-029

Thank you for the opportunity to respond regarding volunteer Zachary Torres.

Mr. Torres was accepted as a volunteer member in July 2019 under then Fire Chief Frank Montone. Mr. Torres began to pull volunteer shifts starting in August 2019. The shifts occurred on a regular cycle due to Mr. Torres compliance with a child custody arrangement. By the end of 2019, Mr. Torres had earned less than \$7,500 in volunteer stipends, which is well below the 20% pay threshold generally used to differentiate volunteer from paid employment.

On January 14, 2020 Chief Montone resigned and on February 3, 2020 Chief Tim McKern was hired as a replacement. COVID-19 appeared in Washington in January, 2020 and by March Governor Inslee issued his stay-at-home order. The pandemic had a markedly negative effect on active volunteerism. Jefferson County has the oldest median age (58.3) in the state and is in the top 20 counties nationally for oldest median age. The very population from which we pull volunteers is an 'at risk' population. Our agency experienced increasing difficulty staffing volunteer shifts, but fire protection and emergency medical response responsibilities do not have a 'work from home' option.

Mr. Torres was one of several young, eager, and highly qualified volunteers who continued to be a steady resource for filling volunteer shifts during a time when many of our volunteers were unable or unwilling to show up. Mr. Torres was permitted to pull as many volunteer shifts as he did out of necessity of providing critical emergency services during the Governor's declared 'State of Emergency'. Our agency was placed in an untenable situation; one in which we simply could not tell a qualified and able body like Mr. Torres to stay home because he may be approaching the 20% pay threshold.

The vaccine mandate announced in August, 2021 further impacted our volunteer roles with several of our very active members being non-compliant and therefor no longer legally able to provide volunteer services. Mr. Torres availability to pull shifts became even more critical during the continuing state of emergency.

We would ask DRS to consider the foregoing in its determinations and any corrections needed regarding Mr. Torres.

Sincerely,

*Robert Rewitzer*

Robert Rewitzer  
District Secretary

## Jefferson County Fire Protection District #2

### DRS Exit Conference

Review Number CR21-029

1 September 2022

#### **ISSUE: Holiday banks were not reported correctly.**

#### **Response:**

- We believe our holiday bank cash outs were incorrectly reported as lump sum payments and should not be reported in the future.

#### **Background:**

- Our Collective Bargaining Agreements (the Contract) covers Holidays and Holiday Pay.
- There are two Contracts in play and the specific language of each is attached on the next pages.
- DRS Email 14-009, Holiday Leave Banks.

#### **Discussion:**

- We consider our Holiday Pay to be a Cash Out of a Personal Holiday as discussed in *DRS Email 14-009, Holiday Leave Banks* which states as follows:
  - Personal or floating holidays are not tied to a specific date and are not considered recognized holidays for the purposes of holiday leave bank cash outs.
- In either Contract on the next pages, Holiday Pay is not associated with any specific holiday.
  - In the either Contract, Holiday Pay is accrued at a rate of 8 hours per month, irrespective of whether a holiday was worked or not. (The 2019-2021 Contract does not specifically discuss an accrual, but rather implies it).
- The 2022-2024 Contract does not permit payment of overtime for any specific holiday worked, and the 2019-2021 Contract implies the same.
- Holiday Pay may be cashed out of the Holiday Pay Bank in in the following instances only:
  - 2019-2021 Contract:
    - Only as a lump sum cash out in the December payroll.
    - Termination prior to the December payroll results in a forfeit of Holiday Pay.
  - 2022-2024 Contract allows payments in two instances:
    - As a lump sum in the November payroll.
    - As a lump sum on termination (if prior to the November payroll).
- We report Holiday Pay to DRS as a lump sum payment.



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## 2019-2022 Contract

### ARTICLE 23 - HOLIDAYS

New Year's Day	Martin Luther King Day	Presidents Day
Memorial Day	Independence Day	Labor Day
Veterans Day	Thanksgiving Day	Thanksgiving Friday
Christmas Day		

SECTION 1. Employees will receive ninety-six (96) hours of holiday pay compensation annually. This payment shall occur annually with the November payroll (normally December 5<sup>th</sup>). If an employee has not been employed for a full year, their holiday pay will be prorated based on their hire date. This will be calculated by dividing the 96 hours by 12 months, which equates to 8 hours per month. The employee will receive the 8 hours of the month they are hired, regardless of the date within the month.

