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NEBRASKA SUPREME COURT
COURT OF APPEALS

No. A-25-923

IN THE NEBRASKA COURT OF APPEALS

MATTHEW SCHIFFMANN,
Petitioner-Appellant,

v.

NEBRASKA GAME AND PARKS COMMISSION,
Respondent-Appellee.

On Appeal from the District Court of Lancaster County
The Honorable Darla S. Ideus

BRIEF OF APPELLEE

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STATEMENT OF THE CASE

Nature of the Case. Petitioner Matthew Schiffmann works for Respondent Nebraska Game and Parks Commission. Schiffmann requested a change in job classification under the State's Labor Contract with the Nebraska Association of Public Employees. The State Personnel Director denied his request. Schiffmann then filed a grievance under the Labor Contract, claiming his job classification violates the Labor Contract. The State Personnel Board denied Schiffmann's grievance, finding his reclassification request is not grievable under the Labor Contract. Schiffmann filed a petition for review under the Administrative Procedure Act.

Issue Presented in the District Court. Schiffmann claimed that the State Personnel Board erred by finding that his reclassification request was not grievable under the Labor Contract.

Resolution of the Issue Presented. The district court agreed with the State Personnel Board that Schiffmann's reclassification request was not grievable under the Labor Contract.

Scope of Review. This Court reviews a final order of a district court in an APA review for errors appearing on the record. *Uhrich & Brown Ltd. P'ship v. Middle Republican Nat. Res. Dist.*, 315 Neb. 596, 603 (2023). The Court asks "whether the decision conforms to the law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable." *Id.*

PROPOSITIONS OF LAW

1. In interpreting a contract, the Court must "ascertain the intention of the parties from the plain language of the contract." *Seemann v. Seemann*, 318 Neb. 643, 651 (2025).

2. Where there is an "apparent inconsistency" between a general provision of a contract and a more specific provision, the "specific provision[] will control over [the] general provision[.]" *Panwitz v. Miller Farm-Home Oil Serv., Inc.*, 228 Neb. 220, 223–24 (1988).

3. "The cardinal rule in the interpretation of contracts is to ascertain the intention of the parties and to give effect to that intention if it can be done consistently with legal principles." *O-N-L Mills, Inc. v. Union Pac. R. Co.*, 151 Neb. 692, 696 (1949).

4. A court should not interpret the Labor Contract in a manner that is "obviously inconsistent with the parties' intent." *Timberlake v. Douglas County*, 291 Neb. 387, 395 (2015).

5. In ascertaining the parties' intent, "a court tries to give meaning to all its parts and avoid an interpretation that renders a material provision meaningless." *Timberlake*, 291 Neb. at 394.

6. "If it can be avoided," this Court should not adopt any interpretation of a contract that renders a provision "superfluous or meaningless." *Seemann*, 318 Neb. at 651.

STATEMENT OF FACTS

I. Matthew Schiffmann works for the Nebraska Game and Parks Commission (the "Commission"). (T1) Schiffmann's employment is covered by the State's Labor Contract with the Nebraska Association of Public Employees. (T1). Schiffmann believes his job with the Commission should be reclassified from "Maintenance Technician" to "Maintenance Specialist I." (E1).

Article 19 of the Labor Contract provided Schiffmann a pathway to challenge his job classification: "If an employee disagrees with his/her classification assignment, the employee may request a review of such assignment." (E11, p. 60). To make such a request, an employee must follow several mandatory procedures. Schiffmann did so.

As required by Article 19, he submitted a written request to the Commission that included (1) a "job description questionnaire … signed by the first level supervisor outside [Schiffmann's] bargaining unit," (2) "a concise and specific statement as to why [Schiffmann] believes the current classification assignment is inappropriate," and (3) "a concise and specific statement of why the classification sought … is appropriate." (E11, pp. 60–61; *see* E5). As required, Schiffmann's supervisor reviewed his job description and provided written remarks on it. (E5, pp. 5–8; *see* E11, p. 61). The Commission's director, according to Article 19, signed off on the job description. (E5, p. 8; *see* E11, p. 61).

