

DEPARTMENT OF LABOR AND INDUSTRIES  
STATE OF WASHINGTON

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ELECTRICAL BOARD MEETING

TRANSCRIPT OF PROCEEDINGS

Thursday, January 27, 2011

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BE IT REMEMBERED, that a quarterly Electrical Board meeting was held at 9:00 a.m. on Thursday, January 27, 2011, at the address of Department of Labor & Industries, 7273 Linderson Way S.W., Tumwater, Washington, before CHAIRWOMAN GLORIA ASHFORD, JIM SIMMONS (Vice Chair), RODNEY BELISLE, TOM PHILLIPS, CATHLEEN BRIGHT, DON KOPCZYNSKI, MIKE NORD, BRUCE TURNER, DAVID BOWMAN, GORDON HOWELL, TRACY PREZEAU, GEOFF NEWMAN, DON GUILLOT, ROCKY SHARP, and SECRETARY/CHIEF ELECTRICAL INSPECTOR RONALD FULLER. Also present was ASSISTANT ATTORNEY GENERAL PAM REULAND representing the Board.

WHEREUPON, the following proceedings were held, to wit:

Reported by:  
H. Milton Vance, CCR, CSR  
(License #2219)

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

Thursday, January 27, 2011  
Tumwater, Washington

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Thursday, January 27, 2011  
Tumwater, Washington

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CHAIRWOMAN ASHFORD: Good morning all. The January 27th Electrical Board meeting will now commence.

Item 1. Approve Transcripts of October 28, 2010,  
Electrical Board Meeting

CHAIRWOMAN ASHFORD: The first item of business is to approve the transcripts from October.

Motion

BOARD MEMBER PREZEAU: So moved.

BOARD MEMBER BOWMAN: Second.

CHAIRWOMAN ASHFORD: We have a motion and a second to approve. All those in favor?

THE BOARD: Aye.

CHAIRWOMAN ASHFORD: Opposed?

Motion Carried

Item 2. Departmental/Legislative Update

///

1 CHAIRWOMAN ASHFORD: Steve?

2 SECRETARY FULLER: Steve's not here today. He got  
3 tied up in another meeting, so I'll just give you a quick  
4 update there on the "Leg."

5 So far there have been no bills put into the hopper  
6 that affect us. The only thing that came close yesterday  
7 actually the bill got dropped about electric cars and  
8 their charging stations. That was about the energy  
9 regulators. And basically it said that if you were  
10 selling power through your charging station, you weren't a  
11 utility. So it was just a rate regulation bill.

12 So that's all that we've had to look at so far for  
13 legislation. So not very much.

14 From the Department perspective, we're adding two  
15 ECORE team members because we've improved the budget.  
16 I'll talk a little more about the budget later, of  
17 course.

18 And we're also going to bring back two non-permanent  
19 inspectors. So everybody's in the process of that right  
20 now.

21 And so things are looking fairly good right now.

22 We'll talk about the budget later, though.

23 CHAIRWOMAN ASHFORD: Okay, let's move on to appeals.

24 Marysville Taping is the first appeal on the agenda.

25 ASSISTANT ATTORNEY GENERAL REULAND: I wanted to

1 clarify something for the Board, if I may, before you head  
2 into the appeals.

3 I think that --

4 CHAIRWOMAN ASHFORD: Pam, could you speak up a little  
5 please.

6 ASSISTANT ATTORNEY GENERAL REULAND: Previously, the  
7 Board had asked me what your authority was. Because the  
8 letters of appeal that go out say that you can affirm the  
9 decision from the Office of Administrative Hearings, you  
10 can reverse the decision, or you could modify the  
11 decision. And you -- I remember you asked me what can you  
12 really do, what can you modify.

13 So if you're interested, I did have clarification on  
14 that for you.

15 THE BOARD: (Nodding affirmatively.)

16 ASSISTANT ATTORNEY GENERAL REULAND: Simply, you are  
17 the Electrical Board. And you have overall sort of  
18 oversight of the appeals. However, these appeals are  
19 under the Administrative Procedure Act. So the Board is  
20 constrained by the rules, the regulations, the WAC's that  
21 are adopted by the Department.

22 So if you can modify -- well, let me back up. You  
23 must follow the rules because the Board cannot act in any  
24 way that would infer that a rule is invalid. That has to  
25 go to superior court.

