

1 DEPARTMENT OF LABOR AND INDUSTRIES

2 STATE OF WASHINGTON

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4 \_\_\_\_\_  
5  
6 ELECTRICAL BOARD MEETING

7  
8 TRANSCRIPT OF PROCEEDINGS

9  
10 Thursday, October 29, 2015  
11 \_\_\_\_\_

12  
13 BE IT REMEMBERED, that an Electrical Board meeting  
14 was held at 9:00 a.m. on Thursday, October 29, 2015, at  
15 the Ramada at Spokane Airport, 8909 West Airport Drive,  
16 Spokane, Washington, before CHAIRPERSON TRACY PREZEAU,  
17 BOARD MEMBERS ALICE PHILLIPS (Vice Chair), ROD BELISLE,  
18 JOHN BRICKEY, JANET LEWIS, RANDY SCOTT, DAVID CORNWALL,  
19 MIKE NORD, DYLAN CUNNINGHAM, DON BAKER, BOBBY GRAY, KEVIN  
20 SCHMIDT, DOMINIC BURKE, and SECRETARY/CHIEF ELECTRICAL  
21 INSPECTOR STEPHEN THORNTON. Also present was ASSISTANT  
22 ATTORNEY GENERAL PAM REULAND representing the Board.

23 WHEREUPON, the following proceedings were held, to  
24 wit:

25  
26 Reported by:  
27 H. Milton Vance, CCR, CSR  
28 (License #2219)

29 EXCEL COURT REPORTING  
30 16022-17th Avenue Court East  
31 Tacoma, WA 98445-3310  
32 (253) 536-5824

Thursday, October 29, 2015  
Spokane, Washington

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Thursday, October 29, 2015  
Spokane, Washington

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PROCEEDINGS

CHAIRPERSON PREZEAU: So good morning. It is 9:01, and I would like to call the October 29, 2015, Electrical Board meeting to order.

Item 1. Approve Transcripts From July 30, 2015,  
Electrical Board Meeting

CHAIRPERSON PREZEAU: So the first agenda item is to approve the transcripts from the July 30, 2015, Electrical Board meeting.

Motion

BOARD MEMBER PHILLIPS: So moved.

CHAIRPERSON PREZEAU: Is there a second?

BOARD MEMBER NORD: Second.

CHAIRPERSON PREZEAU: It's been moved and seconded to approve the transcripts from the July 30, 2015, Electrical Board meeting. All those in favor, signify by saying "aye."

THE BOARD: Aye.

CHAIRPERSON PREZEAU: Opposed?

1 Motion carried. Super cool.

2 Motion Carried

3

4 CHAIRPERSON PREZEAU: So --

5 ASSISTANT ATTORNEY GENERAL REULAND: Can I address  
6 the Board on the issue of the transcripts?

7 CHAIRPERSON PREZEAU: Absolutely.

8 ASSISTANT ATTORNEY GENERAL REULAND: Good morning.

9 As you know, I wasn't here last time. But I wanted to let  
10 you guys know that I thought you did an excellent job in  
11 terms of the appeals and clarifying the record. I know  
12 that it was tedious; I could tell that. But you made a  
13 good record in terms of how you did that, and I just  
14 wanted to let you guys know that you did a good job.

15 BOARD MEMBER BELISLE: You taught us well.

16 CHAIRPERSON PREZEAU: I know. Right? We did it --  
17 it shows that we had a good teacher, right?

18 Before we get into the Department -- before we  
19 continue on with the agenda, I know we did introductions  
20 last quarter. I'm going to ask -- I think that's probably  
21 a good idea, just generally speaking especially since  
22 we're in Spokane, and we've got some different folks in  
23 the room.

24 So if -- Dominic, if we could start with you. If we  
25 just -- if the Board members would introduce themselves

1 and what seat, you know, what stakeholder group they  
2 represent, I'd greatly appreciate it.

3 BOARD MEMBER BURKE: Dominic Burke, Burke Electric.  
4 Contractor seat.

5 BOARD MEMBER SCHMIDT: Kevin Schmidt, Interface  
6 Technologies. Telecommunications contractor.

7 BOARD MEMBER GRAY: Bobby Gray, contractor seat from  
8 Eastern Washington.

9 Thank you for coming.

10 BOARD MEMBER BAKER: Don Baker, electrical contractor  
11 seat.

12 BOARD MEMBER CUNNINGHAM: Dylan Cunningham, M.W.  
13 Consulting Engineers. Engineering seat.

14 BOARD MEMBER NORD: Mike Nord, telecom workers seat.

15 ASSISTANT ATTORNEY GENERAL REULAND: Pam Reuland,  
16 A.G.'s seat.

17 CHAIRPERSON PREZEAU: Tracy Prezeau, Chair. And I  
18 represent electricians.

19 BOARD MEMBER PHILLIPS: Alice Phillips, Vice Chair.  
20 And I represent outside electricians.

21 BOARD MEMBER CORNWALL: Dave Cornwall, manufacturers  
22 seat.

23 BOARD MEMBER SCOTT: Randy Scott, public member.

24 BOARD MEMBER LEWIS: Janet Lewis, electrician seat.

25 BOARD MEMBER BRICKEY: John Brickey, representing

1 cities with electrical programs.

2 BOARD MEMBER BELISLE: Rod Belisle, electrician seat.

3 SECRETARY THORNTON: Steve Thornton. I'm the Chief  
4 Electrical Inspector. I'm the acting secretary.

5 MS. RIVERA: Bethany Rivera, secretary assistant.

6 CHAIRPERSON PREZEAU: And the ever humble Milton  
7 Vance, our court reporter.

8 THE COURT REPORTER: The quiet one.

9 CHAIRPERSON PREZEAU: Rock star. Make sure you get  
10 that in the transcript. Rock star.

11 And I just want to make a couple of announcements  
12 before we move on to agenda item 2. And that is Dennis  
13 Townsend who was our communication utility representative  
14 tendered his resignation to the Board effective September  
15 30th. Definitely sorry to see Dennis leave.

16 The reason for his resignation is that those utility  
17 members seats, it's stipulated in the statute that they be  
18 employed in the industry. And he had retired from his  
19 long-term employer of 35 years and is not actively seeking  
20 work in the industry. So he felt it in the best interest  
21 in compliance with the statute, transparency, to resign  
22 his position.

23 And again, I'm sorry to see him go. He was  
24 definitely an asset to this Board. And wish him all the  
25 best, right?

1           Additionally, I wanted to make a couple of comments.  
2     In the interim -- in fact, just a couple of days ago  
3     Bethany sent out a resource that was forwarded to her from  
4     our AAG Pam Reuland about -- it was a resource regarding  
5     open government. So it's an open government resource  
6     manual. That is not compulsory reading. Although, I'm  
7     sure it is riveting, right? It's been recommended by Pam.

8           So it's meant to be a resource. Obviously we've been  
9     through some open government training as mandated, you  
10    know, through statute by the legislature. So it's offered  
11    as a valuable source.

12           Did you want to speak to that?

13           ASSISTANT ATTORNEY GENERAL REULAND: No. I'm just  
14    going to say, if you have questions about open public  
15    meetings or if something comes up that you want to look  
16    at, that's what it's there for, just so you have it should  
17    you need it.

18           CHAIRPERSON PREZEAU: Perfect.

19           And then final orders, we did -- as you all recall,  
20    we had four appeals at the last quarterly meeting.

21           One of those appeals we were able to secure final  
22    orders in real time. So we signed those. And then -- but  
23    the orders in the Frank Dahmen appeal, and the Segalini  
24    Electric LLC and Michael Segaline, and Potelco Inc. and  
25    Jeff Lampman, we were able to secure final orders.

1           And you guys recall, Kevin Elliot was our AAG at the  
2 last quarterly meeting. Kevin, since he was here, helped  
3 us navigate those waters. He has reviewed those submitted  
4 final orders which have been signed by the respective  
5 parties involved in those appeals, and I just wanted to  
6 update the Board as the Chair, I signed those documents  
7 this morning. So those, we will not have presentment of  
8 final orders. They are not in dispute. And according to  
9 our AAG, they are consistent with the actions taken by  
10 this body last quarter.

11           So just an update on that.

12  
13           Item 2. Departmental/Legislative Update

14  
15           CHAIRPERSON PREZEAU: And with that, let's move to  
16 Departmental/Legislative Update. And I do not believe we  
17 are going to have Jose' Rodriguez this morning, but we  
18 have Steve Thornton giving that report.

19           SECRETARY THORNTON: Yeah, I'll do that. Jose'  
20 wasn't able to be here this morning.

21           So one of the biggest issues that the Department has  
22 right now, which is an ongoing thing with us, is hiring.  
23 We continue to have a hard time hiring inspectors. We run  
24 roughly 10 to 14 vacancies every month. That fluctuates  
25 some, but is pretty standard at that rate. We have a lot

1 of people that are retirement age; they're retiring. We  
2 have a fair amount that are leaving the agency to go work  
3 for other AHJ's. We don't compete very well with them or  
4 anybody else as far as that goes wages-wise.

5 So we have a wage package that has been -- we put in  
6 for that, and it's been approved by the agency. And there  
7 were six packages that left the building. They were all  
8 sponsored. We're one of those six. How we fare in that  
9 we don't know yet. But they have left the building and  
10 gone forward.

11 CHAIRPERSON PREZEAU: So I have to admit that I don't  
12 understand what those words mean. When you say there's  
13 packages that left the building and -- can you give us  
14 some more detail? I don't --

15 SECRETARY THORNTON: Each department puts together  
16 their own package as far as wages and their need for a  
17 wage increase, and those each go out independently. And  
18 depending on how the fifth floor looks at it, some of them  
19 leave the building sponsored; some don't. We were one of  
20 the six that they sent out as ones that they agree need to  
21 be addressed.

22 CHAIRPERSON PREZEAU: Okay, now I get it.

23 SECRETARY THORNTON: So now it's one step farther.  
24 And I believe it's at DOP now, and they look at it and see  
25 whether we take one more step or not.

1           So we are looking at ways to deal with the wages.  
2           How far that gets, we'll see.

3           CHAIRPERSON PREZEAU:   So is it -- can we talk about  
4           what that -- how competitive these wage package -- these  
5           proposals are, or is that something that needs to wait  
6           until --

7           SECRETARY THORNTON:   Yeah, it needs to wait.

8           Right now I've been told I can say there were six and  
9           we were one of the six.

10          CHAIRPERSON PREZEAU:   Okay.

11          BOARD MEMBER LEWIS:   A question.

12          CHAIRPERSON PREZEAU:   Yes, Janet.

13          BOARD MEMBER LEWIS:   So Steve, you said it goes to  
14          the State Department of Personnel.   Can outside  
15          stakeholders write letters or weigh in on the need for  
16          this at the Personnel Board or some process that we can  
17          help?

18          SECRETARY THORNTON:   I don't know the answer to that.  
19          I would encourage everybody to make their feelings known  
20          either way so that everybody understands how the industry  
21          feels about this.

22          And support for this will be huge for us as far as  
23          that goes.   And where you go to do that other than going  
24          straight to your legislator, I don't know.   But I can find  
25          out what the correct process is to make those concerns

1 known.

2 CHAIRPERSON PREZEAU: Yeah. So Steve, I think that  
3 would be incredibly valuable, not only for us as  
4 individual stakeholders, but also as -- under a unified  
5 banner of the Electrical Board. I certainly -- you know,  
6 I'm looking around -- and we had this conversation at our  
7 July meeting, and I don't know about you, but my jaw sort  
8 of hit the, you know, hit the table when Jose', you know,  
9 in his opening or in his updates was -- and certainly you  
10 reinforced these statistics in the presentation that you  
11 had given closer to the end of the meeting, but, you know,  
12 having a 10 percent vacancy rate for -- sustained over two  
13 years is problematic, right? And these were the numbers  
14 that Jose' delivered that, you know, at the time in July,  
15 23 or more inspectors, you know, that we would need 23  
16 more inspectors 2019, that right now 42 inspectors are  
17 eligible for retirement, and that if all, you know,  
18 predictions come true, 90 percent of the staff would be  
19 turned over by 2019.

20 We all recognize that really the success of this  
21 program rises and falls on what -- you know, boots on the  
22 ground and what those inspectors do in the field. And if  
23 you have 90 percent turnover in a four-year period of time  
24 at a compensation rate that is not competitive in the  
25 industry, I see nothing but catastrophic outcomes.

1 SECRETARY THORNTON: And when you --

2 CHAIRPERSON PREZEAU: And I think this Board agrees  
3 with that.

4 SECRETARY THORNTON: And when you add to that the  
5 fact that we cut staff to the bare minimum in 2008, when  
6 you get down to ground zero and then you start losing  
7 people at that rate, it makes it even tougher.

8 CHAIRPERSON PREZEAU: No. I mean, I -- you know, and  
9 we are in a part of the state -- and you know, you correct  
10 me if I'm wrong. I'm coming off of a little bit of  
11 retention of information, but, you know, I've had enough  
12 coffee that I think I might be right is that we are in a  
13 region in the state that has a 60 percent successful  
14 response time to inspection requests within 48 hours.

15 SECRETARY THORNTON: And that sounds a little low.  
16 But yeah, it's down statewide into the upper 80s.

17 And some parts of the state -- which the east side is  
18 a lot sparser and a lot more spread out that inspectors  
19 have to drive a lot farther, so their response times are  
20 not what they are west side of the mountains. So ...

21 CHAIRPERSON PREZEAU: Which has a real monetary  
22 impact, right?

23 SECRETARY THORNTON: Oh, absolutely.

24 CHAIRPERSON PREZEAU: I mean, if you're -- you know,  
25 if you can't get a rough-in inspection in a house or a

1 tenant improvement or -- then it holds up Sheetrock, it  
2 holds up -- it pushes the schedule.

3 SECRETARY THORNTON: And it affects everybody down  
4 the line because if you can't schedule for an electrical  
5 inspection, you can't schedule for a framing inspection or  
6 an insulation inspection. And if every one of those  
7 people have the same issue at the tail end, the general  
8 contractor loses six weeks easy in the process.

9 CHAIRPERSON PREZEAU: Rod.

10 BOARD MEMBER BELISLE: Well, not only the general  
11 contractor, but I'm thinking of the customer who took out  
12 a construction loan. You know, that sounds like you just  
13 added a month to my loan just in that series of events  
14 there. And that's -- we're here to represent those  
15 people. That's concerning.

16 SECRETARY THORNTON: As a general rule, we understand  
17 that. Because most of us came from the construction  
18 industry, and we can say that, but it looks like we're  
19 kind of trying to feather our own nest in the process.

20 The industry needs to make their place in this known  
21 and let people know just how much it costs dollar-wise  
22 when we can't get there on time.

23 CHAIRPERSON PREZEAU: So if you could maybe sketch --  
24 you know, continue this sketch after just to sort of take  
25 the next step beyond what Janet had identified is -- so

1 these wage-package proposals go to the Department of  
2 Personnel, and then from -- if they survive at the -- if  
3 they're forwarded -- if they're supported by the  
4 Department of Personnel, then they go to the legislature  
5 for consideration? Is that how this process works?

6 SECRETARY THORNTON: Correct, yeah.

7 BOARD MEMBER BURKE: Would it help to be from a  
8 safety standpoint too? Because anything over 48 hours, if  
9 it's not inspected, you can energize. Right? You can  
10 look at WAC rules and use some of those rules too and view  
11 it from a safety standpoint and say, "If we don't get out  
12 there, these guys can energize this stuff uninspected."  
13 That might help your case -- our case I should say.

14 CHAIRPERSON PREZEAU: Yeah, no, I think that's --

15 SECRETARY THORNTON: And the safety card is one that  
16 everybody has a hard time arguing with as far as that  
17 goes. They can argue with a lot of other things that you  
18 come up with, but --

19 BOARD MEMBER BURKE: Just giving you another tool for  
20 your tool belt.

21 SECRETARY THORNTON: Yep, yep. It's full and we're  
22 playing them all. But ...

23 CHAIRPERSON PREZEAU: Oh, go ahead, Bobby.

24 BOARD MEMBER GRAY: Last meeting Jose' gave us an  
25 update on the issue of allowing inspectors to do training

1 on the side and that conflict-of-interest issue, and he  
2 implied that maybe there's some movement on that. Do you  
3 have any kind of an update on that?

4 I know I do a lot of work with clients in other  
5 states. And that approach is not consistent throughout  
6 the United States, at least with the states that I'm  
7 familiar with. The inspectors are doing the training  
8 there and doing --

9 SECRETARY THORNTON: And that has been something  
10 that's been ongoing and getting through the process of  
11 being approved and signed off by everybody. It has two  
12 steps left to go. Everybody's pretty much seen it and  
13 agreed that it's going to go through. We still have a  
14 couple of more steps to go through to get it signed off  
15 all the way through the ethics board. But it will give an  
16 avenue for inspectors to do some teaching in certain  
17 situations. So ...

18 And there was a committee put together of people that  
19 have been trainers and inspectors, and they are the ones  
20 who came up with this process of once you look at where  
21 the problem lies or what the perceived problem is, how do  
22 we, you know, know that that perception is there but yet  
23 try to allow people to do this. I've always thought that  
24 that was maybe one of the best outreach things we've ever  
25 done is to be able to go out and interact with our

1 customers and teach. But it's something that other people  
2 look at from a negative point of view, whether it's true  
3 or not.

4 And on the hiring and retention, we've had to look at  
5 any kind of an upgrade or something we can do differently.  
6 The conflict of interest is one thing that we're working  
7 on to give the inspectors something else as far as a way  
8 to, yeah, have two jobs to make a decent wage.

9 We're also looking at starting at something other  
10 than the minimum wage, the very bottom scale, some kind of  
11 a criteria to be able to start in the middle of the pay  
12 scale and at least get people to come on board so we can  
13 get started with the training and the learning process.  
14 Because it's something that you don't just come from the  
15 industry to be an inspector and understand all the  
16 implications of what happens when you go to do an  
17 inspection. So it's not something you learn overnight.

18 We're also looking at improvements in the compliance  
19 aspect of it. Anything that can take work off of the  
20 inspector's plate and make it quicker and easier for them  
21 and get them back out in the field to do inspections.  
22 We're looking at interactive voice type set-ups where you  
23 can just talk into the computer instead of having to  
24 handwrite everything. We're looking at anything that  
25 helps the inspectors.

1           We're also looking at having some dedicated support  
2 people to do a lot of the nontechnical jobs that the  
3 inspectors have. Phone calls, tracking paperwork, a lot  
4 of the stuff that over the years the inspectors have done  
5 from the days when we did everything on paper. Now it's  
6 all done on computers. So it's not something they have to  
7 do.

8           So we're looking at anything we can think of to help  
9 the guys that we have be more efficient and get to more  
10 jobs that --

11           And when we get to the Secretary's Report, we'll come  
12 back to these things because it's pretty evident how  
13 that's affected our response times and such.

14           CHAIRPERSON PREZEAU: Okay, so we're going to have  
15 an opportunity to expand this conversation a little bit  
16 more?

17           SECRETARY THORNTON: Yes, yep.

18           CHAIRPERSON PREZEAU: Which is good because I notice  
19 that Wayne Molesworth is here who, you know, addressed the  
20 Board at the July meeting, and we learned a little bit  
21 about his assignment with these four committees having to  
22 do with, you know, workload and marketing and perception  
23 and compliance. And I also know that Dene Koons, who's a  
24 field supervisor, is here. And I don't want to surprise  
25 these guys, but I'm hopeful that maybe under the

1 Secretary's Report we can call those two gentlemen up and  
2 add their voice to the conversation --

3 SECRETARY THORNTON: Certainly.

4 CHAIRPERSON PREZEAU: -- about challenges of hiring  
5 and maybe get an update of those four committees and where  
6 we're at and maybe hear from Dene about, you know, how  
7 difficult it is, you know, from somebody who actually is  
8 trying to do some of those hiring -- hiring those  
9 inspectors and trying to reduce that vacancy rate. I  
10 would think it would be beneficial I think for the Board.  
11 And hopefully they'll agree.

12 SECRETARY THORNTON: And I mean, we're trying other  
13 things. Our ECORE group that concentrates solely on  
14 compliance, we're using them in particular to ride with  
15 the new inspectors, give them some guidance on how to spot  
16 compliance, how to deal with it. So we're trying to glean  
17 a little bit of their expertise and let the new guys see  
18 how they do things and learn from that.

19 We're looking at some interactive video type  
20 inspections. There are other places that do that. And  
21 we've been asked, "Well, why don't you?" So we're looking  
22 at that. It has a lot of questions involved in it. But  
23 it's something that we're going to look at, anything  
24 people can come up with, to make ourselves more efficient.

25 CHAIRPERSON PREZEAU: Are these like drone

1 inspections?

2 SECRETARY THORNTON: Well, people laugh. But I tell  
3 them, you know, ten years ago if you would have told  
4 everybody we were using Smart phones and computers, they  
5 would have probably laughed at us. Yeah, who knows what  
6 we're going to do in ten years. But -- so -- not today,  
7 no, we can't afford them.

8 CHAIRPERSON PREZEAU: Maybe we could get a blimp.

9 SECRETARY THORNTON: Yeah, there you go.

10 CHAIRPERSON PREZEAU: Might be able to get one cheap.

11 SECRETARY THORNTON: Maybe a cheap blimp and  
12 binoculars, and one guy can cover, you know, 300 square  
13 miles and not have to --

14 CHAIRPERSON PREZEAU: One may be available in  
15 Pennsylvania.

16 SECRETARY THORNTON: And, of course, we're going to  
17 electronic everything, electronic plan review and all of  
18 those kinds of things to try and speed things up and make  
19 things more efficient. The only bad idea people have are  
20 the ones that they don't let us know about because we're  
21 looking at everything.

22 That's probably about it. Like I said, we'll be  
23 coming back to these when we get to the Secretary's  
24 Report.

25 CHAIRPERSON PREZEAU: Very good.

1 Any questions for Steve regarding Department/  
2 Legislative Update, knowing that we're going to have some  
3 more conversation about workload hiring under the  
4 Secretary's Report?

5 Okay, thank you, Steve.

6 SECRETARY THORNTON: Thank you.

7

8 Item 3. Appeals

9 Item 3.a. Nolan Heating & Air, Inc.

10

11 CHAIRPERSON PREZEAU: So seeing no more comments, we  
12 are going to move to the appeals. And our first appeal is  
13 Nolan Heating & Air.

14 So if the appropriate -- the respective parties could  
15 make their way to the front table, we'd greatly appreciate  
16 it.

17 And as they do that, I have a brief announcement that  
18 I would like to make. And that is I have a professional  
19 relationship with the appellant, Mr. Nolan. We have  
20 worked on some legislative issues with respect to the  
21 mechanical and electrical construction industry. And as a  
22 result of our previous work and that relationship, I am  
23 going to recuse myself from participating in this appeal.

24 Because I just want to make sure -- even though I  
25 believe that I can be unbiased, I want to make sure that

1 there is no appearance of favoritism or bias in the event  
2 this body renders a decision or decisions in this matter,  
3 and so I have asked our Vice Chair Alice Phillips to serve  
4 as the Chair to hear this appeal.

5 And Alice, as you would imagine, has graciously  
6 accepted that responsibility -- naturally accepted that  
7 responsibility.

8 So what I am going to do is switch chairs with Alice  
9 so that she can have access to our assistant attorney  
10 general and turn the gavel over to her.

11 Thank you, Alice.

12 VICE CHAIRPERSON PHILLIPS: Thank you, Tracy.

13 All right. So I'm going to try to do this as well as  
14 Tracy does. I have big shoes to fill here. So -- but I  
15 have a script, so I think we're good. Are we ready?  
16 Okay.

17 Good morning. My name is Alice Phillips, and I'm the  
18 Vice Chair of the Electrical Board.

19 The matter before us today is an appeal in the matter  
20 of Nolan Heating & Air, Inc., Docket Number  
21 02-2015-LI-00005 and Docket Number 02-2015-LI-00006.

22 The hearing is being held pursuant to due and proper  
23 notice to all interested parties in Spokane, Washington on  
24 October 29, 2015, at approximately 9:27 a.m. This is an  
25 appeal from a proposed decision and order issued by the

1 Office of Administrative Hearings on June 16, 2015.

2 It is my understanding that decision upheld the  
3 citations notice number EJMAX00375 and EJMAX00377 issued  
4 by the Department of Labor and Industries on June 25,  
5 2014. It is further my understanding that the appellant,  
6 Mr. Nolan, has timely appealed the decision to the  
7 Electrical Board.

8 At this time, the appellant, Mr. Nolan -- and you're  
9 representing yourself?

10 MR. NOLAN: Yes.

11 VICE CHAIRPERSON PHILLIPS: -- will be representing  
12 himself. And the Department is represented by Assistant  
13 Attorney General --

14 ASSISTANT ATTORNEY GENERAL ZURLINI: Zurlini.

15 VICE CHAIRPERSON PHILLIPS: -- Zurlini.

16 ASSISTANT ATTORNEY GENERAL REULAND: Angela Zurlini.

17 VICE CHAIRPERSON PHILLIPS: Angela Zurlini, okay.

18 All right. So the Electrical Board is a legal body  
19 authorized by the legislature to do -- to not only advise  
20 the Department regarding the electrical program but to  
21 hear appeals when the Department issues citations or takes  
22 some other adverse action regarding the electrical  
23 installation. The Electrical Board is a completely  
24 separate entity from the Department, and as such will  
25 independently review the actions taken by the Department.

1           When the Department issues penalties that are  
2 appealed, the hearing is assigned to the Office of  
3 Administrative Hearings to conduct a hearing pursuant to  
4 the Administrative Procedures Act.

5           The ALJ who conducts the hearing then issues the  
6 proposed decision and order. If the entire party -- if  
7 either party appeals, that decision is subject to review  
8 by the Electrical Board.

9           Please keep in mind that while our review is --

10           ASSISTANT ATTORNEY GENERAL REULAND: Do novo.

11           VICE CHAIRPERSON PHILLIPS: -- de novo -- that's good  
12 -- de novo, we sit in the same position as an  
13 administrative law judge and will review the entire record  
14 regardless of whether a certain piece of evidence is  
15 referred to by the ALJ. We are bound by evidence in the  
16 record, and new evidence cannot be submitted at this  
17 hearing.

18           Each party will be given approximately 15 minutes  
19 today to argue the merits of their case. Any Board member  
20 may ask questions, and the time may be extended at the  
21 discretion of the Board.

22           At the conclusion of the hearing, the Board will  
23 determine if the findings and conclusions reached by the  
24 ALJ are supported by the facts and the rules pertaining to  
25 the electrical installation.

1 Any questions before we begin?

2 ASSISTANT ATTORNEY GENERAL ZURLINI: No.

3 VICE CHAIRPERSON PHILLIPS: All right. Mr. Nolan,  
4 you are the appealing party. You have the burden of proof  
5 to establish the proposed decision is incorrect.  
6 Therefore, I will hear from you first.

7 MR. NOLAN: I understood I was going second.

8 But I would like to -- I have this down so I can stay  
9 on track.

10 But from the very beginning, the discussion is  
11 whether or not I ran the wire on a project where we had  
12 installed a ductless mini split on a job. And there's a  
13 control cable between the outdoor unit and the indoor  
14 unit.

15 And our company, my wife and I started 20 years ago,  
16 and we've been doing ductless mini splits for 18 -- from  
17 that point when they first came out. So I've been in this  
18 transition of the changing rules during this whole  
19 process. And we for quite a few years ahead of the time  
20 that these changes came in place, we were always allowed  
21 to run this TC cable. And that's what this discussion is  
22 about is whose responsibility it is to run that cable.