Schiffmann then forwarded the request to the Department of Administrative Services ("DAS") State Personnel Division. (*See* E11, p. 61). Section 19.4 of the Labor Contract expressly states that "[n]o position shall be classified or reclassified without written authorization of the Director of State Personnel." (*Id.*). The Personnel Division issued its decision on June 26, 2023. (E6). The

Personnel Director denied Schiffmann's request, finding that Schiffmann's job was properly classified. (E6, p. 2).

Article 19 foreclosed Schiffmann's ability to appeal. Section 19.7 provides that employees may appeal the denial of a reclassification request to the Classification Appeal Panel, but "only if the action had an immediate adverse financial impact (reduction in salary) on the employee." (E11, p. 61). Schiffmann concedes that he cannot appeal under Article 19 because he did not suffer a reduction in salary. Schiffmann Br. 7, 25.

II. Less than a month after his request was denied, Schiffmann filed a grievance under Article 4 of the Labor Contract over the denial of his reclassification request. (E1). Article 4 provides general grievance procedures where a party can "alleg[e] a violation involving the application and interpretation of the provisions of [the Labor Contract]." (E11, p. 7). Article 4 has no procedures specific to job reclassification requests. (*See* E11, pp. 7–15). The employing agency receives the grievance form, confers with the employee, and makes an initial decision on the grievance. (E11, p. 11). Then, the employee can appeal the decision to the Administrator of the DAS Employee Relations Division (not Personnel). (*Id.*). If Employee Relations rules against the employee, the employee can appeal to the State Personnel Board or can elect voluntary binding arbitration. (E11, pp. 12–13).

Schiffmann's grievance complained that the Commission "violated Article 19 [of the Labor Contract] by failing to appropriately classify [Schiffmann's] position based on the duties he performs, the scope and level of responsibility he is assigned, and the skills for his position." (*Id.*). The Commission denied Schiffmann's grievance. (E2). The Commission explained that Article 19—not Article 4's grievance process—is the appropriate pathway for seeking a job reclassification. (E2). Specifically, the Commission

emphasized that under section 19.4 of the Labor Contract, no job reclassifications can be made without the written authorization of the State Personnel Director. (*Id.*). Thus, the Commission found it lacked authority to reclassify Schiffmann's job after the State Personnel Director had just denied the same request. (*Id.*).

Schiffmann appealed the denial to the Employee Relations Division. (E3; *see* E11, p. 11). The Employee Relations Administrator ordered that the appeal be transferred to the State Personnel Board on grounds that the grievance "is directly related to a decision made by the [DAS] Personnel Division regarding the proper classification of a State teammate and would therefore best proceed through the State Personnel Board procedure." (T27).

The State Personnel Board took the appeal and appointed a hearing officer. (T29, T39). The Commission filed a motion to determine grievability, arguing that Schiffmann could not grieve the denial of his reclassification request. (T49–53). The hearing officer recommended that the State Personnel Board find the grievance was properly filed but deny it because Schiffmann's job classification is appropriate. (T106, T111).

The State Personnel Board voted unanimously to reject the hearing officer's recommendation and ruled that "Article 19[] classification/reclassification request denials are non-grievable" under the Labor Contract. (T114).

III. Schiffmann filed a petition for review under the Administrative Procedure Act. (T115). The petition argued that the State Personnel Board erred by ruling that Article 19 reclassification denials are not grievable under Article 4. (T116). The district court affirmed the Board's decision, holding that the "final decision denying Schiffmann's reclassification request is not

grievable under Article 4 of the Labor Contract." (T136). The district court reasoned that Articles 4 and 19 are inconsistent with one another and that Article 19 controls as the more specific provision with respect to job reclassifications. (T135–36).

SUMMARY OF THE ARGUMENT

The Labor Contract creates a single channel for an employee to challenge job classifications—Article 19. Schiffmann tried to reclassify his job through Article 19's mandatory procedures and was denied. Article 19 foreclosed his ability to appeal.

Schiffmann cannot now use Article 4's general grievance procedures to effectively appeal the denial of his reclassification request. Article 19's plain language disallows such end-run maneuvering. It provides that employees "shall" follow specific procedures to obtain review of their job classification. So an employee cannot succeed in a request for a job reclassification unless he complies with those mandatory procedures. Schiffmann thus cannot circumvent Article 19's mandatory procedures simply by re-filing his request on a grievance form.