1           So if the Department issues a citation -- and, for  
2 instance, the penalty, and we have a regulation that sets  
3 out what the penalties are, you have to follow the  
4 regulation for those penalties. So if the citation -- the  
5 facts of the citation are proven, you have to follow the  
6 regulation in terms of what that penalty is. And you also  
7 have to give due deference to the Department in terms of  
8 determining those penalties.

9           The only time you can really modify a citation would  
10 be if it's been increased because of some other basis.

11           For instance, a prior citation is substantially  
12 similar would mean that the Department could double the  
13 penalty. Then you could look at: Was that prior citation  
14 substantially similar? And if you find that it is, then  
15 you would have to affirm the enhanced penalty. But if you  
16 find that it is not, then you could reduce the penalty.  
17 But other than that sort of situation, you're bound to  
18 follow the rules. So if the rule says the penalty is "X,"  
19 you can't modify it. You can't act in equity; I guess  
20 that's sort of the bottom line.

21           Does that make sense?

22           THE BOARD: (Nodding affirmatively.)

23           ASSISTANT ATTORNEY GENERAL REULAND: So we might want  
24 to change that word "modify."

25           BOARD MEMBER SIMMONS: I think it probably would be a

1 good thing to have changed. Because one of the things  
2 that we've dealt with over the years is trying to clarify  
3 and have accurate paperwork and documentation for what  
4 we're doing so that people understand when they receive  
5 something from the Department or when there's an  
6 application they fill out, that it's clear and  
7 understandable. And I think that's important for all of  
8 us.

9 And when you have a word in there that says "modify"  
10 and we're not able to modify, to me it creates a problem.  
11 And I think that that word should be struck out of that.

12 I just wanted to add one more thing. Everybody, be  
13 sure because we've got a different sound system now and  
14 it's working pretty well, be sure please and speak clearly  
15 and speak up when you're talking and don't cover the  
16 microphones with papers, Don, and -- thank you.

17 BOARD MEMBER GUILLOT: I'm still in the witness  
18 protection program.

19 CHAIRWOMAN ASHFORD: Everyone needs a Jim Simmons  
20 voice.

21 BOARD MEMBER BRIGHT: I have a question about the  
22 example that you just gave us is that can affirm, increase  
23 penalties based on a prior citation.

24 My question is: Are we provided with enough  
25 information to know -- I mean, is simply the RCW

1 violation, that that's the same violation under the code,  
2 is that enough to substantiate that? Or do we -- I guess  
3 -- see where I'm going with that?

4 ASSISTANT ATTORNEY GENERAL REULAND: I think so.

5 And I just sort of made up an example because I  
6 didn't have one, you know, from reviewing the WAC's.

7 If the Department issues a citation, they're going to  
8 -- they have to outline the basis for the penalty. And if  
9 they're going to deviate from the statutory penalty, that  
10 basis should be in the letter of citation I would imagine.  
11 And that then would give you the information to why they  
12 deviated from the statutory -- if it increased it or  
13 whatever. It should be in that letter. And that would be  
14 one of the issues that the Department would have to prove  
15 when they went to hearing at the Office of Administrative  
16 Hearings.

17 So it should be part of the record is my expectation.

18 CHAIRWOMAN ASHFORD: Ron, would that information be  
19 in the letters that you send out?

20 SECRETARY FULLER: What I think you're going to be  
21 looking for is the word "serious." Because that  
22 encompasses several different options. It could be  
23 splicing wire in a pipe citation for installation. It  
24 could be for having multiple previous violations. But  
25 that's the key to me is that if it doesn't have the word

1 "serious" in it, that's when we double the penalties.  
2 That's the only thing that we do to change the civil  
3 penalty schedule is for serious violations.

4 So to me, that's always been the one place that you  
5 do have the option to modify because you can declare it  
6 not serious.

7 BOARD MEMBER SIMMONS: Got'cha.

8 SECRETARY FULLER: And then it would revert back to  
9 the penalty schedule that's in place, the regular penalty  
10 schedule. That's really I think the only thing that you  
11 can modify in my mind.

12 ASSISTANT ATTORNEY GENERAL REULAND: I would agree  
13 with that.

14 BOARD MEMBER BRIGHT: And it's the Department's  
15 discretion as to whether or not the second offense rises  
16 to the level that you would impose a double penalty or  
17 not?

18 SECRETARY FULLER: There's a whole page of rules on  
19 serious violations, so I don't want to go into every  
20 option. But there's multiple ways to become serious. And  
21 when that happens, the penalty is doubled. I do that at  
22 my level.