23 And we've seen enough changes in this -- just in this  
24 one product in the industry. And back when Mr. Fuller was  
25 Chief, we were running the wire at a certain period years

1 ahead at that point. And then there was a decision where  
2 the product was considered wrong, and it needed to be  
3 changed, and it went to a different control cable. And at  
4 that point we changed that control cable. And then during  
5 this whole process at the time about the last six months  
6 before we were warned -- verbally warned on this June 25,  
7 2014, that this is outside of our scope of work.

8 It's outside of our scope of work under your  
9 jurisdiction in the state of Washington. In the City of  
10 Spokane, it is not. And everywhere we work -- in Idaho it  
11 is not. And I'm not here to argue whether it's my scope  
12 or not. That's not my point. But the point was there was  
13 a lot of confusion between the point of when -- who is  
14 allowed and who isn't allowed. And there was even a point  
15 where it fell under the 01's electrician's permit to pull  
16 that license or to pull that permit for that TC cable.

17 We were -- the whole industry was having troubles  
18 with getting the electrician to run that cable. They just  
19 said, well, we'll just put it on our permit, you know, and  
20 include it in that.

21 I don't have to pull a permit for -- before that  
22 point and even now for probably 20 or 30 that we've done  
23 since then because there isn't a 24-volt thermostat that  
24 controls this system. It's a TC cable, and a TC cable is  
25 powered through the outdoor unit and comes to the indoor

1 unit that hangs on the wall.

2 So that's the discussion is I'm being fined for not  
3 getting a -- for a permit. That's what the -- the fine  
4 came -- I need to back up a little bit.

5 The day that it was inspected, Mark, the inspector  
6 had called me, and he said, "Did you run the cable?"

7 And I was forthright. From day one I've said, "We  
8 ran the cable." I was honest. I told him what we had  
9 done.

10 And he had made three calls that week to me finding a  
11 way that on this job, not jobs from down the road, but we  
12 could make this work. And one of them was even line of  
13 sight. And line of sight is a definition that can be  
14 really great.

15 And we even stood there, and the outdoor unit is  
16 there, and it runs ten feet up the wall in a covered chase  
17 with a line set into the unit that you could see through  
18 the window. I know it's a gray area, but it was line of  
19 sight. We even had that discussion.

20 But as the weeks -- as the week went on, the calls  
21 that we made back and forth, I'd asked him, I said, "Okay,  
22 Mark, I know we have to probably do this different from  
23 here on out."

24 And we have. Gwen and I had made a decision that day  
25 that all of our guys, we will hand that cable over to the

1 electricians. We will walk them through what to do.

2 And that's how we're going to handle it under your  
3 jurisdiction. That's all we can do now until possibly  
4 maybe the ruling can get changed. So that's how we  
5 operate with.

6 And my last conversation with Mark, the inspector,  
7 which was -- I said, "Okay, so if we're not running the  
8 12-volt thermostat, we're not responsible for the circuit  
9 that powers the unit" -- it was a new install -- "do I  
10 need a permit? Yes or no?"

11 And his comment to me was, "Apparently not."

12 And then I even followed up, and my other inspector  
13 down that way was Kate, and I called her. Specifically I  
14 asked her, "Kate," I said, "I want to be clear. I want to  
15 make sure we do this correctly from here on out. Is this  
16 -- how do we handle this?"

17 And she was in agreement with Mark. This is how we  
18 handled it from that point on.

19 Never heard a word from Labor and Industries from  
20 that point. Five and a half months later, I get a letter  
21 warning me that that work was out of my scope of work.  
22 This is not a fine. This is not a monetary fine. But  
23 this is a warning. This was outside of your scope of  
24 work. You're not allowed to do it.

25 And I was in agreement on that 25th that okay, I

1 understand, it's not my -- I can't do that in your  
2 jurisdiction. Whether I agree with it or not, I've  
3 accepted it, and I gave you my word I hadn't done it  
4 since.

5 And my frustration with this is five months and a day  
6 later I get fined for not purchasing the permit. And I  
7 get a \$1,500 or \$1,600 fine, which as a small business is  
8 extremely frustrating because I'm fined as the worker, I'm  
9 fined as the administrator, I'm fined as the business  
10 owner for one infraction.

11 And at that point it was a gray area. And I took it  
12 as a verbal warning. I took it seriously because we have  
13 never done it since. And we've done multiple systems  
14 since.

15 And so that's my frustration. So that's why I  
16 appealed. Because if I was doing something so inherently  
17 dangerous, why would L & I wait five and a half months to  
18 tell me and fine me. Because if that was the case and if  
19 I was not a legitimate contractor that cared about my  
20 reputation at our company and expected my guys to do  
21 exactly what I tell them that this is how it's going to be  
22 from here on out, whether or not we agreed with it or not,  
23 because we take the manufacturer's training and we  
24 constantly have to go back after -- the technology's  
25 moving faster than you guys can make the rules.

1           That's on my part a very frustrating thing is it  
2           can't keep up with how quickly -- even on ductless systems  
3           how quickly they're changing. They home run differently  
4           now. Everything moves quickly. It's always behind the  
5           fact that the rules are there, and they come out in the  
6           Electrical Currents, and that's the only way we find out  
7           about it.

8           And so I agree it was a verbal warning basically is  
9           what it was that June and a year ago. And so I took it  
10          not as a warning, as a letter of the law that's how it's  
11          going to be, and that's why I followed up, and that's why  
12          I checked on it.

13          But I'm actually being fined for something I can't  
14          get a permit for. I'm not being fined for doing the work,  
15          which if that was the case, I should have been fined that  
16          day -- that week. Because I was up-front and honest.

17          And then supposedly there was an inspect -- or an  
18          investigation. And I don't know why there would be an  
19          investigation after the fact that Mark had asked the  
20          owner, the electrician and me who ran the TC cable. And  
21          we all agreed it was me. I was up-front and honest with  
22          you completely.

23          So that's my frustration is I don't feel that I  
24          should be fined for something I cannot -- you said this is  
25          my sand box. I can't work outside of there here in your

1 jurisdiction. I agreed to that. And I abide by that ever  
2 since that day. But why in five and a half months later I  
3 get fined for not getting a permit. It is something I  
4 can't quite swallow. That one's very difficult.

5 And then so I decided to fight this and see the judge  
6 in Spokane. And I --

7 (Addressing counsel) I always get your name wrong.  
8 I'm sorry.

9 ASSISTANT ATTORNEY GENERAL ZURLINI: Zurlini.

10 MR. NOLAN: Angela? Can I call you Angela?

11 ASSISTANT ATTORNEY GENERAL ZURLINI: You may.

12 MR. NOLAN: Okay. Thank you.

13 So anyway, Angela and I met before the judge. And  
14 the discussion still was whether or not I ran the wire.

15 And Angela even called me the day before I testified  
16 and said, "I'm bringing up the homeowner. I'm bringing up  
17 the electrician to say that you ran the wire."

18 And I'm like -- I'm going to lose my mind. I ran the  
19 wire. I said that from the beginning. I'm saying that to  
20 you now.

21 And even as we spoke in front of the judge, she told  
22 me the day before that she was going to call off both  
23 people so they didn't have to take their day off to come  
24 up. And that still didn't happen until within an hour of  
25 that conversation in front of the judge, when I gave you

1 my word.

2 And then also in that process, there was evidence  
3 that was brought forward that was not our job, and I would  
4 like to hand you guys the pictures of what was handed over  
5 as evidence against me in front of the judge if that's  
6 okay.

7 VICE CHAIRPERSON PHILLIPS: It's already in the  
8 record. We have those pictures.

9 MR. NOLAN: Well -- okay. You don't have very clear  
10 pictures of what they were. But one of them was -- three  
11 of them were our job. And it was a well-manicured yard  
12 with a four-foot sidewalk, four foot of landscaping, our  
13 ductless mini split on the wall on a manufactured stand  
14 with the controls that we're talking about behind the  
15 unit.

16 And then on the fourth page, there was a picture of a  
17 1960 trailer with an electrical riser where somebody had  
18 taken a 12-gauge wire and put it in a 200-amp breaker, and  
19 it was included in my packet. And it might have been a  
20 mistake; I'm sure it was. It might have been just because  
21 that was the next photo that was on the camera that took  
22 the pictures that day. I have no idea. But it was  
23 included in the packet.

24 And my reputation, and Gwen and I, our reputation as  
25 a business means more to me than maybe you know. The

1 honor of doing business in a small community, to have  
2 something like that go in front of a judge, something that  
3 would kill somebody -- seriously would kill somebody --  
4 when you look at that picture, it was included in the  
5 docket and was going to be used against me. Mistake or no  
6 mistake, it was wrong. And my question to you is: If I  
7 would have brought false information to the judge, what --  
8 I have no idea. What would happen to me? And it was used  
9 -- it was used against me until I objected to it. So --

10 And then the other situation was the judge had asked  
11 Mark, the inspector that inspected the job, and he asked,  
12 "What is a TC cable?" Because she wasn't from the  
13 industry; she didn't understand.

14 And he started to explain. And he said, "This is  
15 where -- this is a cable that is connected to the outdoor  
16 unit. It is where the 24 volts carries the information  
17 back -- or the 24 volts -- and he was discussing it like  
18 it was a thermostat. And it is not like a thermostat. He  
19 was wrong. It's a high-voltage control cable that also is  
20 a communicating cable between the two appliances. They  
21 are one unit, and that information goes back and forth in  
22 that TC cable. It's an approved cable.

23 And so that was my frustration. I was being  
24 inspected by somebody that did not understand the  
25 technology of the equipment.

1           And also he had made a comment.

2           The judge had asked him about the safety of this  
3 system. And she says, "What could have happened to the  
4 customer the way Mr. Nolan installed it?"

5           And he said -- he specifically said, "He could have  
6 got there with a Weed Eater and hit the cable, and it  
7 could have done bodily injury."

8           Possibly so. But there are hundreds, probably  
9 thousands that your inspectors have passed across the  
10 state of Washington; they're installed exactly the same  
11 way. And he would've had to taken that Weed Eater from  
12 the yard, walked past the four-foot sidewalk, past the  
13 four-foot landscaping rock and put the Weed Eater back  
14 behind the unit where there is six inches is where that  
15 cable enters the unit. And that was used against me.

16           So my frustration on this is it has not been the same  
17 way all the way across the state. Whitman County was  
18 being asked to use a product that was not being used as a  
19 TC cable for about a year period that was not being  
20 required to be used anywhere else across the state. And I  
21 know that for a fact because Darren Sims who I have a  
22 letter here from Mitsubishi who's responsible for four  
23 states for training -- and he's the rep for the Mitsubishi  
24 which is probably the largest selling brand -- has a  
25 letter that I had given to the intern (sic) chief, and

1 then set up a meeting to how can our industry work with  
2 you guys on this and how can this -- you guys -- how can  
3 this not keep increasing the cost to the consumer.  
4 Because having two contractors do something that our  
5 industry is trained to do by the manufacturer -- and he  
6 had sent out a letter saying -- and he even had talked and  
7 addressed the intern (sic) chief -- "intern" I'm not sure  
8 if that's the correct word. But it was after Mr. Fuller  
9 left and after -- I forgot who was after Mr. Fuller; I'm  
10 sorry.

11         Anyway, there was a time frame during this situation.  
12 And he had said, "We have more and more equipment coming  
13 in because it's miswired. It's wired with Romex wires as  
14 the control cable. It's voiding warranties. The  
15 manufacturer isn't covering the warranties." But it's  
16 still being passed by the inspectors.

17         So that's why our industry is the industry that's  
18 being trained on it, but we're -- in some circumstances  
19 we're not being allowed to work on it.

20         I guess really why I'm here is I'm not going to lie  
21 to you. I ran the cable. But I'm being fined for not  
22 buying a permit five and a half months down the road. And  
23 I'm being fined for something that I cannot get a permit  
24 for. And I've never had to get one since. And I can give  
25 you probably 25 jobs that we have not been inspected -- we

1 have not -- or not inspected; let me back up. We have not  
2 been -- had to buy a permit for, but the jobs have been  
3 inspected because an 01 has ran the TC cable, ran the  
4 control cable. It's our equipment. It's our  
5 responsibility. We do all -- all -- everything with it  
6 except for those connections. But we have not had to buy  
7 a permit. But that's why I'm being fined today is because  
8 I did not buy a permit for work I cannot do.

9 VICE CHAIRPERSON PHILLIPS: Okay. Thank you.

10 (To court reporter) Do you need them to say their  
11 name and spell it?

12 MR. NOLAN: Oh, I'm sorry.

13 VICE CHAIRPERSON PHILLIPS: I neglected that. That  
14 was my fault.

15 THE COURT REPORTER: Yes, that would help. Yes,  
16 thank you.

17 MR. NOLAN: My name is Greg Nolan -- G-R-E-G,  
18 N-O-L-A-N -- representing Nolan Heating and Air,  
19 Incorporated, in Colfax, Washington.

20 VICE CHAIRPERSON PHILLIPS: Thank you. Sorry about  
21 that.

22 Okay, would you state your name and spell it for the  
23 record, please.

24 ASSISTANT ATTORNEY GENERAL ZURLINI: I will.

25 My name is Angela Zurlini. A-N-G-E-L-A. And my last

1 name is Z-U-R-L-I-N-I. I'm an assistant attorney general,  
2 and I represent the Department of Labor and Industries.

3 There are two issues in this case. The first is  
4 whether Nolan Heating & Air purchased a permit -- an  
5 electrical work permit for the work it performed at Frank  
6 Jones' home. The second issue is whether Mr. Nolan failed  
7 as an administrator to ensure that Nolan Heating & Air  
8 obtained that electrical work permit prior to beginning  
9 the electrical installation.

10 Mr. Nolan has discussed with you today as well as  
11 before the ALJ that heard this case that he did install  
12 the tray cable at Mr. Jones' residence. There's no  
13 dispute that he did not buy an electrical work permit.  
14 The job is considered electrical. It was an electrical  
15 installation. It required the use of an 01 general  
16 electrician.

17 And in the record, as you'll see, he did testify  
18 this prior to the installation at Mr. Jones' residence  
19 that he was aware that he needed to use an 01 general  
20 electrician and, in fact, that he had engaged one to come  
21 to Mr. Jones' home, but for the fact that that 01 could  
22 not get to Mr. Jones' home, he endeavored to install the  
23 tray cable on that 01's behalf.

24 And so while Mr. Nolan is arguing that he wasn't in a  
25 position or because of maybe his specialty he couldn't buy

1 an electrical work permit, one way to get that electrical  
2 work permit is to engage the proper electrician.

3 Mr. Johnson, electrical inspector for the Department  
4 of Labor and Industries, went to Mr. Jones' residence  
5 because he was called out to do an inspection for  
6 Electrical Contractors Northwest. While present at  
7 Mr. Jones' residence, he observed the tray cable and  
8 asked who installed it. And again, no dispute that it  
9 was Mr. Nolan who had installed the tray cable. But what  
10 Mr. Johnson also observed is that the tray cable lacked  
11 physical protection. There was a safety issue there. And  
12 so once again, reinforcing why an OI electrician is  
13 required to perform that type of an installation.

14 Mr. Nolan testified that he has been an electrical  
15 administrator I believe since 1999. While he's testified  
16 today that the code might be gray, he did testify at the  
17 time of hearing that what is not gray is what the code  
18 requires, both RCW 19.28 and WAC 296-46B.

19 He's clear on what the code allows. And, in fact,  
20 he's been cited for this before. Hence, the reason why  
21 there is an escalation penalty. Within three years --  
22 actually it's just a couple years prior to the issuance of  
23 these citations, he was cited for the same thing.

24 And so it is with knowledge that he installed the  
25 tray cable. It is with knowledge that he did so outside

1 the scope of his 06A specialty. And that's why we're here  
2 today.

3 He did receive warnings for performing work outside  
4 the scope of his specialty, for employing a person who  
5 does not possess a valid certificate ... Mr. Nolan, and  
6 for Mr. Nolan for performing the work without the proper  
7 certification.

8 And so I know that -- let's see here. So I would  
9 just argue that there is no gray area. He actually -- the  
10 work he performed at Mr. Jones' residence did expose the  
11 Joneses and anyone at their home to risk.

12 Mr. Nolan has talked about the Weed Eater. There are  
13 other things that could come in contact with an exposed  
14 tray cable that could present dangers to the homeowner:  
15 an animal, folks that are present at the Jones' residence.

16 In terms of, you know, the five months it took to  
17 issue the citation, that's the administrative process, and  
18 that's how it works.

19 In terms of the conversations that Mr. Nolan and I  
20 had in advance of the hearing, I did schedule two  
21 witnesses to testify. And until I had Mr. Nolan's  
22 confirmation on the record that he was admitting to  
23 installing the tray cable, I wasn't in a position to  
24 actually cancel those witnesses.

25 And then in terms of the pictures, that was a

1 mistake. Those pictures should not have been a part of  
2 the Department's proposed exhibits. And so we withdrew  
3 them with our apologies. It was unintended and I'm not  
4 sure how they got there.

5 And then lastly, with the -- Mr. Nolan has talked  
6 with you about line of sight. "Line of sight" is not a  
7 defined term in 19.28 or WAC 296-46B, and therefore, is  
8 not part of the enforcement structure or the regulatory  
9 structure. And so I would ask that you give no weight to  
10 that term.

11 I would ask that this Board based on what was  
12 presented at hearing, what Mr. Nolan has testified to  
13 today, that you affirm the June 16, 2015 initial order of  
14 the Office of Administrative Hearings and the associated  
15 penalties.

16 VICE CHAIRPERSON PHILLIPS: Mr. Nolan, did you  
17 have --

18 MR. NOLAN: Yeah, I have two points.

19 I don't have any idea who I've employed that's  
20 uncertified. I have no record of that. Every one of my  
21 guys is certified.

22 And then also, I don't have any record -- the only  
23 fines that I have -- and they're triple fines because I'm  
24 the worker, I'm the administrator, I'm the business owner.  
25 And one was for not having a permit for a demo, which we

1 still -- I wish I'd fought two years ago. But I didn't.

2 And that is one of them.

3 The only legitimate fine that we have is missing a  
4 thermostat. We didn't get a permit. There's enough work  
5 that goes through our office, it got missed. And we  
6 didn't have a permit on a job for adding a thermostat. I  
7 could argue all day whether or not that was a safety  
8 violation. It was a mistake.

9 But I don't have any idea who Angela is talking about  
10 that is an uncertified employer -- or employee.

11 (Addressing Ms. Zurlini) I don't know if you're  
12 implying to this job or at another point in time. But I  
13 don't know. So ...

14 And this is the first time that we've ever received,  
15 that I know of, of a fine for running a TC cable.

16 VICE CHAIRPERSON PHILLIPS: Does that conclude ...

17 MR. NOLAN: Yes, ma'am.

18 VICE CHAIRPERSON PHILLIPS: Great. Thank you.

19 Do you have any rebuttal or ...

20 ASSISTANT ATTORNEY GENERAL ZURLINI: Sure.

21 So what I was referring to in terms of performing  
22 work without a valid certification, that was the warning  
23 that was sent -- or issued to Mr. Nolan for his  
24 installation of the tray cable at Mr. Jones' residence.  
25 So that's what I was --

1 MR. NOLAN: Well, you made it sound like it was  
2 another job.

3 Oh, I'm sorry.

4 VICE CHAIRPERSON PHILLIPS: You have to address the  
5 Board, not each other. Okay? Thank you.

6 MR. NOLAN: I'm sorry.

7 ASSISTANT ATTORNEY GENERAL ZURLINI: And the last  
8 thing I would say is that Mr. Nolan has the burden of  
9 proof in this case, which is preponderance of the  
10 evidence.

11 I think the weight of the evidence indicates or shows  
12 that he did -- he failed -- Nolan Heating & Air failed to  
13 purchase the permit, and Mr. Nolan as the administrator  
14 failed to ensure that it did so.

15 VICE CHAIRPERSON PHILLIPS: All right. Thank you.

16 Do the Board members have any questions? Rod.

17 BOARD MEMBER BELISLE: Well, I guess first off,  
18 Mr. Nolan, I appreciate you being honest and forthright.  
19 You know, you stated the facts as they are in the record,  
20 which is you're not denying you did what you did. And I  
21 respect that. I appreciate that.

22 The Board's in a difficult position because we're  
23 here to enforce the rules and the laws of the state. And  
24 you stated on record that you did violate that law. So  
25 that's a dilemma we have.

1           It's interesting, this isn't the first time we've  
2 heard a case like this, which I think brings to me the  
3 thought that whatever happens after today probably merits  
4 further discussion on resolving this area of gray if there  
5 is such a thing.

6           I think I know what's required. But it's only  
7 because I've sat through a couple of these, and I've done  
8 a lot of research to this issue. But I brought this up to  
9 a group of contractors recently, and out of ten, probably  
10 five of them all looked around like I'm not sure who does  
11 that. And so I think it's a legitimate issue to discuss  
12 in the future.

13           We get a lot of people that appeal citations because  
14 they were cited for not taking out a permit when they're  
15 not eligible to take out a permit. And I understand that  
16 frustration. But I have to -- I would put it in my own  
17 words of if you have somebody who's driving a car  
18 recklessly and they get stopped by a police officer,  
19 they're probably going to get a citation for driving  
20 recklessly. If they don't have a driver's license,  
21 they're going to get cited for not having a driver's  
22 license. Well, what if they're not old enough to have a  
23 driver's license? It doesn't matter. They're still  
24 required to have a driver's license. Or maybe it's been  
25 revoked to where they can't get one. They still have to

1 have one.

2 So the idea that you can't get it; although, it seems  
3 somewhat rational, unfortunately it's not supported by  
4 law, and that's part of the requirement if you're going to  
5 do the work, you have to have the permit.

6 And so that's a tough one to swallow, but there's  
7 certainly precedent that it's required, whether you're  
8 capable or not.

9 I'm not sure there's a lot to argue as far as the  
10 merit of the case because, as you said, you were honest  
11 and confirmed that you did the work. I know it's in the  
12 record that you hired or ideally had an electrician lined  
13 up to do the work, so you knew it was their work, and then  
14 when they didn't show up or couldn't perform it, you did  
15 it ultimate knowing it was really 01 work. And that's in  
16 the record. So I don't know that there's a lot of  
17 argument regarding the merit.

18 But I appreciate your frustration and your honesty.

19 And perhaps there could be future discussions on how  
20 to resolve this industry-wide so that everybody's on the  
21 same page.

22 VICE CHAIRPERSON PHILLIPS: Thank you.

23 Any other Board members have questions? Yes, Bobby.

24 BOARD MEMBER GRAY: Mr. Nolan, I -- you made a  
25 compelling argument. You have done due diligence to try

1 to do the right thing.

2 I echo what Rod said. I can see where the  
3 frustration would come from. And I appreciate the fact  
4 that you're always torn -- as a contractor, you're always  
5 torn between making sure you provide good service to your  
6 customer, maintaining your integrity and your reputation,  
7 especially in a small community. So I appreciate all  
8 that.

9 But I don't see in the record here anyplace where you  
10 did this accidentally. It sounds like it was intentional  
11 that you did it because, as Rod pointed out, your  
12 electrician -- your 01 electrician wasn't there to install  
13 it.

14 I do have a couple questions. You mentioned in the  
15 record here -- and I'm looking generally at page 28 of our  
16 Electrical Board packet. I don't want to cite any  
17 particular area here. But as I was reading through that,  
18 what wasn't clear to me, you made a statement that the  
19 electrical contractor generally does not have this TC  
20 cable. And you also implied there's different types of TC  
21 cables for different applications. So my question is:  
22 Does this TC cable come with the package, with the  
23 equipment, or is it something you have to go buy and keep  
24 on hand multiple different types that you would install or  
25 give to the installer in order to make this connection?

1 VICE CHAIRPERSON PHILLIPS: Just a minute. That's  
2 outside the record.

3 BOARD MEMBER GRAY: It is?

4 VICE CHAIRPERSON PHILLIPS: We can only consider  
5 those things that have already been presented.

6 ASSISTANT ATTORNEY GENERAL REULAND: My question is:  
7 Does that question call for evidence that is not contained  
8 in the record? Because you can't ask for additional  
9 evidence at this point in the hearing. But if the  
10 question calls for something that's in the record, then  
11 you can ask for that.

12 BOARD MEMBER GRAY: What he said was that the  
13 electrical contractor and the electrician do not have this  
14 cable and he has to provide it. So my question is: Is it  
15 provided because it comes with the package of this  
16 ductless air conditioning equipment, or is it something  
17 that he has to keep on hand and be at the job site to give  
18 to this electrician to go install it? So is that outside  
19 the scope?

20 ASSISTANT ATTORNEY GENERAL REULAND: My only point to  
21 the Board is you cannot ask for additional information to  
22 be provided by either Mr. Nolan or Ms. Zurlini that is not  
23 contained in this transcript.

24 We have this frustration often in terms of you have  
25 questions, and Board members all the time say, "Why isn't

1 it here?" But you can't ask and answer a question that  
2 would add evidence to the record.

3 BOARD MEMBER GRAY: Okay.

4 Then I withdraw that question. And through the Chair  
5 or Vice Chair, I'd like to ask another one that may or may  
6 not be in the scope.

7 Did he actually terminate this cable or did he just  
8 install it and not terminate it? So is that -- because it  
9 wasn't clear at least when I read through the transcripts  
10 of what was intended by install.

11 ASSISTANT ATTORNEY GENERAL REULAND: I think maybe  
12 the way to handle it would be to ask Mr. Nolan where in  
13 the record he could identify the answer to that question.  
14 And then if he could show where in the record the answer  
15 to that question is, then you -- so I think it's  
16 appropriate to ask either party, "Show me in the record  
17 where this is answered."

18 BOARD MEMBER GRAY: Okay. And maybe I'll withdraw  
19 both of them because I'm not sure that --

20 ASSISTANT ATTORNEY GENERAL REULAND: You could  
21 certainly argue, but in terms of the evidence we have --  
22 you're limited --

23 BOARD MEMBER GRAY: I understand. All right.

24 VICE CHAIRPERSON PHILLIPS: So are you going to -- do  
25 you want to ask that question --

1 BOARD MEMBER GRAY: I'll withdraw it.

2 SECRETARY THORNTON: So one thing the Board needs to  
3 take a look at is Conclusion of Law 5.9, which states that  
4 because TC cable is not specifically excluded, that makes  
5 it okay. And that's not the way we look at -- we don't  
6 make a laundry list of what isn't included, and we tell  
7 you what you can do, and that's it. Just because it's not  
8 listed in there doesn't make it okay.

9 BOARD MEMBER BAKER: Stephen, I don't understand that  
10 comment.

11 VICE CHAIRPERSON PHILLIPS: Hold on. We're not in  
12 the discussion phase yet. We're in the questions. So we  
13 can bring this up later.

14 So are there any questions by the Board members?

15 BOARD MEMBER BAKER: Maybe a comment. I might tie a  
16 question in there.

17 I'm a little bit familiar with these systems. And  
18 your record states that you're an 06 I believe, right?

19 MR. NOLAN: Right.

20 BOARD MEMBER BAKER: So the tray cable, which I  
21 believe could be purchased at -- through any distribution,  
22 but your normal -- my service electricians don't carry  
23 that on their van. So they wouldn't normally have that.  
24 Unless they were doing this work on a regular basis, they  
25 would probably carry it with them. But if they didn't do

1 it on a regular basis, they probably would have it on  
2 their truck. It's a little bit of a different product.

3 (To Board Member Gray) That might answer your  
4 question.

5 But the installation of that because it's carrying  
6 line voltage requires an 01 license. And it looked to me  
7 as I read through the record that possibly you understood  
8 that. You had an electrician lined up to do the work, and  
9 as it was stated earlier, they weren't available and time  
10 was of the essence; somebody wanted their heat or air  
11 conditioning running, so you guys made the installation,  
12 which is where I think you crossed the line. Because it  
13 does require that 01 license. It does require that 01  
14 administrator. It does require a permit.