The fact that Schiffmann's grievance form alleges that the Commission is violating the Labor Contract is not a hall pass to avoid Article 19's requirements. The language in Article 4 that generally allows grievances for contract violations must give way to Article 19's more specific requirements. And Schiffmann's argument that nothing in the Labor Contract prohibits him from using both procedures ignores the Labor Contract's plain language. Article 4, as Schiffmann tries to use it, would allow Schiffmann to obtain review of his job classification without complying with procedures that Article 19 requires for employees to obtain such review. Schiffmann cannot wish Article 19's mandatory

procedures away—they apply whenever an employee seeks to obtain a review of his job classification, as Schiffmann does here.

Schiffmann's argument that he can use Article 4's grievance procedures to effectively appeal his Article 19 result would also render Article 19 ineffective and meaningless. The parties did not negotiate Article 19's reclassification procedures—including who can appeal and who cannot—just to allow an employee to throw Article 19 out the window whenever it does not produce the desired result. The parties certainly did not intend to do so in favor of the general grievance process, which, unlike Article 19, is in not suited to resolve reclassification requests.

This Court should affirm.

ARGUMENT

Schiffmann Cannot Use the Labor Contract's Grievance Process to Re-Challenge His Job Classification.

Under the Labor Contract, Schiffman cannot challenge the denial of his job reclassification request through the grievance process. Article 19 of the Labor Contract provides the specific channel for such challenges. That article contains certain mandatory procedures for an employee seeking review of his job classification. Schiffmann availed himself of the Article 19 process to request a job reclassification. His request was rejected, and Article 19 expressly forecloses his right to appeal.

That should have ended this matter. But Schiffmann now wants a second bite at the apple using the Labor Contract's general grievance process. As the district court reasoned, however, when a contract requires a party to follow a specific procedure to seek a specific remedy, that specific procedure governs over a more general grievance process. Schiffmann's argument that he

can avail himself of Article 4's general grievance process after losing under Article 19's reclassification process ignores the Labor Contract's plain language, would render Article 19 superfluous, and would ultimately undermine the parties' intention that Article 19 govern reclassification requests.

A. Article 19 governs reclassification requests under the Labor Contract's plain language.

1. The Labor Contract's language forecloses Schiffmann's arguments. The Court must "ascertain the intention of the parties from the plain language of the contract." *Seemann v. Seemann*, 318 Neb. 643, 651 (2025). The Labor Contract plainly makes Article 19—titled, "Classification and Classification Appeals"—the exclusive pathway for an employee to challenge a job classification. Article 19 expressly provides that "[i]f an employee disagrees with his/her classification assignment, the employee may request a review of such assignment." (E11, p. 60). Article 19 then lays out several mandatory procedures for an employee to seek a reclassification. Requests for review "*shall be* submitted in writing to the Agency Director or Designee" and "*shall contain*" a completed job description questionnaire and employee statements justifying the requested reclassification. (E11, pp. 60–61) (emphasis added).

From there, the agency "*shall have* forty-five work days to review" the submitted job description. (E11, p. 61) (emphasis added). The agency must make any necessary changes to "the assignment of duties and responsibilities of a position," and the first-level supervisor outside of the employee's bargaining unit "*shall provide* written remarks indicating agreement or disagreement with the contents of the submitted job description." (*Id.*) (emphasis added). The agency head must also attest to the

accuracy of the job description. (*Id.*). After the agency reviews the job description, the employee can forward the request to the DAS Administrator of Personnel who "*shall* issue a decision in writing" that "*shall* be implemented" during the current or next pay period. (*Id.*) (emphasis added). At end, "[n]o position *shall* be classified or reclassified without written authorization of the Director of State Personnel." (*Id.*) (emphasis added).

Article 19's plain text thus makes clear that any "request[] for review" of a job classification must follow Article 19's procedures. The procedures are mandatory: The written request "shall contain" the elements required under Article 19, "shall" be reviewed by the agency as provided under Article 19, and the Administrator of Personnel "shall" issue a written decision that "shall" be authorized by the Director of State Personnel. *See* 17A Am. Jur. 2d *Contracts* § 359 (2026) (noting that "drafters of contracts typically intend and that courts typically uphold" the use of "shall" in the "mandatory sense"); *cf.* Neb. Rev. Stat. § 49-802 (Reissue 2021) ("When the word shall appears" in a statute, "mandatory or ministerial action is presumed."). This mandatory language forecloses Schiffmann's attempt to obtain review of his job classification outside of Article 19's strictures.