23 BOARD MEMBER SIMMONS: So maybe what we're saying is  
24 the word should stay in there as long as we have a clear  
25 understanding that we can't just modify what comes out,

1 but that under certain circumstances and very, very  
2 specific ones we do have the option to modify, but it's a  
3 rare circumstance.

4 SECRETARY FULLER: Correct. Because I've got the  
5 ability before the penalty is issued to -- or even after  
6 in some cases on rare occasions -- but that's when I do  
7 the settlements. And then I can vacate or I can modify  
8 the penalty at that level. So that's what the settlements  
9 are about. Because then I can go down to that \$50 minimum  
10 level.

11 ASSISTANT ATTORNEY GENERAL REULAND: I can look at  
12 some language in terms of clarifying that because -- I  
13 understand what you're saying is that it sends the public  
14 a false message that you might be able to just reduce the  
15 penalty, and that's of concern.

16 BOARD MEMBER SIMMONS: I think so. But -- yeah. I  
17 just like everything to be accurate if we can.

18 CHAIRWOMAN ASHFORD: Any more questions on this  
19 issue?

20 And I feel also that we probably need to keep the  
21 word "modify" in there. It would be a rare option, but it  
22 should be there.

23

24 Item 3. Appeals

25 ///

1                   Item 3.A.   Marysville Taping Co.

2

3           CHAIRWOMAN ASHFORD:   Do we have a representative from  
4   Marysville Taping?

5           And we have Courtlan ...

6           BOARD MEMBER SIMMONS:   Do we have somebody from  
7   Marysville Taping here?

8           ASSISTANT ATTORNEY GENERAL ERICKSON:   Madam Chair,  
9   members of the Board, good morning.   My name is Courtlan  
10   Erickson, and I represent the Department of Labor and  
11   Industries in this case involving Marysville Taping  
12   Company.

13           Can you hear me okay?

14           The Department has appealed a decision by the  
15   administrative law judge to dismiss three citations the  
16   Department issued to Marysville Taping Company for  
17   electrical work it performed.   They were numbered  
18   EMUTR00555, 556 and 587.

19           The facts in this appeal are undisputed.   But the  
20   Department disagrees with the way the administrative law  
21   judge applied the law to those facts.

22           There are three basic issues that the Board must  
23   decide here today, and I'm going to summarize them first,  
24   and then I'll go back and talk about each one of them in  
25   more detail.

1           The first issue relates to the definition of  
2 "electrical contractor" in RCW chapter 19.28. The  
3 question is whether a business must be a licensed  
4 electrical contractor to perform an act of electrical work  
5 even if the business did not hold itself out as an  
6 electrical contractor or offer to perform any electrical  
7 work and even if it only did the electrical work at the  
8 direction of the general contractor.

9           The administrative law judge found that this did not  
10 require licensing. But the Department disagrees and  
11 asserts that the business did need to be licensed.

12           The second issue that you need to consider today is  
13 related to the definition of "installation" in the WAC and  
14 the related term "install" as it is found in the RCW.

15           The question is whether connecting a wire that  
16 conveys electrical current constitutes an electrical  
17 installation.

18           The administrative law judge found that it did not.  
19 The Department disagrees and asserts that that is an  
20 electrical installation under the way the law is written.

21           The third issue relates to the exemption for  
22 householders receiving assistance from individuals who do  
23 not hold themselves out as engaged in the electrical  
24 trade.

25           The question is whether a subcontractor on a

1 construction project or one of its employees qualifies for  
2 this exemption when the general contractor owns the  
3 property, has various subcontractors on the job, including  
4 an electrical contractor to do the electrical work, and  
5 whether one of these subcontractors or its employee can do  
6 this work without being a certified electrician under that  
7 exemption.

8 The administrative law judge found, or at least  
9 implied, that that exemption did cover the subcontractor  
10 in this case. The Department disagrees and asserts that  
11 the subcontractor was not exempt under that section.

12 Now I'm going to discuss that first issue in a little  
13 bit more detail.

14 The definition of "electrical contractor" which is  
15 found in RCW 19.28.006, subsection (8), the definition  
16 reads in part: "'Electrical contractor' means a person,  
17 firm, partnership, corporation, or other entity that  
18 offers to undertake, undertakes, submits a bid for, or  
19 does the work of installing or maintaining wires or  
20 equipment that convey electrical current." I believe  
21 that's actually the entire subsection.

22 The word "or" is the key word there. They set up the  
23 statute, the legislature did, in such a way that any one  
24 of those acts brings a person within the definition of  
25 electrical contractor.