15 I'm compassionate, you know, about your position, and  
16 I struggle with some of your comments about in L & I's  
17 jurisdiction you can't do it that way, but in other  
18 jurisdictions -- and I think you might have mentioned the  
19 City of Spokane, you can. I wrestle with that conflict.  
20 Something doesn't line up there for me. And maybe there's  
21 a follow-up that maybe the Department can do with him down  
22 the road and find out why it is that he can -- or he feels  
23 like he can do that installation in the city but he's  
24 unable to do it in L & I's jurisdiction because that  
25 doesn't sound right.

1 MR. NOLAN: May I answer that?

2 BOARD MEMBER BAKER: But just in closing, I feel like  
3 that when you -- when the installation was made, whether  
4 it was connected or not, you installed, you know, a line  
5 voltage cable that is required to be done by an 01  
6 licensed electrician that does require a permit to be  
7 posted on site.

8 And I agree with Rod. I don't know where we go with  
9 this because it seems pretty clear that there's a  
10 violation there.

11 MR. NOLAN: My only concern here is for a long period  
12 of time it was our scope of work until it came out  
13 apparently in the WAC six months ahead of that in  
14 Electrical Currents that it wasn't. And it almost makes  
15 it sound like you guys are acting like this is not a  
16 permitted job. It was a permitted job through the 01.  
17 The 01 reviewed everything that had been done on that  
18 cable.

19 Now, as we look at it today, yes, that was the wrong  
20 way to do it. But when you looked at this process of the  
21 mechanics of hanging that unit on the inside wall and the  
22 freon lines and the control TC cable comes through --  
23 everything connects all at the same time.

24 And it's, you know, I could argue all day how  
25 difficult that is for having two contractors there doing

1 something that is in a confined area right here, and it  
2 all has to be done at the same time. I could argue till  
3 I'm blue in the face on it, but it won't -- we'll just  
4 have to deal with this is how it is now.

5 But it -- half of our work, Gwen and I, half of our  
6 work is in the state of Idaho. We're allowed to run that  
7 cable in the state of Idaho. That's my comment on that  
8 point.

9 There are some jurisdictions that allow the trained  
10 HVAC technician to run that cable because it is a control  
11 cable. It's not just a power wire. It's communicating.  
12 And you're right, those cables are different for the job.  
13 They're supplied by the manufacturer. Residential cables  
14 -- TC cables are a different gauge than commercial.  
15 Commercial, it's opposite of what you would think, are a  
16 lighter gauge. They're a 16 gauge, and it has to deal  
17 with the communication aspect of it.

18 And technology is changing so fast, nothing on our  
19 multiple-systems homes runs anymore to the outdoor unit;  
20 it goes to an internal refrigeration box. So it's moving  
21 quicker than the codes can keep up with it.

22 VICE CHAIRPERSON PHILLIPS: A question?

23 BOARD MEMBER SCOTT: I'm the public member on here,  
24 and I'm just trying to understand a little bit. I'm not  
25 an electrician.

1           So in the picture that's on page 115 and trying to  
2 understand what's going on here, I can see that tray cable  
3 in the background. Is that what we're talking about?

4           MR. NOLAN: This is -- page 115?

5           BOARD MEMBER SCOTT: Page 115.

6           VICE CHAIRPERSON PHILLIPS: Of the Electrical Board  
7 packet. So it would be Exhibit 1, page 18 of 21. Is that  
8 what you're referring to --

9           BOARD MEMBER SCOTT: Correct.

10          VICE CHAIRPERSON PHILLIPS: -- of the exhibit?

11          BOARD MEMBER BELISLE: It's behind the flex. You  
12 almost can't see it.

13          MR. NOLAN: It's behind that Mitsubishi unit on the  
14 back side.

15          BOARD MEMBER SCOTT: Okay. So it comes off the  
16 box --

17          MR. NOLAN: It comes out that gutter --

18          BOARD MEMBER SCOTT: -- and runs up the wall. Okay.  
19 So we're not talking about -- you didn't run the line  
20 connection --

21          MR. NOLAN: Oh, no, nuh-uh. No.

22          BOARD MEMBER SCOTT: -- there. Okay.

23          And then the reason -- a question I have, is the  
24 reason that the 240 cable on the inside -- to the inside,  
25 was there a unit on the inside?

1           MR. NOLAN: Yeah. There was a power head that is the  
2 air-handling unit. It's like a furnace without duct work.  
3 And it hangs on the inside, and it receives power only  
4 from the outdoor unit. It doesn't receive it from a  
5 certain source. It's protected by fuses in the outdoor  
6 unit. It's controlled by the outdoor unit. Once that  
7 disconnect that you see in that picture off to the right  
8 is pulled, power to the whole system is down. It's a  
9 complete package.

10          BOARD MEMBER SCOTT: Got'cha. Okay.

11          I'm just trying to understand -- I mean, you  
12 mentioned that this problem keeps coming up. So I'm  
13 trying to understand the systems here.

14          BOARD MEMBER BELISLE: Well, my knowledge of the  
15 systems is there's a variety of types. So some of them  
16 only have controls between the units, and that perhaps  
17 might fall under an 06A administrator, an electrician.  
18 Whereas, some of them have a line-voltage control between  
19 them, and that clearly is an 01. So it depends on the  
20 unit. And so there perhaps in the past could have been a  
21 time where what they had done was totally legal because of  
22 the type of unit they worked on. That technology is  
23 changing routinely.

24          I know there was a question about the Electrical  
25 Currents being the only way that this was ever clarified.

1 And that's part of the process. You know, the WAC rules  
2 and the National Electrical Code, that's done on a  
3 three-year cycle, and sometimes there's amendments to that  
4 outside of that. But really the only way to address  
5 issues that arise -- and I know there was comment in the  
6 transcript that said this article came out, you know, five  
7 months after there was a problem. Well, I don't think  
8 L & I anticipated a problem until it happened. And then  
9 once it happens, then they address the problem, determine  
10 the right way to do it, and then they distribute that  
11 through the Currents. And I think it's important to  
12 understand that process. I don't think L & I was, you  
13 know, trying to set anyone up for failure, and then  
14 sending it out after the fact. I think they were trying  
15 to head off problems once they started showing up.

16 MR. NOLAN: I wasn't implying that.

17 BOARD MEMBER BELISLE: Sure. Sure, understood.

18 VICE CHAIRPERSON PHILLIPS: Any other questions?

19 Seeing none, is there any discussion?

20 BOARD MEMBER BELISLE: So I guess I have a question  
21 for procedure. Is our duty here today is to either  
22 confirm or modify the ALJ's conclusion?

23 VICE CHAIRPERSON PHILLIPS: Correct.

24 BOARD MEMBER BELISLE: Do we have to then go through  
25 and verify each finding of fact and conclusion of law, or

1 do we just uphold the final order or the order that was  
2 proposed?

3 ASSISTANT ATTORNEY GENERAL REULAND: Procedurally I  
4 think in terms of discussion would be appropriate if any  
5 of the Board members see problems that they think ought to  
6 be corrected or changed that -- I think that you can  
7 certainly have that discussion. If you choose to make a  
8 motion to adopt the initial order in its entirety, that  
9 was up to the -- you could make that motion. I don't  
10 think you need to go through every single finding and  
11 conclusion if you want to have it adopted as is.

12 BOARD MEMBER BELISLE: The reason I ask is because  
13 the Chief brought up Conclusion of Law 5.9. And perhaps  
14 there are others that we might want to look at. And so if  
15 we were to adopt any kind of order, we might want to look  
16 at those individually if there's issues with any of them I  
17 guess.

18 ASSISTANT ATTORNEY GENERAL REULAND: Correct. You  
19 could say that -- you know, you can go through in terms of  
20 adopting, you know, the Findings of Fact 1 through 6 and  
21 have the normal discussion in terms of whether all of  
22 those should be -- and then you can go through the  
23 conclusions. You can do them lump sum in a case where  
24 there's not a lot of dispute.

25 ///



1 VICE CHAIRPERSON PHILLIPS: Is there any other  
2 discussion?

3 ASSISTANT ATTORNEY GENERAL REULAND: Did you get the  
4 copy from -- the correct copy of all seven pages of the  
5 initial order? I think, Beth, didn't you send that out  
6 separately because it wasn't included in the original  
7 packet?

8 MS. RIVERA: Yes.

9 VICE CHAIRPERSON PHILLIPS: Board Member Lewis.

10

11 Motion

12

13 BOARD MEMBER LEWIS: Yes, I'd like to make a motion  
14 to accept Findings of Fact 4.1 through 4.10 of the initial  
15 order.

16 BOARD MEMBER BELISLE: I'll second that.

17 VICE CHAIRPERSON PHILLIPS: So it's been moved and  
18 seconded to accept the Findings of Fact 4.1 through 4.10  
19 in its entirety.

20 Is there any discussion? Hearing none, all in favor?

21 THE BOARD: Aye.

22 VICE CHAIRPERSON PHILLIPS: Opposed? Motion carries.

23

24 Motion Carried

25



1 VICE CHAIRPERSON PHILLIPS: Opposed? Motion carries.

2 Motion Carried

3

4 Motion

5

6 BOARD MEMBER BELISLE: I would make a motion to  
7 affirm findings -- or Conclusions of Law 5.1 through 5.8,  
8 5.10 through 5.12 and the amended 5.9.

9 BOARD MEMBER LEWIS: Second.

10 VICE CHAIRPERSON PHILLIPS: Okay. So it's been moved  
11 and seconded to accept the Conclusions of Law 5.1 through  
12 5.8, 5.10, 5.11 and 5.12, including the modified 5.9. And  
13 it's been seconded. Any discussion? Yes.

14 ASSISTANT ATTORNEY GENERAL ZURLINI: Can I -- I see a  
15 typo actually in one of the Conclusions of Law, which is  
16 under 5.11. I believe the judge intended to say in  
17 reference to the first RCW, "this is not a defense to RCW  
18 19.28." I think she meant to say ".061" not "060." I  
19 think it should say "19.28.061(5)(d)."

20 VICE CHAIRPERSON PHILLIPS: Would you accept that as  
21 a friendly amendment to --

22 ASSISTANT ATTORNEY GENERAL REULAND: She can't make a  
23 motion.

24 VICE CHAIRPERSON PHILLIPS: Oh. A Board member has  
25 to. Okay.

1 In looking at the electrical installation, the WAC's,  
2 the RCW's, there is no 060. So it is a typo.

3 So I'd entertain a motion to accept that -- or to  
4 modify your motion.

5 BOARD MEMBER BELISLE: I'll make a modification to  
6 adopt the previous action with the correction of the  
7 reference in 5.11 to 19.28.061(5).

8 VICE CHAIRPERSON PHILLIPS: Okay. So let me make  
9 sure I got this right. So your motion is to accept the  
10 Conclusions of Law 5.1 through 5.8, 5.10, 5.11 with the  
11 modification of RCW 19.28.060 to read 19.28.061.

12 BOARD MEMBER BELISLE: That's correct.

13 VICE CHAIRPERSON PHILLIPS: In addition, to accept  
14 Conclusions of Law 5.12 and the modified 5.9.

15 BOARD MEMBER BELISLE: That's correct.

16 BOARD MEMBER BURKE: I second.

17 VICE CHAIRPERSON PHILLIPS: Okay, it's been moved and  
18 seconded. Any discussion? All in favor?

19 THE BOARD: Aye.

20 VICE CHAIRPERSON PHILLIPS: Opposed? Motion carries.

21

22 Motion Carried

23

24 VICE CHAIRPERSON PHILLIPS: So now looking at the  
25 initial order, is there any discussion?



1 We're talking about the --

2 BOARD MEMBER LEWIS: Just paragraph 6.1.

3 VICE CHAIRPERSON PHILLIPS: -- just paragraph 6.1,  
4 which reads, "The Department Citation EJMAX00375 issued to  
5 Nolan Heating and Air is affirmed. Nolan Heating and Air  
6 is responsible for a penalty of \$1,000."

7 And 6.2, which read, "The Department Citation  
8 EJMAX00377 issued to Greg Nolan is affirmed. Greg Nolan  
9 is responsible for a penalty of \$500."

10 BOARD MEMBER BELISLE: Two things. In 6.2, I notice  
11 Greg Nolan in the second spelling is missing the "N." I  
12 don't know if that matters. There's a typo.

13 And then I guess I have a question for the Chair,  
14 which is: Am I right in remembering that we are not  
15 allowed or able to modify the amount of the penalty?

16 VICE CHAIRPERSON PHILLIPS: I'll defer.

17 ASSISTANT ATTORNEY GENERAL REULAND: There wasn't --  
18 I have to go back. That is correct in terms of  
19 modification of the penalty unless that you've had  
20 argument or something in terms -- the penalties are set by  
21 statute. And so unless there's been some sort of basis  
22 under the statute to modify it, this Board doesn't really  
23 have the authority to modify the equity.

24 BOARD MEMBER BELISLE: Thank you.

25 VICE CHAIRPERSON PHILLIPS: Okay. So it's been moved

1 and seconded to affirm 6.1 and 6.2. Any other discussion?  
2 Hearing none, all in favor?

3 THE BOARD: Aye.

4 VICE CHAIRPERSON PHILLIPS: Opposed? Motion carries.

5

6 Motion Carried

7

8 VICE CHAIRPERSON PHILLIPS: Okay. So thank you.

9 The Board has made its decision.

10 Mr. Nolan, thank you for appearing. And I'd like to  
11 echo your honesty is commendable. I do appreciate it.

12 It's refreshing actually. So --

13 And can you pronounce your name one more time?

14 ASSISTANT ATTORNEY GENERAL ZURLINI: It's Zurlini.

15 VICE CHAIRPERSON PHILLIPS: Zurlini. Ms. Zurlini,  
16 have you prepared an order or will you prepare an order?

17 ASSISTANT ATTORNEY GENERAL ZURLINI: I have. I  
18 prepared two. And maybe I can speak with Mr. Nolan about  
19 which order he would agree to.

20 VICE CHAIRPERSON PHILLIPS: And then you can bring  
21 that back to us.

22 ASSISTANT ATTORNEY GENERAL ZURLINI: Yes.

23 VICE CHAIRPERSON PHILLIPS: Thank you.

24 And Mr. Nolan, you'll confer with Ms. Zurlini? Did I  
25 do it? I did not butcher your name.

1 Thank you.

2 And then, yeah, if you'll come back and let us know  
3 which --

4 ASSISTANT ATTORNEY GENERAL ZURLINI: I will.

5 VICE CHAIRPERSON PHILLIPS: -- which one you decided  
6 on?

7 ASSISTANT ATTORNEY GENERAL ZURLINI: Yes.

8 VICE CHAIRPERSON PHILLIPS: All right. Thank you.

9 ASSISTANT ATTORNEY GENERAL REULAND: On behalf of the  
10 Chair, Mr. Nolan, the procedure before the Board is if the  
11 parties cannot agree on the form of the order today, it is  
12 the general practice of the Board that it is automatically  
13 set for presentment for the next Board meeting which is in  
14 January in Olympia. Obviously the parties would have time  
15 to confer and submit an agreed order. But we just like to  
16 let the parties know that if you can't agree or sign off  
17 on an agreed order, then you would be required to come to  
18 the next Board meeting to advise the Board members what  
19 the problem is, and if you have different orders that you  
20 want to argue about.

21 VICE CHAIRPERSON PHILLIPS: Thank you both.

22 And I'm going to happily give this chair back to  
23 Chairman Prezeau.

24 CHAIRPERSON PREZEAU: All right. Thanks, Alice.

25 What do you say we take a quick break. Does that

1 sound good? So come back in 15? Thank you.

2 (Recess taken.)

3 CHAIRPERSON PREZEAU: Okay. So let's -- I would very  
4 much like to bring the October 29, 2015, Electrical Board  
5 meeting back to order.

6

7 Item 3.b. Robert McDaniel Denial of Approval to Take  
8 the Washington Journey Level Exam

9

10 CHAIRPERSON PREZEAU: And we are under agenda item  
11 3.b., which is the Robert McDaniel denial of approval to  
12 take the Washington state journal level exam.

13 And it looks like we have present with us  
14 Mr. McDaniel.

15 MR. McDANIEL: Yes.

16 CHAIRPERSON PREZEAU: And also Assistant Attorney  
17 General Will Henry; is that correct?

18 ASSISTANT ATTORNEY GENERAL HENRY: That's correct.

19 CHAIRPERSON PREZEAU: Okay. Well, get you to state  
20 your names and then spell -- we'll take care of that,  
21 Milton, in a minute.

22 So my name is Tracy Prezeau, and I am the Chair of  
23 the Electrical Board.

24 The matter before us today is an appeal of the matter  
25 of Robert McDaniel versus the Department of Labor and

1 Industries, docket number 02-2015-LI-00012.

2 This hearing is being held pursuant to due and proper  
3 notice to all interested parties in Spokane, Washington on  
4 October 29th at approximately 10:41 a.m. This an appeal  
5 from a proposed decision and order issued by the Office of  
6 Administrative Hearings on July 2, 2015.

7 It is my understanding that decision granted the  
8 Department's motion for summary judgment and denied Mr.  
9 McDaniel's motion to retake an examination and denied his  
10 motion for denial of summary judgement. Additionally,  
11 that decision declared Mr. McDaniel ineligible to take the  
12 journey level electrician examination. It is further my  
13 understanding that Mr. McDaniel has timely appealed those  
14 decisions to the Electrical Board.

15 At this time the appellant, Mr. McDaniel, is present.  
16 And I've already spelled your name, Mr. McDaniel, but if  
17 you would do so for the record, I would greatly appreciate  
18 it.

19 MR. McDANIEL: Spell my name?

20 CHAIRPERSON PREZEAU: Yes, sir.

21 MR. McDANIEL: R-O-B-E-R-T, McDaniel M-c-D-A-N-I-E-L.

22 CHAIRPERSON PREZEAU: And the Department is  
23 represented by Assistant Attorney General William Henry.

24 ASSISTANT ATTORNEY GENERAL HENRY: That's correct.

25 For the record, W-I-L-L-I-A-M, H-E-N-R-Y.

1           CHAIRPERSON PREZEAU: Thank you.

2           The Electrical Board is the legal body authorized by  
3 the legislature to not only advise the Department  
4 regarding the electrical program, but to hear appeals when  
5 the Department issues citations or takes some other  
6 adverse action regarding an electrical license,  
7 certification or electrical installation. The Electrical  
8 Board is a completely separate entity from the Department,  
9 and as such will independently review the action taken by  
10 the Department.

11           When the Department renders a decision that is  
12 appealed, the hearing is assigned to the Office of  
13 Administrative Hearings to conduct the hearing pursuant to  
14 the Administrative Procedures Act. The ALJ who conducts  
15 that hearing then issues a proposed decision and order.  
16 If either party appeals, that decision is subject to  
17 review by the Electrical Board.

18           Please keep in mind that while our review is de novo,  
19 we sit in the same position as the administrative law  
20 judge and will review the entire record regardless of  
21 whether a certain piece of evidenced by the ALJ. We are  
22 bound by the evidence in the record and no new evidence  
23 can be submitted at this hearing.

24           Each party will be given approximately 15 minutes  
25 today to argue the merits of your case. Any Board member

1 may ask questions, and the time may be extended at the  
2 discretion of the Board.

3 At the conclusion of the hearing, the Board will  
4 determine if the findings and the conclusions reached by  
5 the ALJ are supported by the facts and the laws and rules  
6 pertaining to electrical installations.

7 Are there any questions of the parties before we  
8 begin?

9 MR. McDANIEL: No.

10 ASSISTANT ATTORNEY GENERAL HENRY: No.

11 CHAIRPERSON PREZEAU: Okay. Very good.

12 So just again, a reminder to the Board. We are bound  
13 by the information that is contained within the record in  
14 front of you. We certainly -- as you saw previously, we  
15 can have questions asked and answered, but they have to be  
16 confined to information included in the transcripts along  
17 with your personal expertise.

18 So Mr. McDaniel, you are the appealing party. You  
19 have the burden to proof to establish that the proposed  
20 decision or portions of the proposed decision are  
21 incorrect. Therefore, we will begin with you first.

22 So please, Mr. McDaniel.

23 MR. McDANIEL: Okay. I don't know what the word to  
24 say is that I'm glad I am here. I'm glad to come here and  
25 face the group of the Electrical Board. I wasn't sure

1 that I would eventually get here. But I made it. And I  
2 hope I can give you the best argument that I can why I  
3 feel that I am eligible to take the journeyman's exam, the  
4 01.

5 I had originally taken two of the exams back in '77  
6 and '79. And then I was injured after going to work for  
7 the City of Bellevue for local Union 77 as a -- in the  
8 overhead wiring for the city and the traffic.

9 That happened up until '83, and then I was injured on  
10 the job. And subsequently I've had three back surgeries.

11 So all that aside, I decided that, well, I found this  
12 letter that I've kept, and what would any normal person  
13 do? So I submitted it.

14 And then I think in a very short period of time I  
15 received no to my -- to retake the journeyman test again.

16 And we got into a disagreement over whether my  
17 previous hours would validate taking the journeyman's exam  
18 today.

19 And then I unfortunately was sent to superior court.  
20 I don't understand. I'll never understand because I can't  
21 ask the parties as to why I was sent there. But  
22 fortunately I was sent to superior court to argue this  
23 case, and I unfortunately spent almost \$20,000 in legal  
24 fees there where they could have just as easily have been  
25 rendered back down to the administrative hearings. That

1 does not set well with me.

2 I'm looking at Mr. -- if we can find it -- Mr.  
3 Mutch's letter that outlined the three categories, the  
4 19.28.181, .191, and .205.

5 CHAIRPERSON PREZEAU: Hang on just a second,  
6 Mr. McDaniel.

7 MR. McDANIEL: I believe it's Exhibit 13. And that's  
8 page -- it doesn't have -- it's going to be department  
9 denial.

10 CHAIRPERSON PREZEAU: So Mr. McDaniel, what I am  
11 looking at is Electrical Board packet page 80. Well,  
12 this letter exists in multiple places within the packets.  
13 I believe if I'm referring to -- if I'm understanding  
14 what letter you are seeking to find, it's also labeled  
15 Exhibit A. And under the tab "Department Witness List and  
16 Exhibits," it is hand numbered page 10, and it looks to me  
17 like it is an e-mail from Rod Mutch to you, and this is  
18 the one -- there's multiple pieces of correspondence. But  
19 this one references 19.28.181, 19.28.191, and 19.28.205.  
20 Is that the letter you're --

21 MR. McDANIEL: That is correct.

22 CHAIRPERSON PREZEAU: Okay. Do Board members have  
23 it?

24 THE BOARD (various): Yes, uh-huh.

25 MR. McDANIEL: Okay. So with that, then I went back

1 and I looked up each individual one. I believe the 205 is  
2 the education rule, which would have required an  
3 individual to return to the trade. I believe that's in  
4 the WAC's. That should be five years or more. That would  
5 include me. So that would be a total of 96. So I think I  
6 have, oh, 128 hours there. So then I -- I also went to  
7 and filed the paperwork that would allow me as a training  
8 electrician to take that test, which I would fall under  
9 the RCW 19.28.191. So those two have been fulfilled.

10 So now, because my letter going back to the  
11 beginning, that I kept -- submitted to retake that test --  
12 I misplaced --

13 CHAIRPERSON PREZEAU: Are you looking for the letter  
14 that's --

15 MR. MCDANIEL: My letter to the state.

16 CHAIRPERSON PREZEAU: So that -- for the Board  
17 members, that page that we were just looking at,  
18 Electrical Board packet page 80, hand numbered 10, if you  
19 flip backwards one page, that letter from the State of  
20 Washington from Governor Dixy Lee Ray, September 27, 1979,  
21 is one page previous in the Board packet. It's  
22 typewritten page number 78.

23 MR. MCDANIEL: Yeah, it says Exhibit 17 is the page  
24 for me. But with this letter -- and I have to ask anyone  
25 since you're on the Board, if having this document in your

1 possession and you're seeking to go back to your choice of  
2 work, what would you do with this document? Well, I did  
3 what any normal person would do with it. I submitted it.

4 But the chaos that followed with misdirection to the  
5 superior court -- and I still don't understand why -- out  
6 of maybe bleeding me with my money or my resources or some  
7 way just have me disappear. But -- so then we discussed  
8 whether or not I meet the qualifications under -- what is  
9 it -- 19.28.181.

10 I don't know what more document a person can have or  
11 submit. This was submitted to me after failing taking the  
12 exam twice. I don't know whether a document that could  
13 have existed. And I don't know why it has no weight today  
14 as it would 20 years ago or 30 years ago or 40 years ago.  
15 It doesn't have a expiration date on it.

16 So -- and then the last thing I'd like to discuss is  
17 does the OAH judge -- we talked about what constitutes new  
18 construction. Is new construction the term of  
19 construction that is in a bunch of pieces and you assemble  
20 it in an area and you call that new construction, or are  
21 we talking about construction that occurred just a year  
22 ago or two years ago. And I have to look at the light --  
23 well, the WAC says that we can allow for individuals up to  
24 five years of absence, and all they have to do to take  
25 this is 96 hours.

1           But in my case, I'm not sure what the state is trying  
2 to tell me. I've argued the case to the very end of my  
3 tolerance. And I think the records speak clearly that I  
4 have qualified under 19.28.181. And I've taken the  
5 education classes. I've registered as a trainee  
6 electrician.

7           And I'm past the point where I think this is -- this  
8 is important maybe in a way of making statements to those  
9 other injured workers that you can return to your electric  
10 field of trade despite what may have happened to you.  
11 That's exactly what I'm trying to do.

12           That's it. That's all I have. I really -- I think  
13 as you read the record, you'll understand my plight/  
14 dilemma.

15           CHAIRPERSON PREZEAU: Thank you, Mr. McDaniel.

16           Mr. Henry.

17           ASSISTANT ATTORNEY GENERAL HENRY: Just a few points.

18           So first of all, I think it is a little bit confusing  
19 as to how we got here today, and so I just wanted to  
20 quickly give a background on the case.

21           Mr. McDaniel talked about being sent to superior  
22 court. So I wanted to discuss that just at the outset by  
23 way of background.

24           So the initial appeal by Mr. McDaniel to take the  
25 journeyman electrician examination, you can find that on

1 page 13 of the Electrical Board packet. It begins on page  
2 13.

3 And he wrote the Department asking to retake the  
4 examination. He included an application and the  
5 appropriate fee. And as evidence of the hours that he  
6 needed in order to qualify to take the exam, he included  
7 the letter that we've been talking about. That letter can  
8 be found on page 15. Just flip the page.

9 The letter indicated that he hadn't received a  
10 passing grade when he took the exam back in 1979. It  
11 looks like at the very bottom of that letters there's also  
12 a code that indicates non-pass of 8-77 as well. So that  
13 probably indicates the first time that Mr. DcDaniel took  
14 the exam.

15 Now, the letter doesn't indicate that Mr. McDaniel  
16 was entitled to take the exam without showing any new  
17 evidence of his qualifications. In fact, the WAC  
18 explicitly cited in this letter as WAC 296-401-010, it  
19 states that any applicant who has failed the examination  
20 may after 30 days from the date of the notification  
21 petition the Department to retake the examination upon  
22 payment of an additional fee. And so a petition, that's a  
23 request. And there's nothing in there to indicate that  
24 this is granting Mr. McDaniel an absolute right to take  
25 the exam.

1           So I wanted to -- so just to continue on the back  
2 story, the Department issued a denial based on the fact  
3 that they didn't see Mr. McDaniel as having the  
4 eligibility -- of having met the eligibility requirements  
5 to take this journeyman exam.