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## 2022-2024 Contract

### ARTICLE 25 – HOLIDAYS

**SECTION 1.** The following holidays are those which shall be recognized and observed:

New Year's Day

Martin Luther King Day

Presidents Day

Memorial Day

Independence Day

Labor Day

Veterans Day

Thanksgiving Day

Thanksgiving Friday

Christmas Day

**SECTION 2.** Employees will receive ninety-six (96) hours of Holiday Pay annually. Holiday Pay will accrue at a rate of eight (8) hours per full month of service. New hires will accrue eight (8) hours for the month that includes the hire date, regardless of the actual hire date within the month.

Payment for accrued holiday hours shall occur annually with the October payroll (normally November 5th), or on a final paycheck if separated from service prior to that time. Employees may not request and Employer will not pay out Holiday Pay at any other time.

Holiday Pay will be paid in lieu of statutory overtime for any specific holiday actually worked.

Holiday Pay will be calculated at the straight time hourly rate in effect at time of payment. This is an equivalent of overtime pay for eight (8) holidays whether or not the holidays were actually worked.

No Employee may work more than eight (8) holidays in any one year.

Holiday Pay is considered additional compensation and is reportable to the Washington State Department of Retirement Security.

## Jefferson County Fire Protection District #2

### DRS Exit Conference

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#### **ISSUE: Overtime Hours Not Reported correctly.**

#### **Response:**

- We agree that Contract Overtime hours have not been reported correctly.
  - Action will be taken to report Contract Overtime hours in future.
- We believe that Fair Labor Standards Act Overtime (FLSA Overtime) hours are not reportable separately to DRS because they are *included* in Reported Hours Worked.
  - See Background and Discussion, below.

#### **Background:**

- Firefighter FLSA Overtime requirements are laid out in the Federal Department of Labor Fact Sheet #8 (<https://www.dol.gov/agencies/whd/fact-sheets/8-flsa-police-firefighters>).
- Our Collective Bargaining Agreements (the Contracts) lay out specific guidelines for pay and overtime (see pertinent Articles in the following pages).
  - FLSA Overtime
    - FLSA Overtime is overtime in excess of Work Period limitations specified in the Fair Labor Standards Act.
  - Contract Overtime Hours
    - Contract Overtime is overtime in excess of On-Duty Regular Hours.

#### **Discussion:**

- FLSA Work Period
  - For work periods of at least 7 but less than 28 days, overtime pay is required when the number of hours worked exceeds the number of hours that bears the same relationship to 212 (fire) or 171 (police) as the number of days in the work period bears to 28.
- Our FLSA Work Period is set at 24 days per the Contracts.
  - Per the above, any hours worked in excess of 182 are considered overtime. (212 hours divided by 28 days times our own 24 day Work Period equals 182 hours).
- Per our Contracts, covered employees are compensated based on 2,912 hours per year, or 192 hours per Work Period.
- All On-Duty Regular Hours worked in a Work Period are accounted for on our Time Sheets and our DRS reports.
- If On-Duty Regular Hours physically and actually worked in a Work Period exceed 182 hours, then those *additional* hours are compensated at an *additional* 50% premium to bring those hours up to the required time and a half.
- To reiterate, we believe FLSA Overtime hours are not reportable separately to DRS because they are *included* in On-Duty Regular Hours (which *are* reported).

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## 2019-2022 Contract

### **ARTICLE 14 - OVERTIME, CALLBACK & COMPENSATORY TIME**

SECTION 1. For the purpose of calculating Fair Labor Standards Act (FLSA) overtime for regular hours worked, a work period of twenty-four (24) days will be utilized for twenty-four (24) hour shift Employees. Paid leaves of absence, vacation and sick leave will be deducted from regular hours worked.

SECTION 2. Except as otherwise provided in this Agreement, any Employee who is required to perform work in excess of the recognized work hours, as established in this Agreement shall be compensated at the overtime rate of pay for the position presently held.