1           So when the administrative law judge found that the  
2           company was not required to be an electrical contractor  
3           because it did not offer to do the work or hold itself out  
4           as doing the work, that ignored the fact that any one of  
5           those qualifies. The fact that the company installed  
6           wires or equipment is sufficient to bring it in -- bring  
7           it within the definition of electrical contractor.

8           The installation issue leads us into the second issue  
9           that I mentioned earlier. The administrative law judge  
10          concluded that connecting a wire that conveys electrical  
11          current does not constitute an installation under the law.

12          This conclusion, again, ignores the portion of the  
13          definition of the installation which is found in WAC  
14          296-46B-100, subsection (37) which reads in relevant part:  
15          "An installation includes the act of installing,  
16          connecting, repairing, modifying or otherwise performing  
17          work on an electrical system, component, equipment or  
18          wire."

19          That definition speaks for itself. Connecting a wire  
20          to convey electrical current is an installation.

21          Here in this case, Mr. Ron Moen, working for  
22          Marysville Taping Company, connected a heater to a power  
23          source at a job site. It wasn't just a heater that you  
24          plug into an outlet; it actually involved connecting  
25          wiring. You've seen in the record on pages 29 through 31

1 of your packets a description of the actual work that was  
2 done. The company as a result did the work of installing  
3 wires that convey electrical current, and since it was not  
4 licensed as an electrical contractor, it violated RCW  
5 19.28.041. And citation EMUTR00555 should be affirmed  
6 along with its penalty.

7 Likewise, since Mr. Moen was not a certified  
8 electrician, the company violated RCW 19.28.271 by  
9 employing someone who is not certified to do electrical  
10 work to engage in the electrical construction trade which  
11 is defined in the RCW as installing or maintaining  
12 electrical wires and equipment. Therefore, citation  
13 EMUTR00556 should be affirmed along with its penalty.

14 And because the installation that Marysville Taping  
15 Company did created what the administrative law judge  
16 called, quote, "a very hazardous situation," end of quote,  
17 the Department properly cited the company for violating  
18 RCW 19.28.010, which requires installations to be safe and  
19 in conformity with the law. Therefore, citation  
20 EMUTR00587 should be affirmed.

21 And the Board should also uphold the associated  
22 penalty which was double because of the gross or serious  
23 nature of the violation due to the safety hazards that  
24 existed there, which again are described in the record.

25 Finally, none of the company's defenses that it has

1 raised excuse it from liability in this situation.

2 While Mr. Moen may have been directed by the general  
3 contractor to do the installation, that does not excuse  
4 him from complying with the law related to this type of  
5 work. Ignorance also is not an excuse.

6 And as for the third issue that I raised at the  
7 beginning, the householder exemption, it states: "Nothing  
8 in RCW 19.28.161 through 19.28.271 shall be construed to  
9 restrict the right of any householder to assist or receive  
10 assistance from a friend, neighbor, relative or other  
11 person when none of the individuals doing the electrical  
12 installation hold themselves out as engaged in the trade  
13 or business of electrical installations." And that is  
14 found in RCW 19.28.261, subsection (6).

15 The term "householder" is not defined in the RCW or  
16 the WAC electrical chapters as far as I know. But one  
17 definition from the dictionary is the occupier of a house.  
18 Another definition is one who keeps house with his or her  
19 family.

20 The project involved in this case was a new home  
21 being constructed by Gilbertson Construction, a  
22 construction contractor. They were also the owners of the  
23 property according to the record.

24 On page 50 of your packet, Mr. Moen testified that  
25 Mr. Gilbertson lives in Snohomish County but had built

1 himself a place over there at Leavenworth and, quote,  
2 "He's been doing some work over there and he had us come  
3 over to do that one drywall job for him," end of quote.

4 So it's unclear from the record whether or not  
5 Mr. Gilbertson was building that house for himself. But  
6 Mr. Moen's testimony implies that that wasn't the case,  
7 that Gilbertson Construction was in the area doing  
8 construction jobs, and this new home was just another  
9 project of his and he would not be qualified as a  
10 householder on that project.

11 But even if the new house were his own or was going  
12 to be his own personal residence, the exemption should not  
13 apply in this type of a situation with a subcontractor or  
14 subcontractor's employee because they're being paid to do  
15 work on part of the project. There was another electrical  
16 contractor -- there was an electrical contractor that was  
17 hired to do the electrical work on that project.

18 And from a policy standpoint, this doesn't make sense  
19 to allow these construction contractors and their  
20 employees to get around the electrical laws by trying to  
21 claim that kind of exemption when they are not certified  
22 electricians.