2. Schiffmann argues that because Article 4 governs allegations that a party violated the Labor Contract, (*see* E11, p. 7), he can seek reclassification under the grievance process by alleging that his current classification violates Article 19. Not so.

The district court got it exactly right: Article 4's general procedures for grievances give way to Article 19's specific requirements for job classification reviews. Where there is "an apparent inconsistency" between a general provision of a contract and a more specific provision, the "specific provision[] will control over [the] general provision[.]" *Panwitz v. Miller Farm-Home Oil*

Serv., Inc., 228 Neb. 220, 223–24 (1988). Here, Article 4, as Schiffman attempts to use it, is inconsistent with Article 19. And Article 19 is the more specific provision that controls.

Schiffmann argues that Articles 4 and 19 are not inconsistent because there is nothing in Article 19 that expressly says that reclassification decisions are not grievable. But this argument ignores that Article 19's procedures are mandatory for obtaining review of a job classification. As discussed, Article 19 outlines several procedures that an employee *must* follow (i.e., "shall") in order to "request a review" of a job reclassification. *See* pp. 12–13, *supra*. Article 4 does not include those same requirements.

Nothing in Article 4 requires the employee to submit a job description questionnaire or statements explaining why the job reclassification is appropriate. (*See* E11, p. 11). The employee's supervisor is not required to review the job description, and the agency director is not required to remark on its accuracy. (*See* E11, pp. 11–12). Then, under Article 4, the Administrator of Employee Relations, not the Administrator of Personnel, decides the grievance. (*See* E11, p. 12). Article 4 also includes different timelines than Article 19 at each stage of the process. (*Compare* E11, pp. 10–13, *with* E11, pp. 60–61).

Further, while Article 19 says that "[n]o position shall be classified or reclassified without written authorization of the Director of State Personnel," (E11, p. 61), Article 4 does not even mention the Director of Personnel. But Schiffmann seeks exactly what the Labor Contract forbids—he asks for his position to be "reclassified without written authorization of the Director of State Personnel."

Article 4 (as Schiffmann seeks to use it) cannot be reconciled with Article 19. Schiffmann's interpretation would allow him to obtain another review of his job classification while ignoring procedures that Article 19 makes mandatory to obtain review of his job classification.

Nor can Schiffmann argue that he is no longer attempting to obtain review under Article 19 and thus Article 19's mandatory provisions do not apply to his grievance. Article 19's requirements apply to any "[r]equests for review" of an employee's job classification. (E11, p. 60). Nothing about Article 19 suggests an employee can avoid its requirements simply by putting the request in a grievance form rather than a personnel reclassification form. "If an employee disagrees with his/her classification assignment, the employee may request a review of such assignment." (*Id.*). And such "requests for review" "shall" satisfy Article 19's requirements. (*Id.*). The Labor Contract does not leave room for an employee to seek reclassification through another path.

At bottom, Articles 4 and 19 serve different purposes. Article 19's procedures are specifically suited for reviewing job classifications, while Article 4's are not. Article 19's mandatory and specific reclassification requirements thus control matters of reclassification.

3. Schiffmann ignores Article 19's plain and specific requirements and instead argues that because the Labor Contract does not affirmatively say "reclassifications decisions are non-grievable," this Court must presume classification decisions are grievable. Schiffmann Br. 20–23. He is wrong on three fronts. First, he derives this "affirmative statement" rule from the Supreme Court's decision in *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960), but the contexts are inapposite. *Warrior & Gulf*'s presumption of arbitrability

reflects a federal labor policy that arbitration is a preferable "substitute for industrial strife." *Id.* at 577–78. So, the policy promotes arbitration over labor strikes as the forum for employees to voice their complaints. But that policy does not apply where a labor contract provides an appropriate forum to resolve specific employee complaints. Here, Schiffmann had a forum to voice his complaint about his job classification—Article 19.