SECTION 3. It is the Employers expectation to use Resident Volunteers and per diem volunteers to fill as many of the overtime shifts as possible. Except in emergencies or inability to find volunteer or an Employee to fill a shift, overtime shall be voluntary. The opportunity to work overtime shall be rotated equally among the Employees. In the event the shift opening remains unfilled after going through the above process and no members are available for force hire, the Chief or his/her designee may do what is necessary to fill the opening. This includes, but is not limited to, a mandatory overtime shift for an Employee covered under this Agreement. An Employee may also be forced on a mandatory overtime shift on a date immediately preceding their regular work shift. If an Employee on scheduled leave is force-hired back, he/she shall receive overtime during the forced hours and the Employee shall retain the leave that covers the specific work period they are forced back to work.

SECTION 4. The overtime rate of pay shall be one and one-half times the basic rate of pay as defined in Article 13 of this Agreement.

SECTION 5. The Employee shall be paid at the overtime rate for a minimum of thirty (30) minutes for each occurrence of all the time worked outside of his/her regularly scheduled hours of work. The aforementioned thirty (30) minute minimum shall not apply to Employees held over for an alarm past termination of their scheduled shift or answering an alarm within thirty (30) minutes prior to the start of their scheduled shift.

- A. Employees shall receive overtime for periods before and after scheduled shifts for those periods exceeding fifteen (15) minutes. Overtime shall be paid thereafter in fifteen (15) minute increments.

SECTION 6. Compensatory time shall be defined as time of at the rate of one and one-half (1 1/2) times the number of hours worked. Compensatory time in lieu of payment of

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overtime shall be the choice of the Employee. Compensatory time will be capped at forty-eight (48) hours. Any hours exceeding forty-eight (48) will be automatically cashed out at the earliest payroll cycle.

SECTION 7. Upon separation, Employees shall be paid at their current rate of pay for all unused compensatory time.

**ARTICLE 16 - HOURS OF WORK**

SECTION 1. The work schedule for all 24-hour shift Employees shall for FLSA purposes be calculated on a 24-day work period. Vacation, Holidays, Sick Leave, and Compensatory Time shall not be calculated as Hours Worked. Shift change for Employees shall be at 0800 hours. The cycle for 24-hour shift members shall consist of 48 hours on, 96 hours off.

SECTION 2. Station shifts begins at the fire station at 0800 each morning (7 days a week). Duty crew is expected to be in the fire station, in uniform and response ready by that time. Daily pass down between off going and on coming shifts is to be conducted in the fire station each morning.

Duty crews are expected to remain in the fire station and productive until 1700 hrs. each day. After 1700 shift personnel may utilize the crew quarters at 67 Herbert Street.

Duty crew personnel shall remain on fire district property during the entire duration of their shifts, with the following exceptions:

1. Any fire district activities, including but not limited to: calls, citizen assists, training, public relations.
2. During the below-mentioned lunch and break periods shift personnel may visit public stores and restaurants. As long as such visits do not slow an emergency response.

Duty crew personnel are given a 60-minute lunch period and two 15-minute breaks between the hours of 0800-1700.

At least 2 hours of fire or EMS training shall be conducted and documented each shift period. One (1) hour of physical fitness will be allowed to be conducted during the hours of 0800-1700 after personnel/Equipment are response ready.

Holidays as recognized by this agreement may have reduced work hours. The Employer reserves the right to schedule activities including, but not limited to inspections and training after 1700 hours, but generally not later than 2200 hours. Activities prior to 0800 may also at times be needed.

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## 2022-2024 Contract

### ARTICLE 13 – BASIC RATE OF PAY

**SECTION 1.** For the purpose of calculating the hourly rate of pay which shall apply to excess hours of work (overtime), the annual salary of each Employee as established by this agreement shall be divided by 2,912 hours (average 56-hour work week).

### ARTICLE 14 – OVERTIME, CALLBACK AND COMPENSATORY TIME

**SECTION 1.** WORK PERIODS. The Employer has elected a Work Period consisting of twenty-four (24) days in accordance with Section 7(k) of the Fair Labor Standards Act (FLSA). Hours worked during a Work Period includes only the hours an Employee is physically present on the job – it does not include paid leave.

**SECTION 2.** The overtime rate of pay shall be one and one-half times the basic rate of pay as defined in Article 13 of this Agreement.

**SECTION 3.** Except as otherwise provided in this Agreement, Employees shall receive overtime pay for any hours they are required to work outside their normally scheduled work shift, as established in this Agreement.