23 So for all of these reasons, the Department  
24 respectfully asks the Board to affirm citations  
25 EMUTR00555, 556 and 557 (sic) and their penalties.

1           And before I conclude, there's one more matter that I  
2 would like to raise with the Board, if I may?

3           CHAIRWOMAN ASHFORD: (Nodding affirmatively.)

4           ASSISTANT ATTORNEY GENERAL ERICKSON: And that is  
5 the fact that the exhibits that were submitted and that  
6 were referred to in the transcripts were evidently lost  
7 from the record, and I have brought with me today a copy  
8 of those that I would like to offer. I would move to  
9 correct the record to match what the administrative law  
10 judge saw by offering these into the record.

11          CHAIRWOMAN ASHFORD: Do you have copies for every  
12 Board member?

13          ASSISTANT ATTORNEY GENERAL ERICKSON: I only have one  
14 hard copy with me. I did shortly before I came over here  
15 e-mail a copy to Ms. Forsberg and Mr. Fuller so they  
16 should have them available on their computer. Or else I  
17 could run back and print off copies. But I only have one  
18 copy with me.

19          CHAIRWOMAN ASHFORD: Is there any Board member that  
20 wants to look at the exhibits before we rule on this?

21          BOARD MEMBER SIMMONS: Well, I think that -- I read  
22 this and noticed that there were no exhibits in it. But  
23 reading the testimony, and obviously at this point not  
24 having anybody show up on the other side of the table, I  
25 don't personally need to see them. I've read the

1 transcripts. I know what the judge said. And after  
2 hearing your testimony, I don't need to. And I don't know  
3 if anybody else needs to. Thank you for bringing them.

4 Oh, Pam has something to add.

5 ASSISTANT ATTORNEY GENERAL REULAND: No, not that.

6 Procedurally, I do think you ought to make a motion  
7 to correct or supplement the record. Because if this  
8 matter were to go further to superior court, you need to  
9 have a complete record. And we need to make sure that  
10 that's done.

11 Courtlan's not asking you to supplement the record;  
12 he's just asking to correct the record that was  
13 transmitted from OHA (sic). So I think procedurally we  
14 need to do that regardless of whether it's necessary for  
15 your decision.

16

17 Motion

18

19 BOARD MEMBER SIMMONS: I make a motion to correct the  
20 record with the additional information as submitted.

21 BOARD MEMBER BOWMAN: Second.

22 CHAIRWOMAN ASHFORD: All those in favor?

23 THE BOARD: Aye.

24 CHAIRWOMAN ASHFORD: Opposed?

25 ///

1 Motion Carried

2

3 CHAIRWOMAN ASHFORD: Thank you.

4 ASSISTANT ATTORNEY GENERAL ERICKSON: Should I  
5 approach and hand this?

6 And I would point out, simply Exhibit 4, page 2, does  
7 include a picture with a sign showing Gilbertson  
8 Construction that was taken at that project as the  
9 contractor on the site.

10 CHAIRWOMAN ASHFORD: I know Jim probably wants to  
11 look at the --

12 ASSISTANT ATTORNEY GENERAL REULAND: Why don't we  
13 pass it around.

14 BOARD MEMBER PREZEAU: I would appreciate an  
15 opportunity just to look at the materials. If we could  
16 pass it around so all Board members could review it, I'd  
17 appreciate that.

18 CHAIRWOMAN ASHFORD: Do we have a motion or any more  
19 discussion on this appeal?

20 BOARD MEMBER TURNER: I have a question. And maybe  
21 it's just for my own education.

22 A lot of your argument was hinged on the word "or" in  
23 the definition of electrical contractor. And so if I'm  
24 reading this correctly, you could say that an electrical  
25 contractor is a person that does the work of installing.

1 So my question is, and I'm just curious about the extent  
2 of applying -- for an electrical contractor applying the  
3 definition. If I am a homeowner, and I get a permit to  
4 install one more circuit in my house, and I install it, I  
5 am a person, and I am installing. Does that make me an  
6 electrical contractor?

7 CHAIRWOMAN ASHFORD: I think Ron can answer that.

8 SECRETARY FULLER: There is -- yes. The answer is  
9 yes. But there's also the exemption for homeowners later  
10 in the statute.