6           You can find -- the official letter is on page 16.  
7 But there was some e-mail communication back and forth  
8 between the chief electrical inspector at the time, Rod  
9 Mutch, and Mr. McDaniel. And there's an e-mail from  
10 Mr. Mutch to Mr. McDaniel that can be found on page 18.  
11 We've been talking about that earlier. And I think it's  
12 also on page 80.

13           The Department indicated the reasons they found that  
14 he wasn't eligible to take the journeyman electrician  
15 examination at that time. And that's found in the second  
16 paragraph. Mr. Mutch indicated that this wasn't  
17 satisfactory documentation to take the -- to qualify him  
18 to take the exam, and that the Department no longer had  
19 any records that had been submitted by Mr. McDaniel nearly  
20 40 years ago prior to him taking the exam in 1979.

21           Mr. Mutch also indicated that the electrical trade  
22 had seen quite a few changes in the intervening 40 years  
23 and that the National Electrical Code had been revised  
24 many times since Mr. McDaniel was last practicing in the  
25 field.

1           The official letter, as I mentioned before, is on  
2 page 16. And this is the part that Mr. McDaniel was  
3 mentioning before about being sent to superior court. And  
4 I wanted to talk just a little bit about that.

5           So there are parts of 19.28 that require an  
6 adjudicative process, that require that the Department  
7 send something on to OAH and then to be reviewed by the  
8 Electrical Board. And those include when a penalty is  
9 issued to a contractor, someone is practicing without a  
10 license, revocations of licenses, suspensions of licenses.  
11 These are all things that are explicitly laid out in 19.28  
12 that require an adjudicative proceeding. It's heard at  
13 OAH and then moves on to the Electrical Board.

14           Now, this wasn't -- the Department at the time didn't  
15 consider this action that it took to be one of those kinds  
16 of -- one of those kinds of actions. This was a -- it was  
17 the denial of a request to take a certification  
18 examination. It's not something that's explicitly in the  
19 statute, and considered this to be other agency action  
20 where the first court of review would actually be the  
21 superior court.

22           For those other kinds of things where a penalty is  
23 issued or a suspension of a license, those are very  
24 fact-dependent things where it really does require that  
25 there be a development of the record added during an

1 adjudicative proceeding in order to really get the facts  
2 straight for why that was done.

3 In this case, the Department considered this, well,  
4 there's an application to retake a test. The eligibility  
5 requirements aren't there. And so for that reason, this  
6 was just pushed on to superior court.

7 Now, in superior court -- I just want to give you a  
8 little bit of background what happened there. And this is  
9 actually towards the back of the packet. It's under the  
10 section entitled "Superior Court Notices and  
11 Correspondence." And I will turn your attention to page  
12 142 which is Mr. McDaniel's Petition for Review and  
13 Request for Declaratory Judgment.

14 This was a complaint that was filed by -- oh,  
15 Mr. McDaniel was represented by a lawyer named Jim  
16 Klauser. And Mr. Klauser on Mr. McDaniel's behalf filed  
17 this complaint in superior court where he requested among  
18 other things monetary damages against the Department and a  
19 whole host of other requests.

20 This was heard in front of a superior court judge.  
21 The Department actually moved for partial summary judgment  
22 on a number of issues. Monetary damages were not  
23 available under the Administrative Procedure Act which is  
24 what this was brought under. Mr. McDaniel wasn't entitled  
25 to a jury. There had been a jury demand. Lots of like

1 sort of legal wrangling that went on.

2 At the end of the day, that motion for partial  
3 summary judgment in superior court was granted. But at  
4 the end of the day, we looked at the law, and I spoke with  
5 Department folks throughout this period. We looked  
6 specifically at the APA and what the APA requires and when  
7 an adjudicative proceeding is required. And it was  
8 arguable looking at that that, in fact, whenever there's a  
9 denial of a license, that someone could be entitled to an  
10 adjudicative proceeding. It wasn't entirely clear on that  
11 point, but we thought it was a close-enough question that  
12 we decided that it would probably be in the best interest  
13 of everyone to send this back to OAH to have an  
14 adjudicative proceeding. So that's what we did.

15 And you'll find the stipulation for the remand to OAH  
16 on page 4 of the Electrical Board packet. You'll see that  
17 Mr. Klauser who was Mr. McDaniel's attorney and myself  
18 stipulated that this would go back to OAH and that there  
19 would be no costs to either party based on -- sometimes  
20 one party has to bear the other party's costs. In this  
21 case because we were just going back to OAH, there were  
22 no costs involved.

23 The next step that you'll see was the notice of  
24 appeal to OAH. And this can be found on page 6. And  
25 basically what the Department did at this point is it took

1 -- it had this order from the superior court now saying to  
2 provide Mr. McDaniel with an adjudicative proceeding. And  
3 so the Department did just that. It sent this on to OAH  
4 to have a adjudicative proceeding.

5 I would just note here that typically when there's an  
6 adjudicative proceeding and a contractor or person's  
7 appealing that adverse decision, there's a \$200 appeal  
8 bond that needs to be filed with OAH. Here we waived  
9 that. And the reason we waived that is because  
10 Mr. McDaniel had already paid court costs in superior  
11 court to initiate this appeal, because we felt that it  
12 would be unfair to basically double charge him.

13 So the Department still didn't think that  
14 Mr. McDaniel had provided the necessary information that  
15 he would need to have done in order to sit for this exam.  
16 Still didn't believe he was eligible. And so the  
17 Department decided to file a motion for summary judgment  
18 at OAH. And you can find that motion for summary judgment  
19 on page 87 of the Electrical Board packet. And the tab  
20 indicates that it's the Department's motion for denial of  
21 summary judgment, but, in fact, this was the Department's  
22 motion for summary judgment, and you see that's the  
23 correct title on page 87.

24 Now, summary judgment is -- the reason we filed a  
25 motion for summary judgment, summary judgment is

1 appropriate where there's really no disputed facts in the  
2 case. It's either he was eligible or not. Either he had  
3 provided the information or not. And no one was really  
4 disputing anything; it was really a question of law. And  
5 we knew what Mr. McDaniel had submitted. It was this  
6 letter. And we left it up to the -- we basically said as  
7 a matter of law, this document is not sufficient, and  
8 there's no need for a full hearing with evidence and  
9 witnesses going back and forth to establish those facts.  
10 The facts were already established prior to ever having  
11 any sort of evidentiary hearing. That's why we moved for  
12 summary in the interest of basically saving everyone a lot  
13 of time.

14 So we filed that on May 22nd. You can see the  
15 standard of review was laid out on page 89. That just  
16 indicates sort of the standards that go into summary  
17 judgment. And actually in the judge's eventual proposed  
18 decision, she also does a very nice job of laying out the  
19 standards for summary judgment. And I'll refer you to  
20 that later on.

21 Now -- so the reasons actually that the Department --  
22 that we argued that he wasn't eligible I think are  
23 probably better reflected in the Department's reply to  
24 Mr. McDaniel's motions. And that can be found on page 64.

25 So I just want to take you through sort of what the

1 basic summary what the Department's argument was on  
2 summary judgment. Again, the facts not disputed.  
3 Mr. McDaniel was saying that this letter was enough for  
4 him to be able to take the journeyman electrician exam.

5 And the Department pointed out that it is the  
6 applicant's burden to establish that he was eligible to  
7 take the journey level exam. Anyone who wants to take  
8 this test has to deliver evidence of their qualifications  
9 in a form prescribed by the Department. That's something  
10 that's right in the statute, something that the  
11 legislature decided, and the Department has promulgated  
12 rules pursuant to that statute about what that form would  
13 consist of. And what the Department has said is it's not  
14 enough for an applicant to just declare that they've got  
15 the necessary hours of work. Instead, the applicant's  
16 employer has to attest to the accuracy of all the  
17 information that's on these affidavits of experience. And  
18 when the Department doesn't get that evidence, it can't  
19 find that someone's eligible to take this exam.

20 Now, we've been talking about this a lot already in  
21 the previous case, but the Board review the record, the  
22 record that was provided at OAH. It doesn't consider new  
23 evidence that's presented here today. And at OAH,  
24 McDaniel didn't provide any evidence that any employer had  
25 attested that he had completed these necessary hours of

1 work.

2 And just by the way, necessary hours or work, you  
3 guys are probably more familiar with this than I am. But  
4 as I understand it, it's 8,000 hours in the industry, and  
5 it has to be -- at least 4,000 of those hours have to be  
6 in the area of new construction, either residential or  
7 commercial. And I think there's also some additional  
8 requirement, if you have been working in a specialty  
9 field, only a certain number of those hours can be in a  
10 specialty field. None of that evidence was presented at  
11 OAH by Mr. McDaniel. Instead he relied exclusively on  
12 this letter, this 1979 letter indicating that he hadn't  
13 passed the exam.

14 Now, I would just point out that the letter -- the  
15 letter again -- sorry, I've lost my place -- the letter  
16 can be found on page 15 I believe. The letter on that  
17 page, page 15, it doesn't actually even indicate that this  
18 was a journeyman level examination. It indicates that it  
19 was a Washington state certification examination. And so  
20 for that reason I think it's even more important that  
21 there be some additional evidence of the actual hours that  
22 Mr. McDaniel received.

23 So I point out the letter doesn't oblige the  
24 Department to reoffer the exam without any new evidence of  
25 qualifications. And -- let's see. And instead, the

1 Department requires that an applicant's employer attest  
2 that the applicant has completed the necessary hours.

3 Now, during the -- if you'll turn to the transcript  
4 portion of the OAH hearing, there was some discussion  
5 about what Mr. McDaniel's prior hours were. And the judge  
6 was being very careful about this. She wanted to make  
7 sure she wasn't going to make a ruling that was unfair --  
8 she wanted to know whether Mr. McDaniel really could  
9 actually produce people who would attest that he had  
10 worked a number of hours in this field.

11 He wasn't able -- he indicated he wasn't able to do  
12 that. He hadn't identified any former employers as  
13 witnesses or people that -- there were no -- and provide  
14 any documentation from other -- from his prior employers.  
15 But the judge was being careful about it and asked him  
16 whether or not he might be able to provide that  
17 information.

18 And I'm having a hard time finding the page, but I  
19 know that he indicated that he might be able to find one  
20 employer, just one employer, and he said that this person  
21 could potentially attest that he had as many as 4,000  
22 hours in the field. But he said that he didn't think he  
23 would be able to find any other evidence indicating that  
24 he had the necessary hours.

25 So the Department -- the OAH Judge Dublin issued her

1 proposed initial order. And that can be found on page 20.

2 And that's the order that we're actually here for today.

3 And as I said, I think this is a very careful ruling.

4 She goes through in a very step-wise logical fashion

5 indicating what the issues are on appeal, and then very

6 clearly lays out what the facts are for purposes of

7 summary judgment. She indicates the documents that she's

8 relying on in terms of making her decision.

9 And then with regard to the really the most pertinent

10 facts is probably actually fact 4.9 where she indicates

11 that Mr. McDaniel does not believe he can accurately

12 recreate a record of his electrical work that he performed

13 before taking the electrician examination in the 1970s.

14 Businesses he worked for are no longer in business. He

15 indicates he might be able to find one employer that

16 worked approximately 4,000 hours, but he wouldn't be able

17 to locate any of his other employers.

18 So for that reason, there really weren't any facts

19 that were in dispute that would entitle Mr. McDaniel to

20 take the exam in 2014, nearly 40 years after he initially

21 sat for the Washington certification examination.

22 I think with that -- well, actually I just wanted to

23 make one last point. And that is: So why doesn't the

24 Department have Mr. McDaniel, assuming that there were

25 employers that could attest to Mr. McDaniel's hours in

1 1979 -- and I don't know if there were; it's not in the  
2 record. But assuming that that was true, why didn't the  
3 Department have a record of it? Well, it could be that it  
4 just -- the procedures were different and it didn't  
5 happen.

6 The other thing, though, is that there's actually the  
7 Secretary of State lays out guidelines for when records  
8 are destroyed. So we only keep records for so long in  
9 this state. And that's something that the Secretary of  
10 State decides. And in this case, the Department keeps  
11 these records for a very long time. It keeps records for  
12 25 years. But here, you know, we're dealing with a  
13 situation that is -- it's nearly 40 years after the fact.  
14 And this is just -- this is too late for us to have those  
15 records.

16 So with that, unless you have any questions for me,  
17 I'll stop talking.

18 CHAIRPERSON PREZEAU: Thank you, Mr. Henry.

19 Mr. McDaniel, do you have any rebuttal for any of  
20 Mr. Henry's remarks?

21 MR. McDANIEL: Yeah. You know, I don't want to get  
22 away from this. I think there's one major question that  
23 the OAH judge used in defining my circumstances is the  
24 definition between new construction -- I mentioned it  
25 before. And I don't want to forget that. And I think

1 that she used that thinking that new construction --

2 CHAIRPERSON PREZEAU: Can you show us where that  
3 exists in the transcript or in the -- within the packet,  
4 can you point that out to us please, Mr. McDaniel.

5 MR. McDANIEL: Okay. You're going to have to give me  
6 some opportunity here. I just know that it's in her --  
7 it's in the original --

8 CHAIRPERSON PREZEAU: So do you think this is in the  
9 actual transcript itself?

10 MR. McDANIEL: I'm sorry?

11 CHAIRPERSON PREZEAU: So I'm asking you,  
12 Mr. McDaniel, do you believe that this line of discussion  
13 regarding the definition of new construction is contained  
14 within the transcript from the OAH hearing.

15 DMR. McDANIEL: Yeah, I believe from the judge's  
16 order there was a way that she used it ...

17 CHAIRPERSON PREZEAU: Board Member Gray, have you --  
18 the reason why I'm asking is because I don't --

19 BOARD MEMBER GRAY: If you look at the summary  
20 judgment, if you look at 5.10, she describes new  
21 installations down near the bottom. Page 25.

22 MR. McDANIEL: Well, I'm not sure where I located  
23 that fact. I do see where we talk about --

24 You know, here's the other thing. The reason why I  
25 did not -- I'd like to tell the Electrical Board why I

1 only mentioned one employer. I was just being cautious,  
2 and I actually had two other employers that I'd be always  
3 willing to give up as companies that I've worked for. So  
4 I was always willing to go out and try to find these  
5 employers and come up with that. But it's one thing that  
6 I've never been able to accomplish. No one's ever said,  
7 Well, okay, go out and spend, you know, however long it  
8 takes, a month, and then come back and see if you can come  
9 up with the necessary evidence to show us that you've  
10 found your employers and your work hours.

11 I truly am sorry that -- I don't know what record  
12 keeping the state did. It took them the whole case to  
13 tell me that my records couldn't be located. So for the  
14 whole time I'm wondering where are my records, where are  
15 my records. And it wasn't until towards the end of this  
16 matter that I finally get a letter stating that  
17 supposedly all of the plumbers and electricians  
18 certificates or information were destroyed some, again, a  
19 period of 20 or 25 years. Well, okay, that's -- with that  
20 in mind, and I knew that if they had been destroyed that I  
21 would have been far more likely to have complied with  
22 their asking me about these employers because I didn't  
23 want the two affidavits or the affidavits from the  
24 employers from then and now not to match. Well, I  
25 wouldn't know what they were today -- I mean, in '77 or

1 '79 because the time had passed.

2 I wasn't sure -- oh, I lost my train of thought here.

3 Excuse me.

4 The point being was that I was able to find or at  
5 least come up with these things. I'd be glad to come up  
6 with them. And then what I was asking was for the  
7 opportunity to go out and find these employers and then  
8 come back here and at least have a chance at that.

9 If you're not willing to accept the State's letter,  
10 that's the hard part. It is a document. It was generated  
11 by the State. I understand what the State's doing. It's  
12 saying, "Well, we do things differently today than we did  
13 back then." And so now you get to "purnize" (sic) or  
14 whatever the way that letter was written and sent to me as  
15 what I would consider to be the next step was waiting  
16 another 30 days and paying a new additional \$15.

17 But being hired by the City of Bellevue was almost a  
18 strand in my life, but that's the way it went. But  
19 getting injured was not something that I anticipated. But  
20 I'm here to return to work as an injured worker, and I'm  
21 here to take that exam and be a journeyman. I see no  
22 reasons why I can't be.

23 CHAIRPERSON PREZEAU: Okay. Thank you, Mr. McDaniel.

24 Any questions from the Board members to either  
25 Mr. McDaniel or Mr. Henry? Don.

1 BOARD MEMBER BAKER: One question and a follow-up  
2 comment for the Department counsel.

3 Is there anything in the record that you identify  
4 that this letter from Dixy Lee Ray is not valid, that it's  
5 not accurate?

6 ASSISTANT ATTORNEY GENERAL HENRY: Other than not  
7 being able to tell exactly what exam was taken, no.

8 BOARD MEMBER BAKER: Okay. So nothing's telling me  
9 that this was falsified.

10 MR. McDANIEL: As far as I know, sir, that's never  
11 come up.

12 BOARD MEMBER BAKER: Yeah, I can't see anything there  
13 that tells me that either. So as far as I'm concerned,  
14 it's the real deal.

15 And I'm just a simple guy. That's probably something  
16 I need to work on. But we dot the "I"s and cross the "T"s  
17 so thoroughly with the Department that I have a really  
18 hard time, you know, telling him that he can't retake the  
19 test.

20 I get this is a real unusual case, and I bet you  
21 don't deal with letters like this coming back to the  
22 Department very often.

23 I just -- for me, I have a really hard time seeing  
24 the harm in letting him sit for the exam. We have a  
25 system in place that tests individuals to see if they're

1 qualified to be electricians. Once they're qualified, if  
2 they want to renew their license every three years or  
3 whatever it is, they have to have their CEU's, and they're  
4 working under an administrator, and their work's inspected  
5 by a state electrical inspector. So I have a really hard  
6 time seeing where the harm is in letting this one  
7 individual sit for the exam that we told him almost 40  
8 years ago that we'd let him sit for the exam if he  
9 complied after 15 -- after 30 days and pay his fee of \$15.

10 Clearly he qualified for it then. Clearly the  
11 documents were sent in, and the State did their due  
12 diligence to make sure they're accurate, and they said  
13 this individual's qualified, let him sit for the exam.  
14 They did it twice. So I need someone to convince me that  
15 there's something here that would deny him the right to  
16 sit for that exam.

17 This is a real unusual case. I doubt we'll ever see  
18 this again.

19 CHAIRPERSON PREZEAU: So I -- I want to jump in on  
20 here because, you know, as somebody who is a journeyman  
21 electrician, you know, petitioned the Department according  
22 to 19.28.181, .205, but here's to me what I find -- and I  
23 certainly appreciate the fact that Mr. Henry made his  
24 comment today is that the letter from -- dated 1979 to  
25 Mr. McDaniel indicated that he was eligible to sit for an

1 examination, but it doesn't tell you -- it does reference  
2 in the letter that, you know, according to -- it  
3 references WAC 296-46B, so that's the electrical WAC. But  
4 the specific citation, right? the specific article within  
5 296-46B, I believe it is 400, that doesn't exist in the  
6 current WAC. There is no corresponding -- there is no --  
7 that number 296 -- WAC 296-401-010, we don't -- that  
8 doesn't exist in the current WAC. That governs electrical  
9 installations, qualification for examination  
10 certification.

11 The other piece that I find -- you know, I certainly  
12 recognize that there -- Mr. McDaniel -- the record  
13 reflects Mr. McDaniel not only complied with 19.28.205  
14 which is the 96 hours of related supplemental instruction,  
15 right? and purchased a trainee's certificate, right? which  
16 complies with the spirit of the law. But, you know, as we  
17 all know, those trainee certificates are supposed to be  
18 purchased in conjunction with the actual work hours,  
19 right? which I don't know if there was trainee  
20 certificates in 1979 or not. And -- but what -- the  
21 problem that I have is that I'm going to read verbatim  
22 from the OAH transcripts. And it's Electrical Board  
23 packet page 41. It's page 12 of the OAH transcript. And  
24 it reads -- is everybody there? And it reads beginning on  
25 line 14. And I believe this is Mr. Henry's testimony in

1 front of the judge.

2 "There are substantial differences between the  
3 requirements for taking the exam in 1979 and the  
4 requirements to take it today, in 2015, almost 40 years  
5 later. There wasn't any requirements of any experience  
6 being new industrial or new commercial electrical  
7 installation. There was no requirements that it be under  
8 the supervision of a master journeyman level electrician.  
9 There were no limits on the amount of the applicant's  
10 qualifying experience within the - within a particular  
11 electrical specialty.

12 "And I would also note that actually the number of  
13 hours has changed - to be eligible has changed between  
14 1979 and 2015. In 1979, it required - to sit for the exam  
15 required at least four years of experience in the  
16 electrical trade. At that time, each year was treated as  
17 1,800 hours, which resulted in a total amount of time of  
18 7,200 hours of experience that was required to sit for the  
19 exam.

20 "That changed in 1997. And effective June 30th,  
21 1997, the regulations were changed to require 2,000 hours  
22 of experience rather than one year. And so in fact, there  
23 would be an additional 800 hours that would still be owing  
24 even if Mr. McDaniel was able to show that he did have  
25 those four years of experience."

1           So from my perspective, if you take the letter from  
2 the State, which I -- you know, I -- on its face, that the  
3 exam that he was eligible to take in 1979, which he took  
4 twice, failed both times, was the general journeyman's  
5 examination. He met the qualifications in 1979, but he  
6 does not meet the qualifications in 2015.

7           Dominic.

8           BOARD MEMBER BURKE: I agree. But that letter would  
9 indicate that he had 7,200 hours of experience by allowing  
10 him to sit for the exam.

11          So I agree with --

12          CHAIRPERSON PREZEAU: No, I agree with that. It  
13 gives him 7,200 hours of experience, but it does not give  
14 him 8,000 hours of experience.

15          BOARD MEMBER BURKE: I don't disagree with that at  
16 all. All I'm saying is --

17          MR. McDANIEL: May I interrupt?

18          BOARD MEMBER BELISLE: No.

19          CHAIRPERSON PREZEAU: No.

20          BOARD MEMBER BURKE: There's -- I'm agreeing in part  
21 with what Don said that I agree the letter shows that he  
22 was eligible then. It's hard for me to say he's not  
23 eligible now per the letter other than the work  
24 experience, which has changed. The current work  
25 experience is 8,000 hours.

1           If you don't have 8,000 hours, none of us could sit  
2 for this exam. I'm a journeyman. I'm a master  
3 electrician. I get it.

4           We all had to do it too. And we had to have  
5 affidavits of our hours. We had to have our hours signed.  
6 I don't see in here where it tells us that that letter  
7 indicates anything other than 7,200 hours of experience.

8           So he's done his classroom training. I think there  
9 was 112 hours in there.

10          So to me, at a minimum, it would show that he's got  
11 7,200 hours of experience. If he went and got 800 more  
12 hours, then he could potentially sit for the exam.

13          CHAIRPERSON PREZEAU: Well, yeah, I agree with your  
14 statement, right? if you take the letter on its face,  
15 which I -- there's nothing in the record to dispute that,  
16 right? is that the letter indicates to me that he has  
17 7,200 hours of on the job training, but it is not -- it's  
18 not -- doesn't meet the requirements to take the 2014  
19 journeyman's exam.

20          BOARD MEMBER BURKE: I agree.

21          CHAIRPERSON PREZEAU: Janet.

22          BOARD MEMBER LEWIS: However, I don't think that the  
23 Department is even recognizing those 7,200 hours. In  
24 fact, from everything I've read is that they're  
25 recognizing any hours.

1           But, you know, going back to the original letter,  
2 they did at that point in time recognize a certain number  
3 of hours, which I don't believe should now be invalid even  
4 -- you know, because it was a previous Department decision  
5 under the current law and WAC at the time. I don't see  
6 how we can just ignore the hours -- the previous hours  
7 that the Department did approve.

8           CHAIRPERSON PREZEAU: Yeah, I mean, the other piece  
9 that I, you know, I would offer for your consideration is  
10 -- and again, I'm going back to the transcript. Again,  
11 this -- beginning on line -- well, this is beginning on  
12 line 17. And that those 7,200 -- the letter from 1979  
13 from Governor Dixy Lee Ray equates to 7,200 hours. It  
14 equates to 7,200 hours under the requirement in 1979,  
15 which may or may not have been supervised and may or may  
16 not encompass new industrial or new commercial electrical  
17 experience.

18           So the question, you know -- and I don't know that  
19 that is part of the ultimate question in front of us,  
20 which is: How do you equate the hours of work experience  
21 that the letter from 1979 indicates Mr. McDaniel had,  
22 what's the -- how do you equate those to current hours and  
23 do you do that, you know?

24           I believe the question before this Board is, you  
25 know, is the -- what's being questioned is the proposed

1 order from the ALJ. And --

2 MR. McDANIEL: May I ask you a question?

3 CHAIRPERSON PREZEAU: No. We're going to finish our  
4 discussion. And then I'll give you another chance to  
5 speak.

6 MR. McDANIEL: Thank you.

7 BOARD MEMBER NORD: I sat for my exam in 1977. I  
8 look at his letter. The question in my mind after reading  
9 this transcript several times was: There's nothing that I  
10 see in this record that indicates he sat for an 01  
11 examination. Did he sit for an 01? Did he sit for a  
12 residential?

13 CHAIRPERSON PREZEAU: We can't answer that question.

14 BOARD MEMBER NORD: We don't know the question -- we  
15 don't know the answer. There's nothing in here that  
16 states what exam he sat for. We're making assumptions it  
17 was an exam that was 7,200 hours. There's nothing in here  
18 that indicates that.

19 CHAIRPERSON PREZEAU: So any other -- Rod.

20 BOARD MEMBER BELISLE: Well, I think the record shows  
21 that he doesn't -- under the current law, he likely  
22 doesn't qualify for the current license requirement to sit  
23 for the exam. He stated in his testimony, and it's in the  
24 record, that he can get some documentation of his hours.

25 I guess my thought is regardless of where this case

1 goes, if he's not allowed to sit for the exam based on our  
2 ruling, I think he now knows the procedure in which he can  
3 get there, which is go to that employer that has 4,000  
4 hours of documentation and provide it on a affidavit to  
5 the State and seek out the other employers that you think  
6 you can find and provide that information through  
7 affidavit, and then with the current trainee license that  
8 he has, he can continue to work in the trade to meet the  
9 8,000 hour requirement.

10 I don't think we're going to solve this based on what  
11 we have in front of us because it clearly doesn't meet  
12 the requirement. But it doesn't mean he's not eligible  
13 or he can't be eligible in the future. He just needs to  
14 go a different route.

15 CHAIRPERSON PREZEAU: No, I agree with Rod. I mean,  
16 certainly the record indicates -- and as Mr. McDaniel  
17 pointed out it's in the ALG's decision that there's a  
18 potential for Mr. McDaniel to identify at least 4,000  
19 hours of on-the-job through the affidavit process, right?  
20 And it is possible that, as you said, Rod, that he has met  
21 the other requirements including the related classroom  
22 training, has a valid trainee's certificate, right? So to  
23 continue to seek on-the-job training hours, right, hours  
24 of experience towards eligibility to sit the general  
25 journeyman's exam. But I agree with Rod is I do not find

1 substantial evidence in this record to compel me to  
2 decide, as much as I would like to, that Mr. McDaniel is  
3 eligible to sit the general journeyman's EL01 exam.

4 MR. McDANIEL: You were going to give me an  
5 opportunity to say something first, or were you going to  
6 take your vote first?