Second, the Nebraska Supreme Court has not adopted the federal presumption of arbitrability in cases where the Federal Arbitrary Act does not apply. In fact, prior to a constitutional amendment in 1996, the Nebraska Supreme Court *prohibited* binding arbitration contract provisions. *See State v. Neb. Ass'n of Pub. Emps.*, 239 Neb. 653, 657–59 (1991). *But see* Neb. Const. art. I, § 13 (now allowing voluntary binding arbitration). Instead, the Court interprets labor contracts according to ordinary contract interpretation principles. "[W]hen presented with a collective bargaining agreement," Nebraska courts follow the "familiar rule" that "the terms of [a] contract are to be accorded their plain and ordinary meaning." *Bower-Hansen v. Neb. Dep't of Health & Hum. Servs.*, 302 Neb. 847, 855 (2019).

Third, even if an affirmative statement rule applied, the Labor Contract would satisfy it: The parties specifically agreed that "[r]equests for review ... shall" comply with Article 19. (E11, p. 60). An affirmative statement that a request "shall" follow certain procedures necessarily states that the request "shall not" follow other inconsistent procedures. Requiring the parties to say "reclassification decisions are non-grievable" replaces ordinary principles of contract interpretation with a magic-words test.

B. Schiffmann cannot twice challenge his classification decision—once under Article 19 and once under Article 4.

Schiffmann suggests that he can still seek review of his job classification under Article 4's grievance procedure because (according to Schiffmann) the Personnel Director's final decision under Article 19 is a grievable action under Article 4. In other words, Schiffmann seeks to use the grievance process as a kind of appeal from the Article 19 process. This argument fails for two reasons (1) Article 19 expressly prohibits Schiffmann from taking a second bite at the reclassification apple, and (2) Schiffmann's interpretation of the Labor Contract would undermine the parties' intent and render Article 19 superfluous.

1. Article 19 expressly prohibits Schiffmann's second attempt to reclassify the same job.

Article 19's plain language prohibits Schiffmann from taking a second bite from the reclassification apple. Article 19 prohibits employees from "request[ing] a review of [their job classification] assignment" if their assignment has been "reviewed by the Administrator [of Personnel] in the previous twelve calendar months." (E11, p. 60). On June 26, 2023, the State Personnel Director issued a written decision denying Schiffmann's request to reclassify his position. (E6). Less than a month later, on July 24, 2023, Schiffmann filed his grievance claiming that the Department "fail[ed] to appropriately classify his position based on the duties he performs, the scope and level of responsibility he is assigned, and the skills for his position." (E1, p. 1). In other words, Schiffmann improperly sought review of his job classification

within 12 months of the Personnel Administrator's review of the classification.

The fact that Schiffmann requests his review in the form of a grievance rather than under the Article 19 procedures makes it no less of a "request [for] a review" of his job classification. He is still asking that his agency and DAS review and update his job classification. And he is not permitted to request a second review of his job classification within 12 months of the Director's denial of his first one.

And the timeline interplay between Article 4 and Article 19 will always prevent an employee from using Article 4 to review an Article 19 reclassification decision. Article 4 requires an employee to bring his grievance within 15 days of the complained-of action (i.e., the denial of a reclassification request). (E11, p. 11). That 15 days will always run its course well before the 12-month waiting period ends under Article 19.

Further, as mentioned, the Labor Contract is clear that "[n]o position shall be classified or reclassified without written authorization of the Director of State Personnel." (E11, p. 61). Yet that is exactly what Schiffmann seeks here—to have his position reclassified without the written authority of the Director of State Personnel. The Director of Personnel does not authorize any disposition of an Article 4 grievance. (*See* E11, pp. 7–15). Schiffmann cannot circumvent the Director of State Personnel by seeking a second review through grievance procedures.

2. Schiffmann's interpretation undermines the intent of the Labor Contract and renders Article 19 superfluous.

"The cardinal rule in the interpretation of contracts is to ascertain the intention of the parties and to give effect to that intention if it can be done consistently with legal principles." *O-N-L Mills, Inc. v. Union Pac. R. Co.*, 151 Neb. 692, 696 (1949). Thus, a court should not interpret the Labor Contract in a manner that is "obviously inconsistent with the parties' intent." *Timberlake v. Douglas County*, 291 Neb. 387, 395 (2015). In ascertaining the parties' intent, "a court tries to give meaning to all [a contract's] parts and avoid an interpretation that renders a material provision meaningless." *Id.* at 394. "If it can be avoided," this Court should not adopt any interpretation of a contract that renders a provision "superfluous or meaningless." *Seemann*, 318 Neb. at 651. Yet Schiffmann's interpretation undermines the intent of the Labor Contract and would render Article 19 superfluous.