11 BOARD MEMBER TURNER: Okay. But my question was: It  
12 does classify me then as an electrical contractor?

13 SECRETARY FULLER: Initially yes. But later in the  
14 statute you have the exemption that declassifies you.

15 BOARD MEMBER SIMMONS: Really to clarify, it's simply  
16 anybody that does electrical installations, electrical  
17 equipment is by law holding themselves out as an  
18 electrical contractor. But a homeowner has an exemption  
19 then that says, Okay, wait a minute, this guy is not. By  
20 statute, by law, he's not. Otherwise, if he's installing  
21 wiring, he has to be by law.

22 BOARD MEMBER TURNER: Thank you.

23 CHAIRWOMAN ASHFORD: I have a curious question.

24 SECRETARY FULLER: Can I say something else too?

25 To add onto that, homeowners don't always have that

1 exemption. Because if they are building something for  
2 rent, sale or lease, even though they own it, they don't  
3 get the exemption. So they're the person again that's a  
4 contractor.

5 CHAIRWOMAN ASHFORD: And this carries questions for  
6 my own information. If Gilbert Construction is building  
7 this home we're assuming for himself, if he was doing his  
8 own electrical work under the homeowners exemption, would  
9 that have changed the dynamics of him asking the taper to  
10 install the electric heater? Just curious. He had an  
11 electrical contractor on site that had taken out a permit  
12 to do the electrical contractor work. But in the case of  
13 the homeowner, even though he was a general contractor, he  
14 was doing it as his own electrical installation.

15 ASSISTANT ATTORNEY GENERAL REULAND: Let me -- could  
16 I interpose a procedural thing?

17 It's appropriate I believe to ask Courtlan as the  
18 representative of the Department. And I understand that  
19 you need to give due deference to the Department's  
20 interpretation. However, it is not appropriate to seek  
21 additional information that's not contained in the record  
22 for purposes of making your decision in this matter. And  
23 I just don't want there to be any inconsistencies in terms  
24 of you asking Ron that direct question versus having  
25 Courtlan as the representative of the Department be able

1 to provide the legal analysis for you. I just want to  
2 make sure our record is clear.

3 CHAIRWOMAN ASHFORD: I understand.

4 I will reask the question after the decision on this  
5 is made.

6 Tracy.

7 BOARD MEMBER PREZEAU: So I just want to share with  
8 the Board my thoughts when I read this.

9 A) There is --clearly that there was an electrical  
10 contractor that was hired to perform electrical  
11 contracting work.

12 B) The taper that was there to perform Sheetrock work  
13 was not there to perform electric work, was not there to  
14 assist. Whether or not this is a homeowner situation in  
15 my opinion was clearly not there to lend assistance to the  
16 homeowner. And that's evident on page 47 of the entire  
17 transcript when he says, "It's not my job or my  
18 responsibility," referring to installing this heater.  
19 Right? So he clearly didn't want to do it. And if he was  
20 assisting the general contractor -- I forget what his name  
21 is -- put him in a horrible situation by basically saying,  
22 "You do it. And I'm leaving. Here's a coil of wire. You  
23 do it. I'm leaving." And I would think that the general  
24 contractor actually knew what liability he was placing on  
25 that sheetrocker, and the reason why he made the

1 sheetrocker do it is because he didn't want to have to do  
2 it himself. Clearly not very much a friend lending  
3 assistance situation in my opinion.

4 I also think it's interesting that -- is it Mr. Moe?  
5 -- Mr. Moen admits performing the installation. He admits  
6 that -- you know, there's technically four citations. One  
7 of them he doesn't challenge because after having -- which  
8 is not getting a permit because he has a conversation with  
9 the electricians doing the work, and the electricians  
10 telling him, "If we would have done that, we would have  
11 got a permit. So therefore, you know, you're in the  
12 wrong." So he doesn't appeal that one.

13 So clearly he admits to doing the work. It's in  
14 violation of the statute. I think the judge got it all  
15 wrong. I think the homeowner exemption does not apply.  
16 And I am going to -- I don't know if I'm ready to make a  
17 motion yet, but I'm going to be encouraging the Board to  
18 overturn the ALJ's decision, uphold the citations and  
19 affirm the penalties.

20 BOARD MEMBER BELISLE: I agree with Tracy for the  
21 most part.

22 I only have one sticking point. And that is on the  
23 second citation, 556, that the drywall contractor wasn't  
24 employing an individual for the purpose of 19.28.

25 You know, they were there on site for the purpose of

1 drywall work. Yes, this guy did electrical work. I agree  
2 with that. Clearly it was a violation. But to hold the  
3 drywall contractor responsible for his employee who was  
4 honestly I don't believe was there hired as an individual  
5 to do electrical work. He did do it, but that was not why  
6 he was hired. And to hold that employer responsible for  
7 that act, I think that's a stretch. If you read the  
8 statute, employing an individual for the purpose of the  
9 chapter, MTC did not employ that individual for that  
10 purpose. He did that, but that's not why he was employed.  
11 So to hold that contractor responsible for that second  
12 citation I think is difficult.