7 CHAIRPERSON PREZEAU: No. Go ahead, sir.

8 MR. McDANIEL: Anticipating that this might happen at  
9 the very end, I did approach the State's attorney and  
10 asked if they would be willing to grant --

11 CHAIRPERSON PREZEAU: Sir -- sir, we can't have any  
12 new information than what is in this text. So if you had  
13 a conversation with the State's attorney regarding some --

14 MR. McDANIEL: Oh. Let me ask --

15 CHAIRPERSON PREZEAU: -- some potential situation,  
16 unless it's in here, we can't hear that.

17 MR. McDANIEL: All right. I suspect that we did not  
18 make a matter of record of our conversation. So that does  
19 that.

20 CHAIRPERSON PREZEAU: It certainly means that we  
21 can't have it in the record here. But it doesn't  
22 necessarily mean that it didn't happen. I'm just saying  
23 we can't have it on the record here. If it doesn't -- if  
24 it doesn't -- it's not contained within this transcript,  
25 we can't -- we can't --

1 MR. McDANIEL: I understand.

2 BOARD MEMBER SCOTT: I have a question.

3 CHAIRPERSON PREZEAU: Randy.

4 BOARD MEMBER SCOTT: So I'm just having a difficult  
5 time with this piece in here that, you know, you were  
6 reading through page 12 and 13 which is on page 41 and 42  
7 where the statement is made finally noting that this is a  
8 very stale experience, and I'm having troubles finding the  
9 "stale experience" clause in the statute. And so going  
10 back to the point that at least he met the minimum  
11 requirements then, if those were 7,200 hours, I think  
12 based on the letter like Don said, unless the letter is  
13 false that the 7,200 hours should at least be granted. I  
14 mean, that's where -- the way I think it should --

15 CHAIRPERSON PREZEAU: Well, so here's the thing I  
16 want to caution the Board is like we don't get to say --  
17 we don't get to tell the Department, right, you should  
18 have used this metric to determine what hours are  
19 eligible. The question before this Board is, is  
20 Mr. McDaniel eligible to sit the general journeyman's  
21 exam. That's the question in front of the Board.

22 So Rod had his hand up first, and then I'm going to  
23 go to Don and --

24 BOARD MEMBER BELISLE: Well, I think I just want to  
25 restate kind of what I tried to say earlier, and maybe I

1 wasn't clear.

2           There's not enough evidence in the record in my  
3 opinion to determine that he meets the qualification.  
4 It's possible that if he were to provide the documentation  
5 from his experience, he will meet the requirements. That  
6 was my -- my point was follow through the process to  
7 provide the documentation, and he might very well meet all  
8 of the requirements.

9           But to make a ruling on what we have in front of us,  
10 there's not sufficient evidence based on the facts that we  
11 have.

12           CHAIRPERSON PREZEAU: Don.

13           BOARD MEMBER BAKER: So I don't want to waffle on my  
14 position, but I agree with everything that's being said.  
15 And -- I guess really to clear this up, when I look at  
16 this letter, there's got to be some value to this letter.  
17 And I guess it's true, we don't know if it was for the  
18 general journeyman or for the 01 or 02. So at a minimum,  
19 maybe this is worth 4,000 hours. I don't know how you  
20 qualify that.

21           Going back to my original position, I still don't see  
22 where there's any harm in letting him sit for the exam.  
23 We have systems in place. This is a one-off situation.  
24 You're not going to be getting letters like this every  
25 week now.

1           But I guess in the end, this letter has to have some  
2 value, whether it's -- whether we say it's worth 4,000  
3 hours or 7,200 hours; I don't know.

4           And I agree with Rod. There's a pathway for an  
5 individual to get to this exam. But this letter's got to  
6 be part of that, and it should qualify for something.

7           CHAIRPERSON PREZEAU: So I'm going in order. It's  
8 Alice, and then we'll go to Bobby.

9           BOARD MEMBER PHILLIPS: So I'm trying to understand  
10 what you're saying. But what I'm hearing you say is that  
11 we should make an expectation to the rules that are laid  
12 out for when you can take a journeyman exam because this  
13 one is so old.

14          BOARD MEMBER BAKER: No.

15          BOARD MEMBER PHILLIPS: Because even with that  
16 letter, he doesn't meet the qualifications today.

17          BOARD MEMBER BAKER: I agree. I agree.

18          BOARD MEMBER PHILLIPS: So there is nothing in this  
19 kind of -- I guess Rod has already said it, but there is  
20 nothing in the transcript. There's no evidentiary  
21 information to allow us to waive that requirement to  
22 take --

23          BOARD MEMBER BAKER: I agree. I agree.

24           And that's where this is going to end up going.

25           But King for the day, he takes the exam. I'm like,

1 "Go ahead. Take the exam. If you pass the test, good for  
2 you. You're a journeyman."

3 But I get it. We can't allow that. But this letter  
4 still has to have some value. And I think at the end is  
5 that this state at the minimum's got to give him 4,000  
6 hours for it even though he can't find the records and  
7 they don't have the records anymore. Why would you? It's  
8 40 years old.

9 But no, Alice, you're right. I'm -- so just I'm  
10 clear, I mean, I know that we don't -- we're not in a  
11 position to do that. This system doesn't work that way.  
12 It doesn't allow that. There isn't necessarily a -- I'll  
13 just leave it at that.

14 CHAIRPERSON PREZEAU: Bobby.

15 BOARD MEMBER GRAY: Well, I understand what Don's  
16 saying. Because when I first read through this, that was  
17 my feeling too. There's a letter. But after I read it  
18 several times, it's clear the letter only allows to  
19 petition the Department to go take the exam. It doesn't  
20 make the commitment there; it just simply allows the  
21 individual to petition.

22 And I thought through that a little bit, and it makes  
23 sense that the Department is obligated to represent the  
24 public here in this state and make sure that the people we  
25 put out there doing electrical work has the skills and

1 knowledge to be able to do that work safely. And if they  
2 don't have compelling evidence that a person has that  
3 ability based on the records and the investigations of  
4 those records and so on, then they're not fulfilling their  
5 duty. So I defaulted back to the fact that yes, I agree  
6 that they do not -- this individual does not meet the  
7 requirements in our statute today to be able to sit for  
8 this exam.

9 CHAIRPERSON PREZEAU: So what I'm -- I want to echo  
10 what Bobby just said is what came up in the transcript a  
11 couple -- at OAH that there is no expiration date in that  
12 letter from Governor Dixy Lee Ray, and potentially, you  
13 know -- and Mr. McDaniel, you know, argued that point.  
14 And I think maybe that is why 40 years later roughly when  
15 you look at that document, it doesn't immediately qualify  
16 you to sit the exam again; it's you have to petition the  
17 Department, and then the Department is going to review  
18 based on the information submitted to them whether or not  
19 you would have access to sit the journey level or  
20 specialty level now examination.

21 So just to reiterate some points that I've heard from  
22 multiple Board members and agree with that there is a  
23 desire to get in the record that the letter has value,  
24 right? The letter has value in determining in the future  
25 whether or not Mr. McDaniel is eligible to sit the general

1 journeyman's exam. We all -- I think we all agree the  
2 letter has value. The amount of value that it has is what  
3 is in dispute. And what I'm hearing from, you know,  
4 several Board members and what I agree with is that there  
5 is not substantial evidence in the record to indicate that  
6 Mr. McDaniel is eligible to sit for the general  
7 journeyman's exam given the information we have. But  
8 that does not stop Mr. McDaniel nor the Department from  
9 continuing conversations in collaboration to determine  
10 whether or not at some point in the future that  
11 Mr. McDaniel is eligible to sit the exam.

12 Milton, do you need to change your paper?

13 THE COURT REPORTER: Whenever you get to a breaking  
14 point.

15 CHAIRPERSON PREZEAU: So let -- you call the shots  
16 here. Let's just stop until Milton can ...

17 THE COURT REPORTER: Again, here to provide  
18 entertainment.

19 (Whereupon, the paper  
20 "situation" was remedied.)

21 CHAIRPERSON PREZEAU: I always know that Milton's in  
22 trouble when I -- he's always very neat except for when it  
23 gets toward the end, there's paper all over the floor.

24 All right. So given the -- I think we've had  
25 adequate discussion. Unless there's more discussion, the

1 Chair would entertain a motion so that we can move  
2 forward.

3 John.

4 BOARD MEMBER BRICKEY: A comment.

5 CHAIRPERSON PREZEAU: Please. I'm not -- yeah,  
6 please.

7 BOARD MEMBER BRICKEY: As I'm thinking about this, in  
8 1997 when the effective date of June 30th changed the  
9 regulations to require the 2,000 hours, if we had a person  
10 sit for the exam on April of that year and they failed the  
11 test and they received a letter saying you're eligible to  
12 reapply, and they came back in July to take the test,  
13 would the State have -- would L & I have required them to  
14 add 800 hours to their work experience in order to sit for  
15 the exam?

16 CHAIRPERSON PREZEAU: That is the question that we  
17 will not know the answer in this forum. We will not know  
18 the answer in this forum because, again, it would be new  
19 information. But it's a very -- it's a fascinating  
20 question and one that would have been interesting to know  
21 the answer to in front of the ALJ.

22 Rod.

23 CHAIRPERSON PREZEAU: I won't answer that question.  
24 But I will say that the Department does have a policy for  
25 those types of things today.

1 CHAIRPERSON PREZEAU: Very good. Okay. So Board  
2 members, we need to -- I call your attention -- I don't  
3 want to stifle discussion, but if we -- I also want to  
4 make sure that we render a decision where appropriate.

5 The Chair would entertain a motion -- the Chair would  
6 love to have folks review the proposed order from the --  
7 the initial order on summary judgment.

8 All right. So as the Board members are reviewing the  
9 initial order, I would ask both Mr. McDaniel and Mr. Henry  
10 if -- knowing that the Board has the ability to make -- to  
11 alter the initial order, I'm wondering if you upon your  
12 review of the initial order have determined any  
13 typographical errors in the initial order.

14 ASSISTANT ATTORNEY GENERAL HENRY: I have not.

15 MR. McDANIEL: No.

16 CHAIRPERSON PREZEAU: Okay. So both parties indicate  
17 no.

18 BOARD MEMBER PHILLIPS: So I guess I have a  
19 clarifying question. We're going to -- we're looking at  
20 summary judgment, not necessarily jurisdiction on this  
21 order; is that correct?

22 CHAIRPERSON PREZEAU: So -- yes, that is correct. So  
23 the, you know, jurisdiction 4.1 and 4.2 is just a matter  
24 of fact, statement of fact.

25 ASSISTANT ATTORNEY GENERAL REULAND: I will say for

1 the Board's consideration that this is an order on summary  
2 judgment, and the Board's -- your review is whether or not  
3 there is a material issue of fact that would merit sending  
4 this back to a hearing on the merits.

5 If you -- it is important in summary judgment since  
6 there is no like hearing on the merits that there is an  
7 itemization of the documents that were considered. So  
8 that would -- if this were to go further, the actual  
9 evidence in the record -- usually we have the transcript.  
10 So I -- in terms of the order summary, the issues, the  
11 summary judgment motion hearing, that's just procedural  
12 stuff; it doesn't matter. But in terms of the documents  
13 that we're considering, I do recommend that that be  
14 accepted.

15 And I, you know, again, as we -- as I indicated  
16 earlier, there could be a motion to accept the -- you  
17 know, choose to affirm in its entirety or if there are  
18 specific changes the Board thinks needs to be made, then I  
19 would recommend that you go through starting with the  
20 facts all the way through and --

21 BOARD MEMBER: (Sneeze.)

22 ASSISTANT ATTORNEY GENERAL REULAND: -- 4.1 and 4.2  
23 because those are included under the factual summaries,  
24 and then do the conclusions and the initial.

25 CHAIRPERSON PREZEAU: So what I just heard you say,

1 Pam, is if there are no edits to any of the portions of  
2 the initial order, including the documents that were  
3 included and the findings of fact, conclusions of law, the  
4 eligibility to take the examination, and the initial  
5 order, if there was no errors or omissions to the initial  
6 proposed order in its entirety, it would be a proper  
7 motion for a Board member to adopt to accept the initial  
8 order as authored by the ALJ in its entirety.

9 ASSISTANT ATTORNEY GENERAL REULAND: That is correct.

10

11

Motion

12

13 BOARD MEMBER PHILLIPS: So moved.

14 BOARD MEMBER NORD: Second.

15 CHAIRPERSON PREZEAU: So it's been moved and seconded  
16 to adopt in its entirety the initial order on summary  
17 judgment rendered by ALJ Lisa Dublin on July 2, 2015.

18 Any discussion on the motion?

19 BOARD MEMBER SCOTT: Where is that in the -- are you  
20 looking -- are you talking --

21 BOARD MEMBER PHILLIPS: Page 20.

22 BOARD MEMBER SCOTT: So just I have a question.

23 CHAIRPERSON PREZEAU: Yes, sir.

24 BOARD MEMBER SCOTT: Probably throw a monkey wrench  
25 into this whole thing, right?



1 CHAIRPERSON PREZEAU: The second -- the person who  
2 seconded the motion?

3 BOARD MEMBER NORD: Yes.

4 CHAIRPERSON PREZEAU: All right. So now just to be  
5 clear, the motion before the Board is to adopt the initial  
6 order on summary judgment in its entirety offered by Lisa  
7 Dublin, ALJ, on July 2, 2015, with the exception of  
8 striking in Finding of Fact 4.7 "to become a licensed  
9 journey-level electrician."

10 Does everybody understand the motion? Discussion on  
11 the motion?

12 BOARD MEMBER SCOTT: I'm going to vote against that  
13 motion. I'm just telling you. Because I think that it's  
14 evident what -- I think the statement is actually true.  
15 So ...

16 CHAIRPERSON PREZEAU: Do you know what? Board  
17 members do not have -- like it's wrong to declare what  
18 your vote is going to be. I'm asking for discussion on  
19 substantive issues before the Board.

20 Janet.

21 BOARD MEMBER LEWIS: I would like to know if this  
22 motion is voted down, maybe Pam can expound on, does that  
23 mean we're sending it back for a full hearing?

24 ASSISTANT ATTORNEY GENERAL REULAND: That is correct.

25 This came up in -- procedurally. It is -- the

1 question is whether or not there is any material issue of  
2 fact that would render a hearing on the merits. And as  
3 Mr. Henry pointed out in the briefing, the material issue  
4 of fact is, is there any facts in dispute that could  
5 render a different outcome.

6 And you are correct, if the Board were to find that  
7 there is a material issue of fact, it would go back to OAH  
8 for a hearing on the merits on the evidence that's been --  
9 for a hearing on the merits where there'd be an  
10 opportunity to call witnesses, et cetera.

11 CHAIRPERSON PREZEAU: Further discussion on the  
12 motion? Seeing none, all those in favor signify by saying  
13 aye.

14 THE BOARD: (Various) Aye.

15 CHAIRPERSON PREZEAU: Opposed?

16 THE BOARD: (Various) No.

17 CHAIRPERSON PREZEAU: So here's what I want. I'm  
18 calling for hands. All those in favor, signify by raising  
19 your hand.

20 (Board Members Cornwall, Phillips, Nord, Gray,  
21 Belisle raising hands.)

22 One, two, three, four, five.

23 Nays?

24 (Board Members Scott, Lewis, Cunningham, Baker,  
25 Schmidt, Burke raising hands).

1 One, two, three, four, five, six. Motion fails.

2 Motion Failed

3

4 ASSISTANT ATTORNEY GENERAL REULAND: So that means  
5 that we have to clarify that the matter will be -- that  
6 summary judgment is not affirmed and the matter should be  
7 remanded to OAH. There is a material issue of fact.

8 ASSISTANT ATTORNEY GENERAL HENRY: Could I be heard  
9 on this?

10 CHAIRPERSON PREZEAU: If you could offer some  
11 clarification, then you would be welcome to be heard.

12 ASSISTANT ATTORNEY GENERAL HENRY: My understanding  
13 is that whether or not Mr. McDaniel took the Washington  
14 state certification examination to become a licensed  
15 journeyman electrician, whether that was the purpose of  
16 the examination or not, that is not a material fact in  
17 regard to whether he is eligible to take the examination  
18 today. Because it doesn't matter one way or the other.  
19 If it was just for a specialty, he wouldn't be eligible.  
20 If it was for the actual journeyman electrician  
21 examination as it existed back in 1979, he still wouldn't  
22 have the requisite hours to be eligible. And so in either  
23 instance, the order for summary judgment should be  
24 affirmed regardless of that -- which way you go on that.

25 ASSISTANT ATTORNEY GENERAL REULAND: So what I hear

1 you saying, Mr. Henry, is that the Department would accept  
2 the initial order as crafted without the deletion that was  
3 suggested in the latter motion, that 4.7, the Department  
4 would accept 4.7 as initially drafted by the OAH and --

5 ASSISTANT ATTORNEY GENERAL HENRY: So this would be  
6 for purposes of summary judgment in which all facts are  
7 construed most favorably to Mr. McDaniel. And so only for  
8 purposes of summary judgment would the Department accept  
9 that.

10 ASSISTANT ATTORNEY GENERAL REULAND: So I think  
11 procedurally what that would mean would be if the Board  
12 would like to make another motion to accept without the  
13 amendment to 4.7, if you want to consider that or not.  
14 Otherwise, we have to send it back. There has to be a  
15 mechanism to send it back on the summary judgment. That's  
16 what I hear you saying.

17 CHAIRPERSON PREZEAU: So let me translate that into  
18 -- right? Because I'm not an attorney.

19 So if I get that, since this motion has been denied,  
20 right, been rejected. So in order to -- if it is the  
21 intent of a majority of the Board members to remand this  
22 back to OAH for a full hearing, you would need to identify  
23 something in the record that allows for a dispute in  
24 subject matter?

25 ASSISTANT ATTORNEY GENERAL HENRY: For dispute as to

1 a fact that would -- it would have to be a fact that  
2 actually made Mr. McDaniel eligible.

3 The only issue, of course, it's constrained to the  
4 issue of whether or not he's eligible. It's an all or  
5 nothing event. So it would have to be a fact that for  
6 whatever reason you thought that the fact that the judge  
7 had incorrectly determined a fact, and if the fact was  
8 otherwise, he would actually be eligible. Otherwise,  
9 there's no need to remand for a new evidentiary hearing.

10 Does that make any sense?

11 CHAIRPERSON PREZEAU: So let me just use my words.  
12 Let's just -- maybe see this as helpful.

13 So what I heard you say is if the Board or a member  
14 of the Board can find fact or evidence contained within  
15 the transcript that Mr. McDaniel -- in order to remand it  
16 back to OAH, you would have to find adequate evidence in  
17 this packet that he is eligible to sit the general  
18 journeyman's exam, not an all or nothing.

19 ASSISTANT ATTORNEY GENERAL REULAND: No, I don't  
20 think that that's correct.

21 CHAIRPERSON PREZEAU: Okay. That's what I heard him  
22 just say.

23 ASSISTANT ATTORNEY GENERAL HENRY: Well, there would  
24 have to be a material issue of fact. There would have to  
25 be some fact that could be construed most favorably to

1 Mr. McDaniel.

2 ASSISTANT ATTORNEY GENERAL REULAND: I think there's  
3 two things here that are going on. The Board -- the  
4 motion before the Board was to accept the initial order  
5 with the amendment. So the first question is: Perhaps is  
6 that -- is that the one amendment in terms of that would  
7 change the Board's vote? I don't know that.

8 The other -- the second thing was: If -- the next  
9 question is: Is there a material issue of fact? Is there  
10 a fact that could go either way that would change the  
11 outcome of the decision. And if there's a material issue  
12 of fact, what is that material issue of fact. And then it  
13 goes back to OAH to have a hearing on the merits -- a full  
14 hearing on the merits.

15 BOARD MEMBER PHILLIPS: I have a question.

16 CHAIRPERSON PREZEAU: Go ahead, Alice.

17 BOARD MEMBER PHILLIPS: Would it have been better for  
18 us to take this -- since we were making an amendment to  
19 4.7, to do that like we did the previous one where we  
20 voted on the amended article before we accepted the  
21 document in its entirety?

22 ASSISTANT ATTORNEY GENERAL REULAND: Was there a vote  
23 on the amendment?

24 CHAIRPERSON PREZEAU: Not -- it was packaged.

25 BOARD MEMBER PHILLIPS: It was packaged.

1 BOARD MEMBER BELISLE: Janet has a ...

2 CHAIRPERSON PREZEAU: Go ahead, Janet.

3 BOARD MEMBER LEWIS: This one's in dispute. The  
4 judge found that he, you know, sat for the journeyman exam  
5 in 1979. That is in the order. So can we send it back on  
6 that basis? But now there is a material fact. It's not  
7 whether he qualifies under today's standards. The fact is  
8 he qualified in 1979. The judge found right here that he  
9 did sit for the journeyman exam.

10 ASSISTANT ATTORNEY GENERAL REULAND: But does that --  
11 but is there -- what is the material -- would you have to  
12 make a finding in terms of what is the material issue of  
13 fact, even assuming that to be true, if the Board's  
14 decision must decide what is the material issue of fact  
15 that may make him eligible to sit for the current exam.  
16 Assuming all of those things are true, because you must  
17 construe them in the light most favorable to Mr. McDaniel,  
18 so assuming that to be true, what is the material issue of  
19 fact that would -- could make him eligible based on the  
20 evidence that you have?

21 And I would caution the Board that Mr. McDaniel's  
22 statements that he could obtain hours from his employer,  
23 that would certainly go to if he reapplies for  
24 eligibility. But this -- this process, he had an  
25 opportunity to submit those affidavits, any affidavits

1 beginning in March of 2014 through the OAH hearing. And  
2 he had it -- it's not a material issue of fact that he  
3 could submit them; it's whether he, you know, he did or  
4 had an opportunity to do that.

5 So that's where the -- assuming all of that is true,  
6 is there a material issue of fact? And I do think you  
7 need to identify what that material issue of fact is for  
8 the record.

9 BOARD MEMBER PHILLIPS: So Chair Prezeau.

10 CHAIRPERSON PREZEAU: Yes.

11

12 Motion

13

14 BOARD MEMBER PHILLIPS: I'd like to make a motion  
15 that we adopt sections 1.1, section 2.1, section 3.1  
16 through 3.5, sections 4.1 through 4.5, section 4.5, 4.6,  
17 4.8 through 4.9, 5.1 through 5.6, 5.8 through 5. --  
18 through 5.11, 6.1 and 6.2 as presented.

19 CHAIRPERSON PREZEAU: So the motion is to affirm the  
20 portions of the initial order on summary judgment as  
21 follows: 1.1, 2.1, 3.1 through 3.5, 4.1 through 4.6, you  
22 omitted 4.7.

23 BOARD MEMBER PHILLIPS: Correct.

24 CHAIRPERSON PREZEAU: You included 4.8, 4.9, you  
25 omitted 4.10, you included Conclusions of Law 5.1 through

1 5.6, you omitted 5.7, you included 5.8 through 5.11 and  
2 Initial Order 6.1 and 6.2.

3 BOARD MEMBER PHILLIPS: Okay. So the motion should  
4 have included 4.10 and 5.7.

5 CHAIRPERSON PREZEAU: So the intent was only -- was  
6 to adopt all portions of the ALJ's decision -- proposed  
7 decision with the exception of Section 4.7.

8 BOARD MEMBER PHILLIPS: Correct.

9 BOARD MEMBER BAKER: A comment?

10 CHAIRPERSON PREZEAU: Well, so let's -- I understand  
11 you want to do that, Don.

12 What I -- normally we would -- the normal course of  
13 business is see if we can secure a second, and then open  
14 discussion.

15 BOARD MEMBER GRAY: I second.

16 CHAIRPERSON PREZEAU: So the motion has been  
17 seconded. So now discussion. Don.

18 BOARD MEMBER BAKER: I think I would affirm the whole  
19 order if I knew the Department based on what we see here  
20 on 4.7, if I knew the Department was going to give him  
21 credit for the letter.

22 ASSISTANT ATTORNEY GENERAL REULAND: You can't  
23 negotiate a settlement.

24 BOARD MEMBER BAKER: So I'm trying to figure out how  
25 I can -- I understand. I'm having a hard time with this

1 because I can't get -- I can't see the end game.  
2 Otherwise, I -- (inaudible) -- that we may have to let him  
3 take the exam. And I get that he isn't qualified in  
4 today's environment, right? He doesn't have the hours.  
5 But we sent him a letter and now it's come to light that  
6 it's a matter of record that it was a journeyman's  
7 electrical exam; it's a matter of record.

8 Just a comment.

9 CHAIRPERSON PREZEAU: Go ahead, Kevin.

10 BOARD MEMBER SCHMIDT: A question. Is there --  
11 because I haven't been able to find it. But is there  
12 anywhere in the document here that the Department is  
13 questioning what exam was taken?

14 CHAIRPERSON PREZEAU: Certainly can ask Mr. Henry  
15 that. But I didn't -- I personally did not find any  
16 comments in the record indicating the Department's  
17 challenging the validity of the letter.

18 BOARD MEMBER SCHMIDT: So just -- and again, this is  
19 -- my question is: Do we have -- then do we have the  
20 right, or is that -- would that be considered new  
21 evidence? I mean, where are we at on this? Do we have  
22 the right to consider that exam paper was there or what  
23 the exam was for? Can we actually say it wasn't? That's  
24 what I'm trying to -- that's what the challenge in my mind  
25 is, Do we have the right to say it was or it wasn't?

1 ASSISTANT ATTORNEY GENERAL REULAND: Well, I think --  
2 I can answer that from a procedural standpoint. But --  
3 because that could create a material issue of fact that  
4 would change the outcome in this case. And if that is --  
5 you can't construe outside of the record; that is correct.  
6 And you can't speculate in terms of what that piece of  
7 paper means or doesn't mean. But does that create a  
8 material issue of fact that would -- should send this --  
9 that would change the outcome, given all the facts, that  
10 needs to go back for a full hearing on the merits. I  
11 mean, you have the option of agreeing that summary  
12 judgment's appropriate or sending it back and saying more  
13 evidence needs to be taken at the hearing on that issue.

14 BOARD MEMBER BURKE: But there really isn't anything  
15 here that gives us -- there isn't a fact that would change  
16 the outcome like we discussed. I agree with you  
17 completely. And I'm in agreement having him sit for the  
18 exam. But the bottom line is, the question is: Does he  
19 qualify right now? That's what's --

20 CHAIRPERSON PREZEAU: Given the information you have  
21 in the record.

22 BOARD MEMBER BURKE: And not only that -- I'm sorry,  
23 was it Mr. Henry? -- stated pretty clearly that even if we  
24 kept that line or struck that line out of this, it's  
25 irrelevant to the outcome of the Board's decision. So

1 while I'm understanding, sympathetic and agree with what  
2 you're saying and would love to see him do all those  
3 things, it's irrelevant to what we're trying to answer  
4 here. And if there was a way that we could somehow tie it  
5 in to help him figure out how to get affidavits in and all  
6 that, that would be nice, but it's not what the question  
7 is that we have to answer.

8 CHAIRPERSON PREZEAU: So Rod has a question. I saw  
9 his hand before Janet. And then we'll go back to Janet.

10 BOARD MEMBER BELISLE: Well, I just -- I'm reading  
11 the conclusions of law, and I guess if I'm in Don's seat  
12 over there, King for the day, I might consider striking  
13 item 5.10 and 5.11 because those are the two items that  
14 say he doesn't -- is not eligible. Everything else is  
15 fact. Everything else is pretty accurately reflected in  
16 the record.

17 And I think your question is: If he was told he was  
18 eligible then, why don't we let him sit for the exam now.

19 So 5.10 and 5.11 are kind of the conclusions that say  
20 he's not eligible because of the letter's not clear or  
21 whatever.

22 I guess if I was on that side of the fence, I might  
23 strike Conclusions of Law 5.10 and 5.11, and then reverse  
24 item 6.2.