**SECTION 4.** Employees shall receive a minimum of thirty (30) minutes overtime pay for each occurrence of time they are required to work outside of their normally scheduled work shift. The minimum overtime pay shall not apply to Employees held over for an alarm past termination of their scheduled shift or answering an alarm within thirty (30) minutes prior to the start of their scheduled shift.

A. Employees shall receive overtime for periods before and after scheduled shifts for those periods exceeding fifteen (15) minutes. Overtime shall be paid thereafter in fifteen (15) minute increments.

**SECTION 5.** The Employer reserves the right to use qualified Volunteers to fill vacant shifts. When the Employer elects to fill a vacant shift with an Employee, the opportunity to work overtime shall be rotated equally by seniority. In the event a vacant shift remains unfilled, the Fire Chief or authorized designee may order an Employee to work a mandatory overtime shift. An Employee may also be ordered to work a mandatory overtime shift on a date immediately preceding their regular work shift. If an Employee on scheduled leave is ordered back to work, the Employee shall receive overtime during the forced hours and the Employee shall retain the leave that covers the specific forced work period.

**SECTION 6.** Compensatory time shall be defined as time off at the rate of one and one-half (1-1/2) times the number of hours worked. Compensatory time in lieu of payment of overtime shall be the

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choice of the Employee. Compensatory time will be capped at forty-eight (48) hours. Any hours exceeding forty-eight (48) will be automatically cashed out at the earliest payroll cycle.

**SECTION 7.** Upon separation, Employees Shall be paid at their current rate of pay for all unused compensatory time.



## Certification of Corrections

### Jefferson Co FPD 02 No. CR21-029

As an employer participating in retirement systems administered by DRS, it is important to understand and adhere to the laws and rules governing the various plans in which employees may have membership. Customer benefits are dependent upon the correct reporting of compensation and hours. As an employer, DRS relies on your reporting to pay correct benefits.

You have **60 days** from the date of the compliance report to make the attached corrections, provide the names of additional corrected individuals, and to certify that the corrections are completed. Please return this certification to [Drs.compliance@drs.wa.gov](mailto:Drs.compliance@drs.wa.gov).

Our Employer Support Services team is available to provide assistance in implementing the corrective action or to provide additional information or clarification on agency laws and rules. Alternatively, you may wish to consult our Employer Handbook available on the DRS website.

### Employer Certification

We understand the importance of correct reporting to DRS and the impact that reporting can have on our employees. We have taken the necessary steps to correct our retirement reporting based on the recent review of our records by DRS. We certify that we have made the corrections listed in the following pages. We have addressed the corrections identified by DRS and have provided the names of other employees/retirees that we identified were also in need of correction.

*Corrections must be made within 60 days of the Compliance Report.*

Signature of Employer Representative:

Date:

\_\_\_\_\_

\_\_\_\_\_

Printed Name Employer Representative:

Title:

\_\_\_\_\_

\_\_\_\_\_

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**Jefferson Co FPD 02**

No. CR21-029

Certification of Corrections

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## Certification of Corrections

*In addition to the specific corrections, attach a list of recent retirees and employees within five years of retirement eligibility for whom you have made corrections. Please include the ERA case number.*

<b>Issue: Employees eligible for membership were not reported.</b>		
<b>The following employees were eligible for PERS back to their hire date.</b>		
<b>SSN</b>	<b>NAME</b>	<b>CORRECTION INFORMATION</b>
xxx-xx-0538	Morris, Helen Jean	Report member in PERS from 1/1/2014.

<b>Issue: LEOFF Plan 2 Non-LEOFF Employer Compensation (NLEC) was not reported correctly.</b>		
<b>The employer had fire fighters mobilized to fight fires by other agencies that were not reported correctly.</b>		
<b>SSN</b>	<b>NAME</b>	<b>CORRECTION INFORMATION</b>
xxx-xx-1391	Winn, Kevin	Correct NLEC reporting through ERA back to 2017
xxx-xx-6534	McKern, Timothy	Correct NLEC reporting through ERA back to 2017.



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**Jefferson Co FPD 02**  
**No. CR21-029**

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*Corrections must be made within 60 days of the Compliance Report.*

Signature of Employer Representative:

Robert Rewitzer

Date:

2/6/2023

Printed Name Employer Representative:

Robert Rewitzer

Title:

District Secretary

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Certification of Corrections

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