13 BOARD MEMBER NORD: Courtlan, if the individual  
14 working for the taping company as a result of his poor  
15 craftsmanship and workmanship and had caused death or  
16 serious injury to someone on the job site, who would be  
17 held liable?

18 ASSISTANT ATTORNEY GENERAL ERICKSON: If the  
19 individual working for the taping company who was not an  
20 electrical contractor caused that?

21 BOARD MEMBER NORD: Yes.

22 ASSISTANT ATTORNEY GENERAL ERICKSON: You know,  
23 that's a good question. I'm not sure I know the answer.  
24 But I can only speculate that a person would have a cause  
25 of action probably against the general contractor and the

1       taping company or the employee who did that. But I don't  
2       know the answer for certain.

3               BOARD MEMBER NORD: I fully agree with Tracy's  
4       analysis. I would support the motion to uphold.

5               CHAIRWOMAN ASHFORD: Cathleen. And then I know you  
6       (addressing Board Member Simmons) have something to say.

7               BOARD MEMBER BRIGHT: I just wanted to get back on to  
8       the point that you (addressing Board Member Belisle) just  
9       made. My question is: If the general contractor  
10      compensated the taping company for performing electrical  
11      work, but if I recall correctly there was no citation  
12      issued to the general contractor for this incident --  
13      related to this incident.

14              ASSISTANT ATTORNEY GENERAL ERICKSON: That's my  
15      understanding.

16              BOARD MEMBER BRIGHT: Okay. Just trying to clarify.

17              I mean, my concern is: Again, where does that  
18      responsibility lie?

19              ASSISTANT ATTORNEY GENERAL ERICKSON: My  
20      understanding is that there is nothing in the record that  
21      specifically says they were compensated for performing  
22      that act of hooking up the heater. But I would presume  
23      that based on their contract which, you know, for doing  
24      the taping, it was just, "Here's your payment for the job.  
25      Thanks for doing your work here" without specifying what

1 it was for.

2 CHAIRWOMAN ASHFORD: That was the fine line that I  
3 also weighed. He was not directly compensated for doing  
4 this electrical installation, but he was compensated for  
5 being on the job site.

6 BOARD MEMBER GUILLOT: We call it "other duties as  
7 assigned" in our work.

8 BOARD MEMBER BRIGHT: But the fact -- but the  
9 testimony indicates that he was directed by the general  
10 contractor to perform this specific work, and that  
11 regardless of whether or not it was in writing under the  
12 scope of the work that the taping company was supposed to  
13 be doing, he was directed by the general contractor to  
14 perform that work.

15 CHAIRWOMAN ASHFORD: And ultimately compensated for  
16 being on the job site.

17 Jim.

18 BOARD MEMBER SIMMONS: I want to add -- and I agree  
19 with Tracy's analysis of this.

20 I want to add a point to what Rod said and try to  
21 clarify that.

22 First of all, if you have a company, and if we're  
23 going to cite the company for doing electrical work, which  
24 we are, because this company had a gentleman on the job  
25 that did electrical work, there's no argument or

1 discussion about that. Okay? So if that inherently then  
2 makes him an electrical contractor, which is what we're  
3 saying, he was holding himself out as it because this guy  
4 did electrical work, then by default, does that not make  
5 his employee working as an electrician? Even though the  
6 person is not licensed, even though the person has no  
7 qualifications to do it. I'm just saying I don't think we  
8 can take part of the law and uphold that and then pass on  
9 part of it.

10 That's my opinion.

11 BOARD MEMBER PREZEAU: And I completely agree with  
12 what you just said, Jim.

13 On the other -- if you flip it around, think about  
14 how dangerous this situation is.

15 BOARD MEMBER NORD: Absolutely.

16 BOARD MEMBER PREZEAU: So Gordon -- I work for  
17 Gordon. He's a -- he's a non-electrical contractor. He's  
18 a Sheetrock contractor. And he directs me to perform  
19 electrical work. Whether you can prove that or not, you  
20 know -- and we get cited -- but whether you can prove that  
21 or not, all Gordon has to do is divorce himself from that  
22 action and he doesn't get a citation. You know. And how  
23 do you prove that conversation?