25 Is that -- would that get -- I mean, maybe that needs

1 to be voted on; I don't know.

2 CHAIRPERSON PREZEAU: Well, we do -- I mean, there  
3 is a motion before this body, and it's been seconded, and  
4 we're in discussion under the motion, right?

5 And here's what I'm -- oh, and Janet wanted to make  
6 -- before I weigh in, Janet, you had your hand up.

7 BOARD MEMBER LEWIS: Well, in light of what Rod said,  
8 I mean, that is a procedural question that maybe Pam could  
9 answer. But my over comment was the relevance of the  
10 statement that the judge basically the assumption without  
11 rebuttal by the Department was that he sat for the  
12 journeyman exam, so there's an assumption that he was  
13 approved for a minimum of 7,200 hours, which, you know,  
14 can be part of this -- you know, whether we uphold the  
15 summary judgment or not, that is that assumption in that  
16 judgment.

17 So, you know, I'm hoping the Department will  
18 understand that now.

19 If not, then, you know, maybe we should take other  
20 action.

21 CHAIRPERSON PREZEAU: Well, you know, as our AAG  
22 indicated before, we cannot negotiate a settlement.

23 BOARD MEMBER LEWIS: I'm not negotiating any  
24 settlement. I'm just saying that that is the assumption  
25 if we accept the summary judgment without any

1 modification.

2 ASSISTANT ATTORNEY GENERAL REULAND: Is there  
3 anything that would preclude an applicant from reapplying?  
4 I mean, can they apply to sit for the test? Or is there  
5 any time lines? Can they just apply, apply and apply  
6 until ...

7 So I was looking for, you know, in terms of that.

8 CHAIRPERSON PREZEAU: So I'll offer my thoughts  
9 here.

10 As much as I am as sympathetic as others to  
11 Mr. McDaniel's plight, I certainly recognize that he was  
12 eligible to sit the exam in 1979. There is nothing  
13 stopping Mr. McDaniel and the Department -- there's  
14 nothing stopping Mr. McDaniel from petitioning the  
15 Department regard -- to sit the exam, regardless of the  
16 actions taken by the Board today.

17 What I struggle with is I find nothing in this record  
18 that tells me he was elig -- I find no material facts that  
19 compel me to overturn or somehow find erroneous any of the  
20 pieces that are in this ALJ's decision from the beginning  
21 to the end. I think -- that's my personal decision -- or  
22 that's my personal position is I think this judge, this  
23 ALJ hit this one on the head in terms of summary judgment,  
24 the information that is included in here, and included in  
25 here, right?

1           John brings up a very interesting question, which if  
2 it would have been asked, maybe it produces a whole  
3 different situation, right? Had maybe the ALJ been asked  
4 other questions about what -- or had the ALJ entered into  
5 the record what the letter was worth in terms of  
6 qualification towards the eligibility to sit the exam  
7 today. I don't know that that's a question for the ALJ.  
8 It's ultimately a question for the Department.

9           But what I continue to struggle with is I don't  
10 believe there is anything in this record that indicates  
11 that Mr. McDaniel is eligible to sit the EL01 license  
12 today in this record that might indicate that as  
13 Mr. McDaniel has indicated in the testimony that he could  
14 probably get 4,000 hours of continuing -- or on-the-job  
15 training that meets the requirements. That's in the  
16 record. But it wasn't part of his formal petition to the  
17 Department for eligibility to sit the exam through this  
18 process. It doesn't mean that that doesn't exist. I'm  
19 just saying it doesn't exist in this record.

20           So there is a -- I want to remind the Board that  
21 there is a motion before this Board, and it has been  
22 seconded, and we are in discussion on that motion. And I  
23 will remind the Board members that the motion in front of  
24 the Board as I understand it is to adopt all portions of  
25 the initial record written by Administrative Law Judge

1 Lisa Dublin on July 2, 2015 with, the exception of 4.7,  
2 completely omitting 4.7. That is the motion in front of  
3 this Board.

4 Discussion on the motion? Janet.

5 BOARD MEMBER LEWIS: Well, I'm confused now because I  
6 thought you said a minute ago that you found nothing  
7 erroneous in the transcript or the order, but now we want  
8 to omit 4.7.

9 CHAIRPERSON PREZEAU: I didn't make the motion.

10 BOARD MEMBER LEWIS: Oh, I see.

11 BOARD MEMBER PHILLIPS: Can I explain the motion?

12 It appeared to me that 4.7 was the portion that was  
13 in dispute. So my thought was let's approve the stuff  
14 that was not in dispute, and then have discussion on that  
15 article that was.

16 CHAIRPERSON PREZEAU: So -- Pam.

17 ASSISTANT ATTORNEY GENERAL REULAND: Well, the motion  
18 as it stands, Alice, though, includes the ultimate  
19 findings. And so if the motion as it stands, if you agree  
20 that all of the findings with the exception of 4.7 lead to  
21 the conclusions of 6.1 and 6.2, you do not need to have  
22 any further discussion regarding 4.7 because you're  
23 excluding that from the decision.

24 BOARD MEMBER PHILLIPS: Okay.

25 CHAIRPERSON PREZEAU: So let me -- a clarifying

1 question of the maker of the motion. You're excluding 4.7  
2 because you think that's reducing controversy? Or do you  
3 actually find --

4

5 Motion Amended

6

7 BOARD MEMBER PHILLIPS: Let me do this. I'm amend my  
8 motion to include 4.7 as written. So in other words, to  
9 approve this in its entirety without any edits. Does that  
10 make sense?

11 CHAIRPERSON PREZEAU: Who was -- who made the second?

12 BOARD MEMBER GRAY: And I agree with that.

13 CHAIRPERSON PREZEAU: Okay. So now the motion before  
14 the Board -- it's been moved and seconded to adopt in its  
15 entirety the initial order on summary judgment written by  
16 Lisa Dublin, Administrative Law Judge, on July 2, 2015.

17 It's the motion before -- discussion on the motion?

18 So to clarify, it is going to include 4.7 in its  
19 original form which includes the words "to become a  
20 licensed journey level electrician." Is everybody clear  
21 on the motion?

22 Further discussion? All those in favor, signify by  
23 raising your hand.

24 (Board Members Belisle, Lewis, Scott, Cornwall,  
25 Phillips, Nord, Cunningham, Gray, Schmidt, Burke raised

1 hands.)

2 One, two, three, four, five, six, seven, eight, nine.

3 Opposed, raise your hand.

4 (Board Member Baker raised hand.)

5 One. Motion carries.

6

7 Motion Carried

8

9 CHAIRPERSON PREZEAU: So Mr. Henry, I'm curious as to  
10 whether or not you prepared a final order that reflects  
11 the Board's final action.

12 ASSISTANT ATTORNEY GENERAL HENRY: I do not have a  
13 final order for you here today.

14 CHAIRPERSON PREZEAU: Okay. So I want to notify both  
15 parties that --

16 Okay. So the Board has made its decision, and  
17 Mr. Henry as the prevailing party, I asked if you prepared  
18 an order, and you have not. So I would like the parties  
19 to -- if it's possible to get one today. That would be  
20 -- may or may not be possible. But before you leave, if  
21 you are not able to get a final order authored with  
22 Mr. McDaniel, please let us know.

23 Be advised all parties that if you do not reach an  
24 agreement today, the final order -- the presentment of  
25 final order will automatically be set for presentment at

1 the next regularly scheduled Board meeting that's in  
2 January. If an agreed order has not been received by that  
3 date, the parties will be expected to their proposed  
4 orders and appear and advise why their proposed order best  
5 reflects the Board's decision. Hopefully this will not be  
6 necessary. If you are able to reach agreement as to the  
7 form of the order before the next meeting, please forward  
8 it to the Secretary of the Board's office, and they will  
9 ensure it gets signed, copies provided to the parties.

10 ASSISTANT ATTORNEY GENERAL HENRY: So my suspicion is  
11 we will not have an order for the Board today.

12 CHAIRPERSON PREZEAU: Okay. Thank you, Mr. Henry.  
13 Thank you, Mr. McDaniel.

14 All right. So Board members, we have left on our  
15 agenda, we have the Secretary's Report, Certification, and  
16 any additional public comment. I'm not interested in  
17 prolonging Board meetings, but I'm curious if we need to  
18 take an expedited lunch break or a short break for Scooby  
19 snacks. Thoughts?

20 THE BOARD (various): Let's keep going. Keep going.  
21 Let's keep going.

22 CHAIRPERSON PREZEAU: Okay, we're rolling.

23 Milton, is that cool? Milton, is that cool for your  
24 fingers?

25 THE COURT REPORTER: I'll keep going.

1 CHAIRPERSON PREZEAU: Let's rock and roll. Look at  
2 you.

3

4 Item 4. Secretary's Report

5

6 CHAIRPERSON PREZEAU: So we are not apparently taking  
7 a short break. So we are under agenda item Secretary's  
8 Report.

9 SECRETARY THORNTON: Okay. For the Secretary's  
10 Report, on the budget, in September the fund balance was  
11 \$8,242,322, which is about five months worth of operating  
12 costs. On an average, it costs us about \$1,675,600 a  
13 month to operate.

14 We have the mobile-inspection project going on.  
15 We've started to see the costs of that come out of the  
16 fund, which has started to gradually decrease it. But  
17 that's not something we didn't know was going to happen.  
18 But we have started that process and we are seeing some of  
19 those costs come out.

20 We anticipate spending about \$1,608,580 during this  
21 current fiscal year. At the current staffing levels, the  
22 fund at the end of the year is going to be about  
23 \$7,067,000.

24 From a customer service point of view, we sold 35,850  
25 permits in the last quarter. 32,582 of those were

1 processed on-line. A lot of our business nowadays is done  
2 on-line rather than in person at the front counter.  
3 That's about 91 percent of our transaction was last  
4 quarter. 95 percent of contractor permits are purchased  
5 on-line. Anybody that does business with us on a regular  
6 basis has pretty much switched over to the on-line stuff.

7 Homeowners, they don't deal with us often enough to  
8 do the on-line stuff. A lot of their stuff is still done  
9 at the front counter, about a little over 50 percent,  
10 about 56 percent of their business is still done at the  
11 offices.

12 Inspection requests. 81 percent of those are done  
13 on-line. And there, again, electrical licenses, about 70  
14 percent of those are done on-line. And all along, we  
15 gradually get to where we can do more and more stuff  
16 on-line. So it should gradually increase the amount of  
17 stuff that gets done on-line over the Internet.

18 From the performance measures point of view,  
19 inspection requests within 48 hours, we have a goal of 94  
20 percent. And we were at 87.8. So this is where the  
21 discussion gradually gets back to what we talked about  
22 this morning. The number of staff, being able to hire  
23 staff, and the fact that we just can't get every place we  
24 need to go with the number of people we have.

25 And compliance-wise, our goal is 1,052 in a quarter.

1 We had 851. And there again, that goes right back to the  
2 number of staff we have. And the more pressure they have  
3 to get to the inspections, the less time they have to work  
4 on compliance.

5 CHAIRPERSON PREZEAU: So Steve, did you just report  
6 that number was 851? What I have --

7 SECRETARY THORNTON: 851, yeah.

8 CHAIRPERSON PREZEAU: -- in front of me, it says 574.  
9 Oh, there's an updated one. Sorry. Sorry, I'm looking  
10 off the wrong one.

11 SECRETARY THORNTON: And like I said, we still have  
12 the same goals for the inspectors. So we continue to I'm  
13 going to say apply pressure for them to meet all of their  
14 goals. But they're gradually getting more and more to do  
15 and getting farther and farther behind. And the vacancy  
16 rate doesn't help us at all there.

17 Our inspections stops per inspector are up a little  
18 bit to 10.7. Last month I think -- or last quarter, they  
19 were a little over 10. So it's --

20 CHAIRPERSON PREZEAU: 10.2.

21 SECRETARY THORNTON: Yeah. So it's gradually going  
22 up.

23 Electrical disconnect corrections, we issued 11,375.

24 Licensing process turn-around time, we have a goal of  
25 100 percent the same day. We were at 95 percent.

1 Turn-around time for the average plan review is less  
2 than three weeks is the goal. And we were at about .5.

3 Licenses this quarter, we processed 6,664.

4 Our phone calls and such stay pretty steady. Right  
5 now is one of the busier times of the year. Everybody's  
6 ramping up to get their jobs done before the weather sets  
7 in.

8 Testing labs, we didn't have any new testing labs  
9 this quarter.

10 CHAIRPERSON PREZEAU: So this is sort of a global  
11 perspective I guess is I look at the number of permits  
12 that were sold, you know, this last quarter versus what  
13 was reported in July, and they're almost identical,  
14 right?

15 SECRETARY THORNTON: Uh-huh.

16 CHAIRPERSON PREZEAU: And the number that are  
17 processed on-line is also almost identical. But what is  
18 -- you know, I guess I don't know if this bears any  
19 conclusions, but, you know, last quarter we met the 48  
20 hour requests 92 percent of the time. So this is a, you  
21 know, four point -- greater than four point reduction, you  
22 know, percentage hitting that goal, you know, and moves us  
23 further away from the target.

24 And then, you know, we have a slight increase in  
25 workload, and then a significant increase in electrical

1 disconnect corrections. And maybe that's part of the  
2 problem is the work that's being done out there is not --  
3 you know, I don't know. I'm not looking for editorial  
4 statements really unless you want to add them. But it  
5 appears to me that if you have the same number of permits  
6 and you have the same workforce, I mean, clearly -- and  
7 you have roughly the same stops per day, it's how much  
8 time is being spent at the stop, like what is happening.

9 SECRETARY THORNTON: And the one thing that isn't  
10 shown there is the number of requests. We may sell the  
11 same number of permits. But some of the ones are  
12 lingering. And the ones that are sold this quarter,  
13 everybody's in a hurry to get those up to the dried-in  
14 states that they can work on them all winter. So that  
15 probably doesn't correlate real well to these numbers.

16 CHAIRPERSON PREZEAU: That's perfect. That's sort of  
17 the missing variable I guess.

18 SECRETARY THORNTON: And then this time of year, we  
19 have more guys on vacation and such too. So that lowers  
20 the staff a little more.

21 CHAIRPERSON PREZEAU: All right. Any questions for  
22 Steve about that? Rod.

23 BOARD MEMBER BELISLE: I have two I think.

24 First off, the item 6, turn-around time for plan  
25 review, that's .5 of a week? Half a week? Is that --

1 SECRETARY THORNTON: Yes.

2 BOARD MEMBER BELISLE: Okay. And then the second  
3 question I have. Just curious. Contractors buy the  
4 majority of permits on-line. How do they pay? Do they  
5 have a credit card on file?

6 SECRETARY THORNTON: Credit card, uh-huh.

7 I don't think it's on file. They are of the ability  
8 to scan it. And --

9 BOARD MEMBER BELISLE: I just -- the reason I ask is  
10 because if that's the large majority what our contractors  
11 do, credit card companies charge a pretty significant  
12 processing fee, and I didn't know if there was ever any  
13 consideration for another method for them that do a large  
14 majority of work and pay with a check so that you don't  
15 lose that processing fee.

16 SECRETARY THORNTON: And they have a CD account that  
17 they can deposit money in. How many of them choose to do  
18 it that way, I would think there would be most have gone  
19 over to the credit card route. I think I might be the  
20 only guy in here that still writes checks. But ...

21 CHAIRPERSON PREZEAU: I still do, and I --

22 SECRETARY THORNTON: All right. Good for you.

23 BOARD MEMBER BURKE: What are checks?

24 SECRETARY THORNTON: The young guy.

25 BOARD MEMBER BURKE: The only question -- comment I

1 have, and I'll reiterate what I said earlier is that 87  
2 percent on 48-hour request, I think that's a real safety  
3 concern. Out of all the things out there, I think that we  
4 should heed that as a major warning to what's going on.

5 CHAIRPERSON PREZEAU: Well, and I think we're going  
6 to have some more of that -- it's my intention to have  
7 some more of that conversation. You know, I indicated  
8 this morning I wanted to invite Wayne Molesworth and --  
9 and -- what did I say?

10 SECRETARY THORNTON: Dene.

11 CHAIRPERSON PREZEAU: Yeah, Dene, to come up and have  
12 -- Dene Koons to come up and have a conversation.

13 I am -- were you going to -- go ahead. Oh, I'm  
14 sorry, John.

15 BOARD MEMBER BRICKEY: I had a question for the  
16 Chief. And that is under the focused citations and  
17 warning, the goal of 1052. Is that number significant in  
18 any way? 1052?

19 SECRETARY THORNTON: That is what the goal has been  
20 all along. And we divide that goal by the number of  
21 employees. So the more employees we get, it kind of  
22 lessens the load on them. We try to keep the goal the  
23 same so that the amount of compliance stays consistent and  
24 doesn't fluctuate with the number of staff we have.

25 BOARD MEMBER BRICKEY: The reason for the question is

1 that it seems like the goal would be 100 percent. Of  
2 course, we don't know what that number is. But it might  
3 -- I don't know if it has to be reflected as a goal or if  
4 it could anticipated focused citations being 1052, and  
5 you're able to accomplish 851 of them.

6 The reason I say that is that making citations a goal  
7 sounds a little bit like --

8 SECRETARY THORNTON: Heavy handed.

9 BOARD MEMBER BRICKEY: Just a perception that could  
10 be --

11 SECRETARY THORNTON: Noted.

12 CHAIRPERSON PREZEAU: Okay. Any other questions for  
13 Steve about the Secretary's Report?

14 I have a question about the budget numbers.

15 SECRETARY THORNTON: Okay.

16 CHAIRPERSON PREZEAU: You know, the -- and that is --  
17 you know, and I have all of the -- you know, you provide  
18 us every quarter with these, you know, agency-wide numbers  
19 as well as -- you know, and the fund balance, you know,  
20 these spreadsheets, which I find usually helpful to be  
21 honest with you.

22 But one of the things that I have noticed in my time  
23 on this Board is that when you start looking at the  
24 Information Services division and the admin portion and,  
25 you know, what's dubbed "Other Services, Legal Director's

1 Office, Admin Services, Other" -- there's a tendency to  
2 overrun. And what I find to be curious -- and it's not  
3 usually a huge amount of money, right? But what I find to  
4 be interesting in this information, when you're talking  
5 about a fund balance of \$8.242 million. But what I find  
6 interesting in this Information Services division report  
7 is, you know, we had total allotments of \$94,387,000, and  
8 we spent \$188,706, which is a -- which is 100 percent  
9 overspending. And again, in the grand scheme of things,  
10 it's not a huge amount of money. But 100 percent  
11 overspending is, you know, if fairly significant. And I'm  
12 just curious, you know, and in these three departments,  
13 they don't always look like this, right, in terms of  
14 significant, you know, variance in overexpenditures, but  
15 they do this quarter, and they caught my eye. And I'm  
16 curious if we can -- I don't know if we can get additional  
17 detail today. I don't know if, Steve, if you're able to  
18 report on that. But I would really like to understand  
19 more clearly what exactly are the costs that get coded to  
20 Information Services, and Admin, FSPS and Other services.  
21 I would like a more detailed understanding of what is  
22 happening in these three codes.

23 SECRETARY THORNTON: And part of that -- and I don't  
24 know for sure. But part of that could be that we're just  
25 following up the end of the biennium. And I know we

1 always get some late pick-up type bills for things that  
2 have overrun and that kind of thing.

3 IS, I would have to assume part of that is some  
4 computer stuff other than mobile, which we deal with all  
5 the time. But ...

6 CHAIRPERSON PREZEAU: Yeah, I mean, I just would like  
7 a -- you know, we don't have to go into a huge debate  
8 here. Normally I'm used to, you know, looking at the  
9 regions and understand that salaries, benefits and travel,  
10 those are -- depending especially with the vacancy rate of  
11 10 percent is you're going to have overtime and -- which  
12 -- and additional travel. I mean, I get all that, you  
13 know.

14 But -- you know. And the biggest -- you know. If we  
15 could get some greater detail about like what gets coded  
16 to these departments, and maybe you and I can have a  
17 conversation, you know, about what that maybe additional  
18 reporting looks like, and we can do that to satisfy any  
19 other curious Board members besides myself before the next  
20 meeting.

21 SECRETARY THORNTON: And I could always -- I was  
22 going to ask the Board if they're interested in some of  
23 the other things that we track internally on our own to  
24 kind of keep an eye on where we're going, what's going on.  
25 We have all kinds of budget reports, inspection reports,

1 and whether those are things of interest that you'd like  
2 to see all the different ways we kind of keep track of  
3 what we're doing. Because I could show some of that stuff  
4 in a presentation next quarter if that was what would be  
5 interesting.

6 CHAIRPERSON PREZEAU: I think the more -- you know,  
7 your previous -- your predecessors have done a great job  
8 -- and I'm glad that you're also on board with this -- of  
9 trying to pull the curtain back a little bit more with  
10 respect to day-to-day operations of the Department,  
11 whether we brought people in from the audit division or  
12 ECORE. And so I think that is a fantastic idea. And time  
13 permitting -- again, I'm not interested in manufacturing  
14 agenda items. But --

15 SECRETARY THORNTON: You don't want to be here till  
16 6:00 again?

17 CHAIRPERSON PREZEAU: -- if you could -- the more  
18 that we could pull back the curtain and understand in  
19 greater detail how you arrive at certain benchmarks or  
20 whatever -- you know, to John's question from earlier, it  
21 only makes our job easier.

22 SECRETARY THORNTON: Okay.

23 CHAIRPERSON PREZEAU: Thank you for offering.

24 SECRETARY THORNTON: If I don't offer, don't be  
25 afraid to ask.

1           CHAIRPERSON PREZEAU: Any other questions for Steve  
2 under the Secretary's Report?

3           So do we want to have more discussion about the  
4 vacancy and hiring of inspectors. Do we want to have  
5 Mr. Molesworth and Mr. Koons come up and engage the  
6 Board?

7           BOARD MEMBER BURKE: I would almost rather see that  
8 presentation than have that discussion. But ...

9           CHAIRPERSON PREZEAU: So tell me -- say that again?

10          BOARD MEMBER BURKE: I would almost rather have more  
11 information because I think the information that the  
12 Chief's going to provide is going to help us in that  
13 discussion and give us a lot more information too.

14          CHAIRPERSON PREZEAU: So you want to have that -- you  
15 want to schedule that for the January meeting? Is that  
16 what I hear you say?

17          BOARD MEMBER BURKE: Just throwing it out there. We  
18 might be more useful in the discussion with them and more  
19 beneficial both ways. But ...

20          CHAIRPERSON PREZEAU: Okay. Rod.

21          BOARD MEMBER BELISLE: I'm wondering if the Board can  
22 be informed via e-mail or something in between meetings as  
23 to the progress of the wage request that's moving forward  
24 and at what point does it get to some office where it  
25 would benefit from our support and how we can do that.

1 CHAIRPERSON PREZEAU: Steve, your thoughts on that?

2 SECRETARY THORNTON: I think you probably need to  
3 hear what they have to say today. We can go into more  
4 detail with the slide shows and such next meeting to  
5 clarify any of it. But, you know, what's going on today I  
6 think is important that you know about today. So ...

7 CHAIRPERSON PREZEAU: I agree with Steve, to be  
8 honest.

9 BOARD MEMBER BURKE: Perfect.

10 CHAIRPERSON PREZEAU: All right. So Mr. Molesworth  
11 and Mr. Koons, if you could please come up. And then when  
12 you do, if you'd be kind enough to state your name and  
13 spell it for our court reporter.

14 MR. MOLESWORTH: My name is Wayne Molesworth.  
15 W-A-Y-N-E, M-O-L-E-S-W-O-R-T-H. And I'm a project manager  
16 for Field Services and Public Safety which houses the  
17 electrical department.

18 MR. KOONS: My name is Dene Koons. I'm an electrical  
19 field supervisor for the Department for the Walla Walla,  
20 Tri Cities and Moses Lake service areas. My name is  
21 spelled D-E-N-E, K-O-O-N-S.

22 BOARD MEMBER PHILLIPS: Wow. So Tracy's gone. Tracy  
23 left. This is my day, I guess.

24 So you have a presentation for us?

25 MR. MOLESWORTH: So it's kind of off the cuff because

1 I wasn't aware that we were going to be addressing the  
2 Board today.

3 But there is a lot of good pertinent information,  
4 especially about how you can support us through this  
5 process.

6 A few of you approached me during the last meeting  
7 and said that you didn't envy our position because you  
8 understood the type of process it was and how difficult it  
9 could be. And you're absolutely right. It's a very  
10 intricate process. There's a lot of steps to it.

11 We just submitted -- what we were referring to before  
12 was we just submitted a classic comp package, and that  
13 consists of if we feel the electrical inspectors are in  
14 the wrong classification, which has to do with what wage  
15 they're paid, then we would look at that and see if there  
16 were other places in the state that were under the  
17 classification.

18 That's been determined that we're probably the only  
19 ones, and that no, there wasn't a classification problem.

20 However, there is a compensation problem. And so we  
21 submitted a classic comp package under the realm of hiring  
22 and retention. Because there are several different ways  
23 that you can present that. And so use hiring or retention  
24 for the electrical department. Because that's where we  
25 have the bulk of the problem we've determined.

1 I want you to know the classic comp package I think  
2 was put together very well. It's a six-page document  
3 with seven -- I think at least seven attachments that  
4 outline the situation that the Department's in for  
5 vacancies to comparing wages with the private sector.  
6 Also addresses the State's own market survey where we were  
7 found to be 37 percent below market.

8 And that's an extremely complicated survey. I'm  
9 still trying to figure out how they derived from what they  
10 did. So it's interesting.

11 I think our objective right now is that we're looking  
12 for that support. Because we've got now a package that  
13 was supported by our leadership and by the Department and  
14 sent that forward to State HR. The problem with State HR  
15 is that we have several different levels of justification  
16 in that package.

17 One of them was the safety issue. And I want you to  
18 know that that was addressed about the time it takes to  
19 get to the inspections and what happens during that period  
20 of time and what dangers are left unattended when we can't  
21 get there. So that was ...

22 Could it have been better? Everything can always be  
23 better. And we're going to be looking at that.

24 And before I get into how you can support us, I want  
25 you to know that we're being proactive in this also

1 because while we developed the classic comp package, we  
2 found several parts of it that we can get better at as far  
3 as documenting our situation and how it affects the  
4 stakeholders in the state of Washington.

5 So we put together a committee just last week during  
6 the supervisors committee to help us determine what those  
7 are and how we're going to document them and how we're  
8 going to track them and make sure that those things are  
9 done from here on out so that we're not questioned as  
10 thoroughly. Because the question comes up is that how big  
11 of a problem is this? And the problem is is that when you  
12 talk about 10 percent, it's huge, right? I know it's  
13 huge. Everyone in the Department knows it's huge. You  
14 all know it's huge. But what happens is is that somebody  
15 that's sitting in state HR, they look at the data and say,  
16 Well, we're sending you -- the staffing solution sends  
17 them 20 applicants that they say are qualified. They meet  
18 a minimum qualification. That doesn't mean they're  
19 qualified to be an electrical inspector. It just means  
20 they meet the minimal. We're changing that also as well  
21 into PDF so that we can have a higher level of PDF that  
22 will also show that we're not getting 20 qualified  
23 candidates. We're only getting those candidates that meet  
24 the minimum "quals" because by law you have to send them  
25 forward. There's maybe four that we would consider

1 applying. Two of those don't show up to interviews. The  
2 one we offer to says, "I'm sorry, but your wages are too  
3 low." And we're left hiring number two, which in six  
4 months they'll probably go also because we found that our  
5 biggest vacancy rate is in the newer guys because they're  
6 available outside, people know that they're still there,  
7 and they solicit them and go back and forth.