The parties plainly intended for Article 19 to handle reclassification requests, not Article 4. Article 19 is specifically designed to promote accurate classification decisions. Employees must complete a questionnaire that details their job description. (E11, p. 60). They are required to provide two different statements: one explaining why the current classification does not fit their job description, and one explaining why the hoped-for classification does. (*Id.*). Then, their supervisor is required to review the job description, and the agency director must attest to its accuracy. (*Id.*). From there, the application is forwarded to the Administrator and Director of *Personnel,* who apply their experience with job classifications to make the decision. (*Id.*). Personnel's final decision is appealable to a panel dedicated to classification appeals—the Classification Appeal Panel—but only if the

disposition has "an immediate adverse financial impact (reduction in salary) on the employee." (E11, pp. 61–62). And, if at end the employee's request is denied, the employee cannot try again for another twelve calendar months. (E11, p. 60).

But Schiffmann argues that if an employee does not like the final decision rendered from these procedures, he can immediately throw that decision out and start over—but this time, under procedures *not* tailored to classification decisions. Article 4's grievance procedures are plainly aimed at discrete *actions* employers take towards any employee—such as employee discipline (which is why the Employee Relations Division handles them). For example, upon the grievant's request, an agency is required to provide "an abstract of the Agency disciplinary records *concerning the same or similar offenses and the type of punishment administered*." (E11, p. 11) (emphasis added). What sense does that requirement make for a job reclassification request?

But Schiffmann argues that he should be able to re-challenge his job classification under Article 4, which does not require an employee to submit a job description or request the agency's evaluation of the job description. And instead of going before the Personnel Division of DAS, grievances go to the Employee Relations Division. If the employee still does not like the decision, he can take it to voluntary arbitration or appeal to the State Personnel Board.

Schiffmann's reading renders Article 19—especially its appeal provision—entirely superfluous and ineffective. The State and NAPE negotiated Article 19 for the specific purpose of rendering reclassification decisions. And, at end, they struck a bargain that some decisions should be appealable and others should not. Schiffmann's interpretation ignores that bargain and effectively makes all reclassification decisions appealable under the

grievance process. But if the parties intended to allow all employees to appeal a reclassification denial, why would they make employees whose salary is not reduced start over with a grievance instead of appealing to the panel dedicated to reclassification appeals? Further, nothing about Schiffmann's argument would prevent an employee from *starting* with the grievance process, so long as the employee alleges his job classification violates the Labor Contract. But why would the parties go through the effort of negotiating Article 19 if they thought Article 4 could handle reclassifications at the outset? Schiffmann's interpretation leaves more questions than answers.

The interpretation that best captures the intent of the parties is the common-sense one: The parties intended Article 19 to govern reclassification decisions and Article 4 to govern general grievances. And the parties went through the trouble of negotiating Article 19 because they did not find Article 4's procedures well-suited to handle the content and volume of classification decisions. Indeed, with respect to State employees not covered by collective bargaining agreements, DAS regulations expressly provide that "[p]osition classification" decisions that involve "no salary reduction" are "non-grievable." 273 Neb. Admin. Code ch. 14, § 003.01(G) (2023). The State did not change its mind for employees covered by the Labor Contract. The parties never intended to allow employees to throw out the decision rendered by Article 19—which is geared toward making correct classification decisions—to try again under the general grievance process.

CONCLUSION

The Court should affirm the district court.

Dated: June 10, 2026

Respectfully submitted.

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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface and word-count requirements of Neb. Ct. R. App. P. § 2-103 because it contains 4,788 words excluding this certificate. This brief was prepared using Microsoft Word 365.

/s/ Lincoln J. Korell
LINCOLN J. KORELL

Certificate of Service

I hereby certify that on Wednesday, June 10, 2026 I provided a true and correct copy of this *Brief of Appellee* to the following:

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