8 So it's a very tough road to get people past that.

9 And as Steve alluded to before, we're working on  
10 certain issues where we can start people at higher pay to  
11 get them to the point where it's going to be harder for  
12 them to say "no." They can consider that they're getting  
13 a little bit more at this point and not be faced with such  
14 a strong decision.

15 Now, getting to the point where we need you guys is  
16 with that guy sitting at State HR, he needs to know what  
17 dilemmas our program is up against and how it affects our  
18 stakeholders. And since you guys are all stakeholders --  
19 and I refer guys as --

20 CHAIRPERSON PREZEAU: It's gender neutral as far as  
21 I'm concerned.

22 MR. MOLESWORTH: So it's -- it's -- it's important  
23 that we teach them through your communication with them  
24 what are the problems, what is it and how is it going to  
25 affect the economic growth of our state and affect our

1 contractors and the homeowners as we heard before. It  
2 affects everybody right down to, you know, whoever  
3 occupies that building.

4 And so if we can get back to them and educate them  
5 about the dynamics of our program as well, you know, how  
6 does our program work, and why do we have the things we  
7 have, and why is it important we have people that can use  
8 computers, communicate well, be courteous, have the soft  
9 skills they need to deliver bad news because, you know,  
10 that's part of the job, and do it in a manner that it's  
11 respectful and considerate of our contractors and  
12 homeowners.

13 They don't get that. All they see is they're seeing  
14 the data that we presented and the justifica -- and the  
15 six pages of justification for that data.

16 And so, again, when they look at it, they're seeing,  
17 Well, you don't have a real big problem because we're  
18 sending you a bunch of people. Why aren't you hiring? We  
19 need you guys to tell them why we're not hiring. Because  
20 you want us to support you in a manner that is respectful  
21 and courteous and that you can count on the guys we're  
22 sending you to know the code. They know how to apply the  
23 codes to wiring method. They know what wiring methods are  
24 used where.

25 You know, that's something that I think when we look

1 at some of the candidates coming through is that -- and we  
2 all know that at some point in our lives we had people  
3 that were a journeyman that all they'd ever done was  
4 thread two-inch nipples, right? And that's all they did.  
5 And so they have no experience. They've got the  
6 experience because they've got somebody that signs off on  
7 them. But they can't identify all those things. And  
8 we're identifying that in the interview process, which I'm  
9 sure Dene will talk about in a second.

10 But we have to be able to attract those people that  
11 are knowledgeable, are good communicators, can type.  
12 Typing's a good thing. It sounds like a very little  
13 thing. There's hours spent typing on some of this stuff  
14 because we're hunting and pecking. It is unbelievable.

15 So that's -- it's a big part of that is finding out  
16 who ...

17 So if you guys have any questions, I've gotten it  
18 written down to find out who you can contact at State HR.

19 The electrical department will go through the entire  
20 legislative process. It's two years long. The package  
21 that they've got for them is confidential at this point.  
22 But it's -- it could definitely help us.

23 And so it's important that we keep it moving through  
24 the process. And your legislators needs to know because  
25 they'll be a big part of saying "yes" or "no." There's a

1 lot of people out there asking for money right now, and  
2 that's a problem.

3 The other problem we have is that during this  
4 process, there were six of them that were sent forward.  
5 There was two that are going through a shorter budget  
6 process. It's only a year process. And it was  
7 disappointing that electrical didn't get put in that  
8 process. However, the programs that they chose may or may  
9 not have had better justification. That's yet to be see.

10 But that's ...

11 BOARD MEMBER LEWIS: A question.

12 CHAIRPERSON PREZEAU: Janet.

13 BOARD MEMBER LEWIS: When you say "they chose," who  
14 is "they"?

15 MR. MOLESWORTH: So it's the Director and the  
16 deputies that determine, you know, through the  
17 justification process what divisions are in the most  
18 critical state.

19 And I'm working with another group, and I'll just  
20 give you an example. They're a smaller group. Elevator  
21 inspectors have a total of 27 elevators inspectors. Very  
22 small group. They did not inspect 11,000 conveyances last  
23 year for annual inspection out of 17,000. So that's  
24 drastic.

25 They also had a 38 percent vacancy rate for -- well,

1 it's still going on -- in this last year from January on.

2 So when you see those things, now we have to make  
3 those comparisons, you know, what it is. And they were  
4 one of the ones that are going to go through the shorter  
5 process. Is that right or not? That's not for me to  
6 decide.

7 But that's who makes that decision.

8 The exact process of how they make that, I couldn't  
9 begin to tell you.

10 CHAIRPERSON PREZEAU: Thank you, Mr. Molesworth,  
11 Mr. Koons.

12 MR. KOONS: Well, I'm kind of on the receiving end of  
13 that. So -- like I said, I supervise a very large area in  
14 Southeastern Washington.

15 Just to kind of put some numbers to it, my  
16 presentation to the L & I staff in Tumwater over Goal 5.  
17 And Goal 5 is our make L & I an employer of choice. I was  
18 asked to give a presentation. And post of the people in  
19 the room had heard about the electrical program, but none  
20 of them really knew much about it.

21 What Steve and the staff have to deal with, just to  
22 put some figures to it, is 800 requests for inspection  
23 every day. Every day. Whether we are in training or  
24 whether we have something else to do, those numbers just  
25 come in. And that's a big ballpark average because

1 sometimes it's more than that, and other times -- a few  
2 times it's less than that. That equates to about 17,000  
3 inspections a month. Every month. Whether we have 80  
4 staff or 105 staff. So when we talk about a 10 vacancy  
5 rate, those inspection numbers and request numbers never  
6 go away. So it's our struggle as electrical supervisors  
7 to man that.

8         And for those of you that have owned a business or  
9 contractors on the Board, you know that you never have 100  
10 percent staff, ever. And we track those numbers within  
11 our program also, and we're lucky if we have 80 percent of  
12 our staff in the field at any given day. For a multitude  
13 of reasons. Some of it's annual leave. Some of it's sick  
14 leave. Some of it's FMLA. Some of it's training. Some  
15 of it is just our inability to get people where they need  
16 to be.

17         So if we have 105 FTE's right now, only about 85 --  
18 or 80 percent of those are going to go to work on any  
19 given day in the field.

20         So we work really hard on our efficiency and try to  
21 get as much as we can get out of an eight-hour day with  
22 the people that we have. The supervisors do an incredible  
23 job of realigning areas and holding inspections so they  
24 can group them so we can keep our average numbers up. And  
25 the further we get behind, usually what happens to us, the

1 more inspections that we pack, the more efficient we can  
2 be because we'll have a group of them now in an area where  
3 we can cut our travel time down, especially in Eastern  
4 Washington, and get more bang for our buck.

5 So that being said, I'm also one of the writers of  
6 the SPI program. And if any of you know about that,  
7 that's our Succession Planning Inspector program.

8 So we went through the process of recruitment and  
9 interviewing for that now six times I think since its  
10 inception in the spring of 2013. We have hired about 30  
11 people from that, and we developed -- the supervisors  
12 developed a training program to go along with that to cut  
13 our time down and condense our training to when we hire  
14 somebody, we know we have a vacancy, to when we hire  
15 somebody till we get 'em trained till they can actually be  
16 a productive inspector in the field. We've cut that time  
17 down now from about three months, about twelve weeks, down  
18 to about eight weeks. And out of those eight weeks, we  
19 only train every other week. So our training is down to  
20 about a month. But we do it every other week to give the  
21 person time to get some training, then go back to the  
22 field, practice what they've learned, get some more  
23 training, then go back to the field.

24 Because we found when we started the process that we  
25 expected so much out of these people that we threw so much

1 information at them that they were overwhelmed, and then  
2 we didn't do a very good job of training either.

3 So we're concerned. I mean, we brought this forth to  
4 our executive management in 2011. We were given about a  
5 year to develop the SPI program. And at our last  
6 statewide staff meeting, over 50 percent of our staff have  
7 been here three years or less. And part of that was  
8 created from the reductions in force that we took in 2008  
9 and 2009. But it's difficult when you have that many  
10 young staff to manage the workload that we have to manage.  
11 And I applaud my peers for doing as good as we're doing.

12 Unfortunately that number's only going to get worse.  
13 So we have a huge gap between our entry-level guys, our  
14 one- to three-year guys, and our tenure guys. Our 10, 15,  
15 20, 25. We don't have anybody in the middle. The people  
16 that were in the middle got riffed. So we've kind of had  
17 to start over again.

18 We're going to lose those tenure guys at a rate of  
19 about 13 or 14 a year. When you're looking at 40 guys,  
20 because that's really all that's left, you can see that it  
21 won't take very long for them to go. And we recognize  
22 that.

23 I'll just give you an example. The last recruitment  
24 I had was for a permanent FTE in Moses Lake. That job had  
25 been vacant for a year. I posted the job the first time

1 in October of 2014. I've interviewed for the job twice.

2 I finally hired a candidate; he'll start on Monday.

3 Out of the last candidate pool of 12, I disqualified  
4 three right at the beginning because they didn't have a  
5 license. Can't be an electrical inspector without an EL01  
6 license. I disqualified two more because they had never  
7 worked construction. They were specific focused  
8 maintenance people. So that was -- that's five. One  
9 other was an employee that we had dismissed. We dismissed  
10 him; not going to hire him back. So that got me down to  
11 six. I contacted those six candidates. Two of them  
12 declined right off the bat. Said, "I can't come to work  
13 for you in Moses Lake. I'm sorry." That put me down to  
14 four.

15 I went out and solicited another candidate that I  
16 actually got from Bob Olson. Talked him into  
17 interviewing. I interviewed -- scheduled five interviews.  
18 Out of those five, one of those didn't show up. So now  
19 I'm down to four.

20 That's been the process that we've been dealing with  
21 for the last -- well, especially SPI's, for the last three  
22 years.

23 CHAIRPERSON PREZEAU: How long have you been a  
24 supervisor, Dene?

25 MR. KOONS: 1996.

1 CHAIRPERSON PREZEAU: Have you ever seen it this  
2 challenging?

3 MR. KOONS: Never.

4 I asked my lead inspector who's been with me for  
5 quite a while if he could remember the last time my work  
6 unit was fully staffed. He could not. I went back to the  
7 records. It was the fall of 2007 right before the riff.

8 And I'm not telling a story that doesn't exist in all  
9 of the rest of the regions. If you take a look at the gap  
10 between new staff and tenured staff, it goes all the way  
11 through the program. If you look at the supervisors,  
12 there's a big gap. We have a couple in the middle, but  
13 they haven't been supervisors very long. So you have a  
14 bunch of guys -- Jim Hinrichs, Bob Thomas, Steve until he  
15 moved to the Chief's office, myself, Gary Gooler -- been  
16 there for quite a while. The rest of the guys are pretty  
17 new.

18 We have four vacancies right now for lead inspectors.  
19 There's only 11 lead inspectors. They won't even apply  
20 for the job. You get five percent for being a lead.  
21 Nobody wants to do it for five percent.

22 I tried to get my lead inspector -- I know there's  
23 going to be a vacancy in Yakima. Gary Gooler's going to  
24 be eligible to retire in a year. But he looked at me like  
25 I shot my mom. "Are you kidding? Go to Yakima to be a

1 supervisor? I know what my world's like right here. No  
2 way. Especially not for five percent."

3 And we have that -- I mean, that's a story that's  
4 told over and over and over again. So -- I mean, it's  
5 what we've had to deal with. And it is what it is, and  
6 we've tried to make the best out of it.

7 So when we look at the numbers that Steve provides  
8 you, we measure our program ten ways to Sunday. We have  
9 micromanaged it down to the point where the guys feel like  
10 we look over their shoulder almost every minute of the  
11 day. We look at the numbers of inspections they make. We  
12 look at the number of miles they drive. We look at the  
13 number of citations they write. We look at the number of  
14 corrections they have. You know, we try to do our best to  
15 get as much done with the staff that we have. And it's  
16 demoralizing when we're having to tell the story over and  
17 over like Wayne's done to people that don't live in our  
18 world.

19 We don't get a penny of tax money. You guys know  
20 that. We're not one of the public servants that lives at  
21 the trough. We're very accountable for our money, and we  
22 try to spend our money wisely. And we just -- it's  
23 unfortunate that we are in the position that we're in.

24 BOARD MEMBER CORNWALL: I have a question. I'm  
25 hoping you can just reiterate what is the average salary

1 for an electrical inspector. Because the figure that was  
2 spoken sounds so low to me that I have -- I thought I  
3 might have wrote it down wrong.

4 MR. KOONS: If you're -- I've hired everybody at --  
5 over the last two years hired everybody at step K, which  
6 is the one step below the top, which is L, except for M  
7 which is tenure pay. So ...

8 MR. MOLESWORTH: And I think if you're looking at  
9 what they actually top out at, because that's an important  
10 figure, is that it's right about 68, right in there. I  
11 just saw it the other day. I'm not remembering right now.

12 CHAIRPERSON PREZEAU: \$68,000 a year.

13 SECRETARY THORNTON: \$66,750 is about what it is  
14 actually. Because it was on that survey.

15 CHAIRPERSON PREZEAU: \$66,750 annually.

16 BOARD MEMBER BAKER: A good bonus plan?

17 SECRETARY THORNTON: Yeah. Health care is great.  
18 401(k)?

19 MR. MOLESWORTH: Well, there's a benefit package.  
20 But when you look up the benefit package of others, we're  
21 a minimum benefit package. There's no doubt.

22 MR. KOONS: I'd like to say one more thing.

23 What's hard for us to explain is -- you all come from  
24 the industry. You understand when the industry's growing,  
25 we need electricians. When the industry's growing, we

1 need inspectors. We go out to the same candidate pool  
2 that you guys do to hire people. We're not competitive in  
3 your candidate pool.

4 And there's a misconception out there that government  
5 jobs are the elite jobs. I think there's some  
6 classification where that may be true. But right now it's  
7 certainly not us.

8 CHAIRPERSON PREZEAU: Don.

9 BOARD MEMBER BAKER: That's crazy, \$63,000 a year.  
10 I'm amazed that you can get anybody, to be honest.  
11 Honestly. I mean, ask me how much I made last year. I'm  
12 not going to go there.

13 But if we look at our fund balance of \$8,242,322.  
14 And when was the last time they swept us?

15 CHAIRPERSON PREZEAU: Two years ago.

16 SECRETARY THORNTON: And since I've been here,  
17 they've taken like \$20 million out of the fund. And we  
18 can't get a pay raise.

19 BOARD MEMBER BAKER: We should be rewarding our  
20 inspectors. We should put something in place. Our  
21 inspectors need a living wage. \$63,000 is ridiculous.  
22 That's ridiculous. You couldn't get a journeyman to leave  
23 his job and go do that.

24 BOARD MEMBER BURKE: You couldn't get a fourth-year  
25 apprentice to --

1           SECRETARY THORNTON: You can't get a first-year  
2 apprentice to do that.

3           CHAIRPERSON PREZEAU: Alice.

4           BOARD MEMBER PHILLIPS: I just find it ironic that  
5 these State employees are the ones that our communities  
6 that are citizens rely on to keep their homes and  
7 businesses safe, and we're paying them that.

8           CHAIRPERSON PREZEAU: Well -- and I mean -- go ahead,  
9 Wayne.

10          MR. MOLESWORTH: I was just going to say you hit it  
11 on the head. Because what we keep saying is we don't want  
12 those people that we can hire for that representing us.  
13 We've been in this a long time. I was an electrical  
14 inspector for 17 years, and then two as a supervisor. I  
15 don't want some of these guys out there because if we're  
16 compared with them, that's just ridiculous.

17          CHAIRPERSON PREZEAU: Well --

18          MR. MOLESWORTH: And plus, it doesn't bring the  
19 safety like -- it doesn't bring the safety, they're not  
20 getting the right service.

21          I had a personal experience the other day that -- not  
22 with one of ours, but a different inspection agency --  
23 that they didn't look at anything. They didn't recognize  
24 anything. And my comment to Steve is always: How do we  
25 know that these guys know the code? How do we know that

1 they can recognize all the wiring methods? How do we know  
2 when they go into a gas station they know where those --  
3 (inaudible) -- are supposed to be and the wiring method  
4 they can use to them and the distances and the likes.

5 So we don't. We have a very short time to interview  
6 them, to process them and, you know, we just don't get ...

7 BOARD MEMBER PHILLIPS: This --

8 MR. MOLESWORTH: Sorry.

9 BOARD MEMBER PHILLIPS: This level in our industry  
10 should be the top of the top. This should be the cream of  
11 the crop that's out inspecting the other folks. It  
12 shouldn't be the other way around.

13 SECRETARY THORNTON: It should be where the best of  
14 your people want to go.

15 BOARD MEMBER PHILLIPS: The best of the best.

16 CHAIRPERSON PREZEAU: And certainly for the record I  
17 think -- you know, I certainly understand this -- I've  
18 heard in great detail from expert folks, right, about the  
19 level of the challenges.

20 You know, Dene, you've been -- how long have you  
21 worked for the Department, total?

22 MR. KOONS: 27 plus years.

23 CHAIRPERSON PREZEAU: And how many -- there's --  
24 there was definitely -- you know, we have some amazing  
25 caliber, amazing inspectors and technical specialists and

1 leads and supervisors that have been there, you know, that  
2 are the cream of the crop, that are the best, right?  
3 Which is the way it's supposed to be. Because there -- I  
4 mean, I'll make a broad and very valid point. If you  
5 don't get an inspection within 48 hours, then what  
6 mechanism -- you know.

7 But additionally, if the folks that are the ones  
8 upholding the correct installations standards are not the  
9 best of the best, then maybe they are making -- are not  
10 making good decisions, right? Or are being told by others  
11 that what they did meets code, and then are making --  
12 right? And so --

13 I mean, I think we all have universal agreement that  
14 we are distraught by the situation that is in front of us.

15 And I appreciate, unscripted, coming up and reporting  
16 to the Board. And clearly, we have work to do, and maybe  
17 some creative solutions, you know, in terms of where the  
18 additional funding can come from so that we can mitigate  
19 these recruiting and retention issues.

20 And, you know, Dene, it certainly didn't fall on deaf  
21 ears about, you know, the staff right now. I mean,  
22 they're micromanaged I guess -- not maybe micromanaged,  
23 but there's so much data that's collected on what they do  
24 in terms of the stops and corrections and everything else  
25 that certainly that -- for our benefit, right? For us to

1 armchair quarterback.

2 MR. KOONS: I would like to say that I owe a lot to  
3 my peers and the staff that -- the supervisory staff that  
4 I work with. They're 11 of us. Well, 12 if you count  
5 Plan Review statewide that work with the Chief and the  
6 technical specialists. And I supervise 14 staff that are  
7 strung out between Pomeroy to Coulee City. And it's with  
8 the cooperation of those staff and the peers that I work  
9 with that we maintain that competency level that we have.

10 And so your constituents, the people that you  
11 represent, aren't calling you or aren't calling the  
12 Governor or calling their legislature or calling the  
13 supervisor every day with mistakes that those guys make.

14 I mean, the SPI program has been instrumental in the  
15 training of our new guys to give them the fundamental  
16 tools to do their job. And we're working on that every  
17 day.

18 CHAIRPERSON PREZEAU: Bobby.

19 BOARD MEMBER GRAY: I think there's one other quality  
20 that I never appreciated till I got on this Board. And  
21 that's the fact that these inspectors are able to  
22 represent the Department in a legal setting in court.  
23 That means they almost have to have the law enforcement  
24 ability to maintain custody of evidence and keep good  
25 records and be able to make their case in a court of law

1 and in front of this Board.

2 So another quality -- I've worked with an awful lot  
3 of electricians, and I'll tell you, very few of them would  
4 have the ability to be able to do that.

5 So I don't know if you teach them that or if that has  
6 to be a quality that you screen when you do your  
7 interviews. But certainly it's another quality that's  
8 above and beyond what a normal electrician would have.

9 MR. KOONS: We do. We work on that all the time.

10 And every citation that gets written goes through the  
11 supervisor at some point. So that supervisor -- I mean, I  
12 would probably -- I've got a good group. But I would say  
13 that probably 20 percent or 25 percent of the citations  
14 that are written go back to that inspector for  
15 completeness.

16 So we have some tools that we use, the what, why,  
17 where, when, you know, tools to make sure that the  
18 statement in the citation will stand on its own merits.  
19 So yeah, we work on that all the time.

20 And deliver of customer service. You know, how do  
21 you tell somebody to ...

22 SECRETARY THORNTON: Rip it out and start over and  
23 have them like it.

24 MR. KOONS: Go south and look forward to the trip,  
25 you know.

1 I mean, it is. It's not a job that everybody --  
2 every electrician can do.

3 And I'd like to say one other thing. For the tenured  
4 staff, for the people that have been here for a long time,  
5 they've delivered a sense of personal satisfaction because  
6 there isn't a lot of reward in this job, especially when  
7 you got a supervisor breathing down your neck all the time  
8 like, you know, "You didn't get this done," or "I need you  
9 to do this for me today," or "Your citations are down" or  
10 whatever. And they still keep coming back. But we're  
11 losing them.

12 BOARD MEMBER BURKE: Those numbers are downright  
13 embarrassing. I'm sorry.

14 MR. KOONS: The entire staff for the City of Bellevue  
15 including the chief except for one guy came from us, and  
16 they weren't the entry-level guys. They were the 10, 15,  
17 20 year guys that left that just couldn't do it anymore  
18 because as soon as they walked out the door they had a  
19 manageable workload, they didn't have to do compliance,  
20 and they got a \$15,000 a year raise.

21 We are just not competitive.

22 BOARD MEMBER BAKER: It should be an agenda item for  
23 every one -- every one of our meetings we need to address  
24 this. Because this problem's only going to get worse.

25 I know we had projections a meeting or two ago about

1 a ten-year forecast and a need for inspectors. And I know  
2 nationally NECA has rolled out some information over the  
3 next 15 years the deficit for electricians.

4 So as your guys are retiring and stepping off, this  
5 is only going to get worse, and it's going to affect the  
6 end-user. And it's going to affect the contractors.  
7 Somehow quickly we need to address it.

8 And maybe an inspector is -- I couldn't imagine. You  
9 must have some serious morale issues in the Department. I  
10 mean, really. And we haven't even talked about that, but  
11 there must be some morale issues.

12 MR. KOONS: It's not going to affect you. It already  
13 is. We're just working as hard as we can to make it  
14 minimal.

15 MR. MOLESWORTH: Steve calls me all the time and  
16 yells at me on the phone.

17 CHAIRPERSON PREZEAU: Who doesn't yell at you on the  
18 phone.

19 So I would like to just -- I want to echo Don's  
20 comments. And I'm looking over at Bethany because she's,  
21 you know, the keeper of the scribes is I think it is --  
22 just like these exam reports, you know, it was interest  
23 from the Board that really created this recurring report  
24 of what is happening with that is I think it is completely  
25 appropriate and as the Chair, you know, would love -- or

1 I'm asking to have -- to touch in on this topic of  
2 recruitment and retention every quarter.

3 MR. MOLESWORTH: So if you guys would like, I keep a  
4 implementation plan for management to look at and how  
5 we're progressing on the counter measures that we  
6 identified, one of them being wages, but there is a lot of  
7 other stuff that's going on that we think you guys can  
8 help us with such as marketing and recruitment. Because  
9 we're developing -- trying to overcome an image that we  
10 perceive we have.

11 And also recruiting. We want to change how we're  
12 recruiting. Because putting an ad on the Web site just  
13 isn't cutting it. So we want to go out and start doing  
14 some actual recruiting and looking for people and  
15 identifying those people that we want.

16 So if you like, we can send that as well so you can  
17 see where the work groups are at and what they've  
18 accomplished.

19 CHAIRPERSON PREZEAU: I think that would be welcomed  
20 and appreciated.

21 BOARD MEMBER BURKE: It only benefits us all if we  
22 help them market. I mean, we need more people in our  
23 program right now. NECA's got numbers for 2019 that are  
24 in the realm of 125,000 electrician deficiency in the  
25 country. And that's three years away. That's not very

1 far away. And if they're forecasting 125,000 deficit,  
2 that's not including the Department's inspecting and -- I  
3 mean, so you can add another -- you know.

4 MR. MOLESWORTH: Right. So the big marketing plan  
5 behind that should be a group effort.

6 BOARD MEMBER BURKE: Absolutely.

7 MR. MOLESWORTH: We need to go in and start talking  
8 to our kids again.

9 BOARD MEMBER BURKE: We need more people getting into  
10 apprenticeship programs, --

11 MR. MOLESWORTH: Kids need to be getting into the  
12 trades, you know.

13 BOARD MEMBER BURKE: -- getting into the trades.  
14 Whether they go to them or us, if we pump the numbers up,  
15 then it's going to help everybody.

16 MR. MOLESWORTH: Right.

17 CHAIRPERSON PREZEAU: Perfect. Rod.

18 BOARD MEMBER BELISLE: It would be a novel idea to  
19 get some inspectors out in front of the journeyman  
20 electricians and the apprentices teaching classes. And  
21 then they would recognize what those guys are up to and  
22 they might see that as a career path. That would be like  
23 a recruiting rather than a conflict of interest.

24 CHAIRPERSON PREZEAU: But those inspectors would get  
25 an opportunity to showcase their knowledge and skill.

1 BOARD MEMBER BELISLE: Absolutely. I don't know why  
2 we didn't think of it earlier.

3 BOARD MEMBER BURKE: In a non-hostile environment.

4 MR. KOONS: I'd like -- I really -- I would like one  
5 comment on that.

6 That's part of our problem. Part of our problem is  
7 the customers that we deal with know what's expected of  
8 that inspector. They don't want anything to do with it.  
9 Honestly. That is -- that's reality.

10 I have talked to many, many, many electricians to try  
11 to get them to come to work for me, before we ever talked  
12 about money, "Are you kidding, Mr. Koons? I don't want to  
13 deal with that every day." Because they do know; those  
14 people do.

15 CHAIRPERSON PREZEAU: You know what I think would --  
16 I would find, and maybe the Board would find very  
17 interesting, is if we could do a historical wage  
18 comparison or compensation comparison. What I mean by  
19 that is, Dene, you've been working for the Department for  
20 25 years, and I know that there's always been sacrifices  
21 in terms of compensation. But what would be interesting  
22 to know is how far off of the open market -- and what I  
23 mean by "open market" is going to work as an EL01, you  
24 know, general journeyman -- which, you know, varies.  
25 Compensation obviously varies, especially throughout the

1 state. But what would be interesting to know is, you  
2 know, at one point in time did the compensation for an  
3 inspector keep pace with market value? And then, you  
4 know, have we seen significant erosion of that?

5 It would be interesting to, you know, to have some  
6 data about that.

7 SECRETARY THORNTON: Well, and when you look at it  
8 that way, if you look at what the job was 25 years ago  
9 when I came on, we had a pencil and a piece of paper and a  
10 car, and you handwrote everything. The tickets were like  
11 a State policeman's, and it took you about 30 seconds to  
12 write one out and hand it to somebody. Now it's computers  
13 and air cards and mobile phones and everything, but yet  
14 the minimum qualifications are the same. And the wages  
15 haven't changed that much compared to what the job has  
16 changed to.

17 MR. MOLESWORTH: So one more comment on some of that  
18 like on your market comment is that is if you guys have  
19 organizations or you want us to come to any type of a  
20 meeting and talk about that, perspective people, if you  
21 know those organizations, I'm more than willing. I know  
22 Steve and I have talked about it. Our supervisors are  
23 going to allow us to do that as part of a marketing  
24 strategy as well. So -- I know I'd be more than happy to  
25 come and do that just to give the pros of what they can do

1 and how they can benefit the citizens of Washington.  
2 Because you've got to have that -- you've got to have the  
3 public service DNA chip in you too. If you don't, then no  
4 matter how much money you make, it's not going to make a  
5 difference.

6 CHAIRPERSON PREZEAU: I agree.

7 Anything else for Mr. Koons and Mr. Molesworth?

8 Thank you, Dene and Wayne; appreciate it.

9 MR. KOONS: Thank you.

10 MR. MOLESWORTH: Thank you.

11 CHAIRPERSON PREZEAU: Okay. So I know we are down to  
12 Certification and public comment. I also know that for  
13 those who haven't snuck out to go use the restroom, it's  
14 probably a good idea to take a quick break.

15 Before we do that, I have in front of me the roster  
16 of individuals requesting to speak. Greg Nolan from Nolan  
17 Heating & Air Conditioning. He was here for his appeal.  
18 He is no longer here. William Henry is the assistant  
19 attorney general in the McDaniel case who is also no  
20 longer present. Robert McDaniel who was here for the  
21 McDaniel appeal. Angelina Zurlini from the Department of  
22 Labor and Industries. I think this says John Kendall  
23 which is -- and it just indicates observe.

24 UNIDENTIFIED: He's no longer here.

25 CHAIRPERSON PREZEAU: Okay. Joe Thornton.

1 MR. THORNTON: Present.

2 CHAIRPERSON PREZEAU: Is it your intention to engage  
3 with the Board?

4 MR. THORNTON: Yes.

5 CHAIRPERSON PREZEAU: Okay. Very good.

6 So I just wanted to clarify that, which we're not  
7 going to do that at this moment.

8 And then Tena Risley from Northwest HVAC Association  
9 had signed in and then crossed her name out.

10 So here's what I would like to do is I would love to  
11 take a ten-minute break. Ten minutes, right?

12 And then when we come back, I will do the  
13 Certification Report in the agenda items, and then we will  
14 hear public comments, and then we'll see what happens  
15 after that.

16 So a ten-minute break. Thank you.

17 (Recess taken.)

18 CHAIRPERSON PREZEAU: All right, guys, let's get back  
19 to it. So while people are taking their seats, I want to  
20 talk about how to get reimbursed for your expenses. That  
21 might compel people to come back to their seats.

22 SECRETARY THORNTON: That'll shut 'em up, yeah.

23 CHAIRPERSON PREZEAU: So in your Board packets, it  
24 always gets sent electronically. And I think Bethany may  
25 or may not have some additional hard copies of the expense

1 form.

2 MS. RIVERA: Yes.

3 CHAIRPERSON PREZEAU: And -- so she does.

4 So basically the way this works is you fill out this  
5 paperwork and attach any original receipts, whether it is  
6 for your hotel, whether it is for parking at the airport,  
7 whether it is gas or, you know, meals. You can expense  
8 meals. If you have questions about how to get compensated  
9 for your real expenses, you know, I would ask you to  
10 direct those to Bethany, or you can also direct them to  
11 Megan. You can send your -- you can submit your expenses  
12 electronically. You have to scan your original receipts,  
13 and you can send them to Megan. Megan's e-mail address is  
14 pame235@lni.wa.gov. There is no time limit on seeking  
15 reimbursement for your expenses. It just affects how  
16 quickly you can get reimbursed, right? I mean, if you sit  
17 on it for a month, you sit on it for a month.

18 BOARD MEMBER NORD: Does she have a mailing address  
19 for those of you that --

20 ASSISTANT ATTORNEY GENERAL REULAND: It'll have to be  
21 closed up by the fiscal year.

22 CHAIRPERSON PREZEAU: So I was told that the mailing  
23 address --

24 MS. ERIKSEN: Don't use the mailing address on your  
25 form.

1 MS. RIVERA: I corrected some of the ones I have  
2 here.

3 CHAIRPERSON PREZEAU: So for those of you that -- so  
4 this is the mailing address in the event that you want to  
5 submit written documents. So it is attention Megan  
6 Eriksen -- E-R-I-K-S-E-N, at the Department of Labor and  
7 Industries. And that address is 72 --

8 MS. ERIKSEN: No. P.O. box.

9 CHAIRPERSON PREZEAU: The address is P.O. Box 44460,  
10 Olympia, 98504.

11 Okay. Got it? Get it, got it, good.

12

13 Item 5. Certification/CEU Quarterly Report

14

15 CHAIRPERSON PREZEAU: So let's do the Certification  
16 Report. Mr. Larry Vance, state and spell your name.

17 MR. VANCE: My name is Larry Vance. L-A-R-R-Y,  
18 V-A-N-C-E.

19 Madam Chair, members of the Board, your exam report  
20 was sent to you electronically. One of the things that  
21 this exam report reflects is is that we're now giving a  
22 different exam. It's not so much a different exam; it's  
23 the revised exam on the 2014 National Electric Code. And  
24 you'll see that split out.

25 One of the things that caught my eye was on the 01

1 exam. So that the folks that are taking the 01 general  
2 electrician exam under the 2008 code, they've got a 46.87  
3 percent pass rate. There's just been a small wave that  
4 have taken the 2014 version, and they've got a 57.8  
5 percent pass rate. That's a pretty significant jump,  
6 about 11, almost 12 percent. And we're going to keep an  
7 eye on that because we really don't know why it happened.  
8 I know that there was no real significant changes to the  
9 numbers of questions, the types of questions. There's  
10 nothing significant there. It could just be a wave of  
11 apprentice graduates versus trainees or what have you. So  
12 we're going to keep an eye on it.

13 And one of the things that we've got going on right  
14 now is the contractor administering the exam is we're  
15 entertaining proposals. There's several different vendors  
16 that would like to acquire the contract for testing.

17 CHAIRPERSON PREZEAU: Is PSI seeking --

18 MR. VANCE: PSI is also seeking to renew their  
19 contract. I'm not quite sure where that's at, but it's  
20 something that is happening. And in preparation of that,  
21 I -- there was a report that was available that's  
22 candidates by testing location. I never delved into it  
23 before, but I pulled this report up, and I'll provide a  
24 copy of it to the Board next meeting. But it shows every  
25 PSI testing location where an exam was given. And talking

1 to what was being said earlier about the electricians  
2 trying to -- you know, NECA in Washington, for instance,  
3 getting electricians, this report shows people testing all  
4 over the United States to come to work in Washington. And  
5 everywhere from Florida to Alaska to -- you know, anywhere  
6 where there's a PSI testing location, they're getting  
7 certified and on the road to Washington. It's about seven  
8 pages of stuff. It's kind of interesting.

9 CHAIRPERSON PREZEAU: So Larry, I have to ask you to  
10 back up for a second. And, you know, I understand what  
11 time it is. But -- so if I'm understanding this  
12 correctly, what you're calling our attention to is on page  
13 5 of this report at the bottom is the results of the folks  
14 that sat for the 01 exam. And this period of time is for  
15 -- tell me -- summarize me why this period of time is  
16 different than the top of page 6. This is for the folks  
17 that took the exam under the 2014 code, and are -- is that  
18 what I'm seeing correctly?

19 MR. VANCE: On page 5, what you're seeing is people  
20 that are taking the '08 -- the 2008 version.

21 So the exam changed on July 1st of 2015. So anyone  
22 that was approved for the general journey level exam after  
23 that date would take the 2014.

24 CHAIRPERSON PREZEAU: Which would explain why this  
25 number is so much smaller in terms of total applicants on

1 the top of page 6.

2 MR. VANCE: Correct.

3 CHAIRPERSON PREZEAU: Okay. Now I'm tracking.

4 MR. VANCE: There's 63 applicants.

5 CHAIRPERSON PREZEAU: Very good. Thank you.

6 MR. VANCE: So who are the 63? We've got a good  
7 group of 63 coming through there. Almost 60 percent pass  
8 rate.

9 CHAIRPERSON PREZEAU: Yeah. Interesting.

10 Because the 02 which is the next like most  
11 substantive sample size, there's not -- it's not -- it's  
12 not a significant difference from my perspective, right?

13 MR. VANCE: Right.

14 CHAIRPERSON PREZEAU: Any -- so you are going to  
15 bring us back at the January meeting maybe some greater  
16 insight on exam by location?

17 MR. VANCE: Yeah, delivery location. It's a simple  
18 report that's available through PSI's Web site. I'll make  
19 it part of this.

20 CHAIRPERSON PREZEAU: And then potentially -- and  
21 obviously you'll always continue to keep us in the loop on  
22 the exam including whether or not what's happening with  
23 the request for proposals, if you will, for proctoring the  
24 exam.

25 MR. VANCE: We're getting closer on that. But I'm

1 not quite sure. The contracts division is --

2 Steve, do you have --

3 SECRETARY THORNTON: I don't, no, nuh-uh, no.

4 CHAIRPERSON PREZEAU: Any questions for Larry?

5 Thank you. And I have to say -- it's interesting to  
6 see. I'm glad that you had the forethought to bring out  
7 the 2008 and -- that's good. It's nice to see. We always  
8 like data just like you, Larry.

9

10 Item 6. Public Comment(s)

11

12 CHAIRPERSON PREZEAU: All right. So last item on our  
13 agenda is -- again, back to public comment. And we have  
14 determined that the only person left, at least that has  
15 signed in is Mr. Joe Thornton.

16 And so Mr. Joe Thornton, if you would -- you wanted  
17 to address the Board. I would ask that you come up as  
18 others have done.

19 MR. THORNTON: Thank you.

20 CHAIRPERSON PREZEAU: And then upon arrival, please  
21 state and spell your name for the court reporter.

22 MR. THORNTON: My name is Joe Thornton. It's  
23 spelled Joe J-O-E, Thornton T-H-O-R-N-T-O-N. No relation  
24 to Mr. Stephen Thornton here for clarification.

25 Thank you all for coming to Eastern Washington. We

1 really appreciate it over on this side of the state. It's  
2 been a while. Maybe a little too long. But I appreciate  
3 you all coming.

4 And these meetings are pretty long. This is my first  
5 one, so it was kind of tough to stick it out.

6 Thank you all for your service to this state for  
7 being here.

8 Anyways, a couple things that I'd like to speak about  
9 today while I have this opportunity to speak in front of  
10 you.

11 One issue is really localized to our area of Spokane,  
12 something that I think that needs to be addressed  
13 statewide, but I think is a little worse in our area than  
14 other parts of the state simply because of our proximity  
15 to Idaho.

16 The other issue is a very large-scale issue, and I  
17 think it actually deals very well with some of the  
18 presentations that were made earlier today and even some  
19 of the due process things that went on.

20 So first off, speaking to the local issue, I really  
21 personally like to see -- and I think a lot of people in  
22 the state -- excuse me, let me back up a little bit.

23 I'm an electrical contractor. I'm also an  
24 electrician. I've got an engineering degree from Gonzaga  
25 University; I used to be an engineer. I'm also a member

1 of the IAEI chapter in this area. And if any of you would  
2 like to join, I'll put my two cents out for that. Let me  
3 know afterwards.

4 But I come to you today as just a citizen of  
5 Washington and the Spokane community in general.

6 Anyways, getting back to our local border issue, one  
7 of the issues that we have is we need to see our education  
8 requirements for our trainees up to scale and on par with  
9 the state of Idaho and the state of Oregon. This is a  
10 huge, huge, huge issue. If we're not up to their level,  
11 we become a dumping ground for those states. And it's --  
12 I don't think anybody in Washington wants to feel like  
13 they're playing second fiddle to Idaho. No offense to  
14 anybody from Idaho. But -- and I don't think that we want  
15 to do that with Oregon either. So I really encourage this  
16 Board to do all that they can to get on par and become  
17 reciprocal with our neighboring states and to get that  
18 done as fast as we can.

19 Every day that we do that -- like I said, we are  
20 basically having people come over the border and do work  
21 in our area that simply can't cut it in their own state.  
22 And I don't think that we want that. I don't think any of  
23 us wants that. I think that we can all pretty easily  
24 agree that that's something that we don't want.

25 The second issue I'd like to speak about is it's very

1 broad, but I think it's very, very relevant. We've talked  
2 a lot today -- the Board has talked a lot today about  
3 inspectors' compensation. I think we're all getting a  
4 really good picture of how difficult their job is. And  
5 it's very difficult. And I think that it's a reflection  
6 of our state in general and our electrical program in  
7 general to look at the broad scope of where we want to be  
8 going forward in our community.

9 We've spent a lot of time here today, and other than  
10 the 30 minutes that we had at the beginning of this  
11 meeting and maybe an hour thereafter, a lot of the stuff  
12 that has been discussed has been reactive to things that  
13 are going on. I really encourage this Board to be  
14 proactive and show their relationship to the state in  
15 general going forward on what we can do as a community and  
16 as a state to get our electrical programs on track and  
17 where they want to be.

18 We're not just losing with inspectors right now.  
19 We're also losing to the community in general. And I  
20 don't think that this is a statewide trend; I think it's  
21 a national trend. But I would really encourage Washington  
22 state to be proactive in combatting it.

23 Some of the things specifically that I'd like to  
24 point out to talk about that is our lack of general public  
25 education about what we do, how we do it, why it's

1 important, the safety of it all, everything else. It's  
2 not done. We don't have marketing that goes out and tells  
3 people. We don't have marketing that recruits inspectors  
4 in the general public. We don't have marketing that  
5 encourages people to pull permits and why that's important  
6 and everything like that. There's very little.

7 As a matter of fact, I just recently was in the  
8 Seattle area. And for the first time in my life I heard a  
9 commercial from -- I can't remember -- Herb Weisbaum, is  
10 that his name?

11 CHAIRPERSON PREZEAU: Yeah.

12 MR. THORNTON: He's got the commercial that talks  
13 about, you know, getting licensed contractors out there.  
14 I don't know -- I don't have the figures on any of this  
15 kind of stuff. That's the first one I've ever heard.  
16 I've been in the industry since 1977. I may not have been  
17 paying attention really well all that time, to be honest  
18 and fair. But that's the first such commercial I've ever  
19 heard on this issue. And I think that it's -- quite  
20 frankly it's a little bit embarrassing. Because we --  
21 there's a huge public safety concern here with  
22 electricity, and we're not talking to the public about  
23 that. Our scope has been very narrow in what we do and  
24 how we do it.

25 The State as it stands and their inspection process

1 right now is becoming so narrow because they're short of  
2 inspectors that we're only looking at electricians and  
3 electrical contractors. And we have a marketing campaign  
4 that in a lot of ways counteracts what we want to do in  
5 terms of public safety that's happening every single day,  
6 and I would specifically point out our home improvement  
7 retailers in the area.

8       Just to give you a couple examples of some slogans  
9 that they have. Let's build something together. Never  
10 stop improving. More savings, more doing. Let's do this.  
11 You can do it; we can help. And this one's my favorite:  
12 Get in, get it done, get on with your weekend. They are  
13 consistently bombarding the public that we not speaking to  
14 at all about doing things, and that includes electrical  
15 things. They sell hundreds of feet of wire a year. They  
16 sell boxes. They sell all this material that we know in  
17 this room that you're supposed to be trained, qualified,  
18 pulling permits to do this kind of stuff. At no point do  
19 they ever let people know that. And as a matter of fact,  
20 I would argue -- or I wouldn't argue, but it can be argued  
21 that some of them are actually counteracting that  
22 mentality.

23       If this is important us to in this state, then we  
24 need to look at counteracting that. Because they're  
25 putting out -- they're putting information out to the

1 general public that basically says, Go ahead and do it.  
2 At no time are they telling people how they should do it.  
3 Sometimes they'll offer advice by people that aren't even  
4 trained to give that kind of advice.

5 And the fact of the matter is we're so short on  
6 inspectors that we're ignoring it because we can't keep up  
7 with their requests anyways.

8 The 2014 code, just as an example, if you replace an  
9 outlet in a house, okay? You've got an outlet that's gone  
10 bad, 20, 30 year life, right? It should be going bad.  
11 You've got a house that's built in the 1960s, it has to be  
12 replaced with an arc-fault outlet. Pure and simple.  
13 That's what the code says. An arc-fault outlet or putting  
14 it on an arc fault circuit breaker is not a like-for-like  
15 change. That requires a permit. People are doing that  
16 every single day. People that are unqualified. Lowes,  
17 Home Depot, Ace, their professionals, their helpers, they  
18 don't know that; they don't care. But those people are  
19 out there doing that. And that's just one small example  
20 every single day.

21 We don't track the amount of wire that's purchased  
22 from those places. We have no idea. We have no checks  
23 and balances in place that a cashier would even say,  
24 "Unless you're planning on taking this 12-2 that you're  
25 buying and storing it inside your garage, you need to pull

1 an electrical permit." Because we all know that if you're  
2 running wire, you're supposed to pull an electric permit.

3 Do these home improvement stores have any stake in  
4 telling people that? No, they do not. And we're  
5 completely ignoring the issue. And I know that we have  
6 all kinds of things going on. It's doom and gloom all  
7 over the place.

8 I've got plenty of ideas that I'd love to share with  
9 you guys if you're interested. But I really encourage  
10 this Board to take a huge step back and look at what we do  
11 and how we do it and where we want to guide this state and  
12 what we want it to be like. Because right now what we  
13 have are inspectors that are tracking contractors.  
14 They're not tracking the general public.

15 A contractor is being tracked because we have to be,  
16 you know. You have to pull a permit, and if you don't,  
17 you lose your livelihood. But some guy on the weekend  
18 that wants to install his hottub can go out and do it, and  
19 if he does it on the weekend there's no inspector working.  
20 We have three people in the state that are even checking.  
21 How is it going to happen? It's not. It's not going to  
22 happen.

23 And the fact of the matter is, in the Spokane area  
24 alone we've seen a tremendous just this year amount of  
25 structure fires increase. Increase.

1           And I'm a little bit appalled that we track things  
2 like how fast is our turn around for inspectors. I'm not  
3 saying that's not important. But why aren't we looking at  
4 structure fires? I mean, how many of those are caused by  
5 electrical damage or improper electrical installations.  
6 We don't even know because we don't even have a way to  
7 look at that. It's not even in our scope. It's not even  
8 there. And if we continue to ignore that, I guarantee  
9 that these large national retailers are going to continue  
10 to put out information that contradicts everything that  
11 we're doing at these meetings.

12           I can't even imagine what it feels like to be an  
13 electrical inspector and go into a home improvement store.  
14 Can you imagine being an electrical inspector and walking  
15 down the electrical aisle, hearing the different pros tell  
16 somebody this is how you do things or this is -- you know.  
17 And looking at the person and thinking, he's not qualified  
18 to do it, and he's not qualified to give him advice. They  
19 don't even have the parts on the shelf that would qualify  
20 them to do this installation. That's got to be one of the  
21 most torturous things in the world. If you want to  
22 recruit inspectors, then how are they supposed to do that  
23 when they got to show up inside a Lowes or Home Depot?  
24 That's agony. That's agony just to do that. That's  
25 terrible.

1           So I -- you know, I really, really encourage this  
2 Board to step back and look at that and really make some  
3 creative -- and allow yourself to be creative in how we're  
4 doing what we're doing in our state. Because the fact of  
5 the matter is it's not just an inspector and staffing  
6 issue; we are I think technically -- not technically, we  
7 are really losing the battle statewide in what we're  
8 doing.

9           The other thing that I think tremendously hurt our  
10 industry was that the inspectors being allowed to be  
11 educators outside of their jobs has hurt tremendously. We  
12 have to realize that our inspectors are our ambassadors to  
13 the general public. They're our ambassadors to  
14 electricians, to homeowners, to other trades and  
15 everything else, and when we restrict them from doing  
16 education and things like that, they're not able to  
17 provide that level of expertise to the general public. So  
18 I mean, I really would encourage everybody to take a step  
19 and look at that immediately and get that changed.

20           I think that the inspectors should be encouraged to  
21 be part of professional organizations. The IAEI being one  
22 of them. IEEE would be another. Society of Illuminating  
23 Engineers. There's multiple things. But we should  
24 provide them compensation on top of what they're already  
25 doing just for being a member of those things. That's how

1 we spread the knowledge of our trade.

2 And not only that, but it should be a savings for the  
3 community in general because these people are out there  
4 getting information that we're not having to pay for  
5 training for them for. Right? They're getting  
6 information. They're talking with people on the street.  
7 They're learning about the nuances of the code. They're  
8 discussing gray areas. This is all very important stuff.

9 So that would be something that I would like to see  
10 changed, you know, pretty quickly.

11 The other issue that I think -- I got a couple other  
12 things here that just in response to kind of looking at  
13 that scope, I think we should really push to remove  
14 compliance from part of what we do. Any other place --  
15 any other industry where you're breaking the law, the  
16 police come out. If they're breaking the law, then I  
17 think that there should be a call to WE or a policing  
18 officer or something like that that says, Hey, why don't  
19 you get out there and take care of this person. Because  
20 honestly, we have three people doing it. I don't have --  
21 I haven't seen the numbers, but I'm really kind of  
22 suspicious of how good a job three people do across the  
23 entire state.

24 Another issue that I think -- or another tool that I  
25 think would help tremendously is I carry an iPad with me

1 every day. I've got a smartphone with me every day.  
2 Technology is there. Let's start using it. We have  
3 things like Skype. Google has a voice chat thing. We  
4 should be able to call up an inspector on the job remotely  
5 and say, "Hey, I want to Skype with you. Let's do the  
6 inspection." He's going to walk you through what he wants  
7 you to see -- or what he wants to see, the things that are  
8 important to him. If he feels like he's not being  
9 justified in what he's seeing or he needs to see more,  
10 then have him come out. But for gosh sakes, we -- you  
11 know, it's crazy for somebody to go out and look at "I  
12 just changed this outlet to an arc fault and it's all the  
13 way in" -- you know, "it's 100 miles from where you're at,  
14 so go inspect it please."

15 The last thing I would say is some of the metrics  
16 that you have, and we've -- I've talked -- I talked about  
17 getting the trainee instruction up to par with our  
18 neighboring states. I think that the state's done a  
19 really good job honestly with increasing the demands on  
20 our electricians. I think that's important to improve the  
21 professionalism of all of our electricians in the state.

22 I love the continuing education. I think it's  
23 fantastic, And I would probably advocate for increasing  
24 that.

25 With that, though, we need to demand more from our

1 contractors and our electricians, and as way of easing the  
2 woes on our inspectors, stop treating those contractors  
3 and electricians as adversaries and start treating them as  
4 partners in what we are doing.

5 As I said before, there's so much work that's not  
6 even tracked that's going on out there. I can't even  
7 imagine what it would do for the staffing levels of our  
8 inspectors if all those people started, you know, filing  
9 permits and requesting inspections and everything else.

10 Let's use the contractors and get them to a point  
11 where we're professional enough as an industry that we can  
12 cut them a little bit of slack so that we can start  
13 looking at more of these important issues and start  
14 focusing on education and everything else.

15 Thank you very much.

16 CHAIRPERSON PREZEAU: Thank you, Mr. Thornton. I  
17 appreciate your willingness to stick it out to the end. I  
18 appreciate your -- no, I honestly and genuinely appreciate  
19 your input out -- going into a laundry list of responses  
20 because -- you know.

21 But just as an example, I just want to share with  
22 you, one of the ideas that has been discussed previously  
23 with respect to large home improvement stores is  
24 installing kiosks -- permit purchasing kiosks in Home  
25 Depot, Lowes, right? that go directly -- and you may ask,

1 Well, what would be the incentive for those, you know,  
2 home improvement stores for putting them in is -- you  
3 know, I mean, if you want to get really creative and have  
4 no bounds to any rules is, you know, they get a bounty for  
5 all the permits, you know, a portion of the permits. But  
6 that's -- I just want to get -- I don't want to get into a  
7 debate for obvious reasons. This -- no, I mean, today I  
8 don't want to get into a debate. But I offer that as  
9 that's the level of creative thoughts that at different  
10 Board meetings, right? or that the industry is putting  
11 forward.

12 And I just really want to thank you for lending your  
13 voice to that discussion.

14 And what I heard you say today and I'm going to get  
15 in the record is that you're willing to engage in these  
16 types of discussions going forward, right?

17 MR. THORNTON: Sure.

18 CHAIRPERSON PREZEAU: So that as we -- because we are  
19 now going to get a report, you know, make an agenda item  
20 about, you know, update of recruitment and retention, you  
21 know, at this Board meeting. And I think it's always  
22 available for an organization to stop and ask itself why  
23 do we -- why is it that we've always done it this way. A  
24 perfect example: Why is it the Scorecard has always been  
25 laid out this way? Well, I don't know. Maybe because of

1 the .... So evaluating metrics, evaluating where those --  
2 how those metrics are measured and what value those bring.  
3 I think -- well, I don't think. I know are hugely  
4 valuable to any organization including this program.

5 And, you know, I'm glad that you are advocating for  
6 much of the same policy that many of those on the Board  
7 have voiced similar support for.

8 And in the event that you wanted to seek an  
9 inspector's position since you're so passionate about it,  
10 see Mr. Koons over here.

11 MR. THORNTON: Pass.

12 CHAIRPERSON PREZEAU: I tried.

13 BOARD MEMBER BURKE: One thing. You guys, you might  
14 talk to Steve or some of these guys about getting involved  
15 with the ECORE team and understanding what those guys do.  
16 Because the more advocates that you have discussing with  
17 the ECORE team that's in place, it -- their whole mission  
18 is to squash that underground, you know, economy  
19 basically. And so I'd encourage you to chat with these  
20 guys about it while you're here.

21 MR. THORNTON: Great. Thank you.

22 CHAIRPERSON PREZEAU: Yeah, I mean, if it's possible  
23 that, you know, again, I'm not the -- you know, I'm not  
24 king, but it's possible that -- well, in order to solve  
25 these ongoing problems, right, especially the ones that

1 are in front of us, it's going to take some very creative  
2 solutions. And it is possible that we need to cast a  
3 wider net than this Board and who's attracted to these  
4 meetings in order to get some input, some -- on more  
5 creative ways to solve the problems, right? including  
6 technology, right? So I'm not -- you know, I keep a check  
7 register, so I'm probably not the most qualified person to  
8 talk about creating/designing apps for smartphones and  
9 tables to allow for -- to alleviate some of the pressures  
10 that are on the Department.

11 But I welcome those conversations.

12 MR. THORNTON: Sure. And I -- you know, I really  
13 can't stress enough that, you know, some kind of positive  
14 marketing campaign for the Department of Labor and  
15 Industries electrical would go so far. We just don't do  
16 that. And it's just not okay. We need to do that. It's  
17 important. It's very important.

18 CHAIRPERSON PREZEAU: Thank you, Mr. Thornton.  
19 Appreciate your comments.

20 Any other comments, questions, concerns from the  
21 Board? If not, the Chair would entertain a motion to  
22 adjourn.

23 SECRETARY THORNTON: Tracy, one thing that I missed  
24 in the budge update or the program updates is we have put  
25 in for a fee increase, 4.3 percent which is \$2 on a -- you

1 know. But -- and just more information for you guys.  
2 That was a struggle to get people to buy off on that as  
3 small as it is. So there are issues on that side of the  
4 fence too.

5 CHAIRPERSON PREZEAU: Very good.

6 And I'm assuming that we can have more conversation  
7 -- detailed conversation about that in January.

8 SECRETARY THORNTON: Yes, we will.

9 CHAIRPERSON PREZEAU: Thank you. Is there a motion  
10 to adjourn?

11

12 Motion

13

14 BOARD MEMBER PHILLIPS: So moved.

15 BOARD MEMBER BELISLE: Second.

16 CHAIRPERSON PREZEAU: It's been moved and seconded to  
17 adjourn. All those in favor, signify by saying "aye."

18 THE BOARD: Aye.

19 CHAIRPERSON PREZEAU: Opposed?

20

21 Motion Carried

22

23 CHAIRPERSON PREZEAU: We are adjourned.

24 (Whereupon, at 2:00 p.m.,  
25 proceedings adjourned.)