24 The only way you prove it is me as an employee rats  
25 Gordon out and says, "This is what he told me to do."

1           And still, he's going to say, "No, I didn't." Right?

2           So how do you enforce the statute if you don't have  
3 the ability to do that? That's how I look at it.

4           BOARD MEMBER PHILLIPS: I have to agree with Rod. I  
5 don't think you need a company in order to be a  
6 contractor. Right? An individual can meet that  
7 definition. So he became the contractor, and he acted  
8 alone without his -- allegedly without his drywall  
9 company's blessing.

10           Let's say if I were there and did the work -- I work  
11 for the City of Kirkland -- and I did the illegal work,  
12 that made me contractor. That wouldn't make my city or my  
13 other employer who has nothing to do with contracting or  
14 whatever their business is an electrical contractor  
15 either.

16           Just because they have that relationship, I don't  
17 think you have to take that relationship to that person.  
18 If that person commits murder on the job site, you don't  
19 go back and blame his employer.

20           So I would agree with Rod.

21           BOARD MEMBER SIMMONS: Could I just read what -- I  
22 happen to have the RCW with me. I'm going to read what it  
23 says. There's just a short sentence that I think you need  
24 to hear. And it directly applies to this. It is for  
25 anyone's information, and it's RCW 19.28.271, and this is

1 violations.

2 The second sentence: "It is unlawful for any  
3 individual to engage in the electrical construction trade  
4 or to maintain or install any electrical equipment or  
5 conductors without having in his or her possession a  
6 certificate of competency."

7 I think that's pretty clear. I don't know how you  
8 could say that this person was not doing electrical work  
9 when he hooked up wires. I don't know how you could say  
10 that. And by -- you know, just to say, "Oh, the poor guy  
11 was -- you know, he was told to." Well, I understand, and  
12 we all understand that the situation is unfortunate the  
13 way it happened. But he did the work. He put people in  
14 this case at risk of getting hurt, of possibly burning  
15 down a building, electrocuting a kid that walked by.  
16 There's lots of issues with this. And I think we need to  
17 be clear and send a message to people. And we have upheld  
18 this statute before, and I think we should this time.

19 ASSISTANT ATTORNEY GENERAL ERICKSON: May I say  
20 something for clarity, please.

21 CHAIRWOMAN ASHFORD: Yes.

22 ASSISTANT ATTORNEY GENERAL ERICKSON: Thank you.

23 The citation ending in 556 was issued to the company  
24 for violation of RCW 19.28.271 for employing somebody who  
25 was not certified. It was not issued to the individual

1 for doing the work when he was not certified.

2 So I believe the discussion has properly centered  
3 around the citation being issued to the business for  
4 employing that person.

5 Mr. Moen was both the owner of the company and the  
6 individual who did the work. So he is the -- I guess -- I  
7 don't want to say his own employee, but he is the company  
8 employee who did the work, and he is also the owner of the  
9 company. And that was the basis for the citation ending  
10 in 556. Which what it refers to a person, firm,  
11 partnership, corporation or other entity employing an  
12 individual for purposes of RCW 19.28.161 through 271, we  
13 go back to RCW 19.28.161, and that says no person may  
14 engage in the electrical construction trade without being  
15 certified. And engage in the electrical construction  
16 trade, again, means -- or includes installing or  
17 maintaining electrical wires. So that chain of  
18 definitions is what the Department followed in this case.  
19 It issued the citation to the business for employing a  
20 non-certified individual to do that work. So that is what  
21 that citation is all about.

22 CHAIRWOMAN ASHFORD: Any further questions or  
23 discussion on this?

24 BOARD MEMBER NORD: Well, I've got one comment.

25 Findings of fact number 18 says, "Mr. Moen never

1 involves himself, and MTC never involves itself, in  
2 electrical work when performing sheet rock contracting.  
3 Mr. Moen did not offer to connect the heater to the power  
4 source and did not want to do so, as he has no expertise  
5 in electrical contracting."

6 If this is the case, why did he do it? He's  
7 obviously saying here he's not qualified. If he didn't  
8 want to do it, he shouldn't have done it.

9 CHAIRWOMAN ASHFORD: Rod.

10 BOARD MEMBER BELISLE: I guess maybe to throw a  
11 little bit more confusion into the issue. On page 36 of  
12 the transcript, the inspector during the hearing speaks  
13 out to the fact that he asked who did the installation.  
14 And the owner Moen actually said Luis was the name of the  
15 guy who did it. And then when he further pried the  
16 question, he said, "Okay, never mind. I did it." So I  
17 mean -- you know, it's kind of hard because now you've got  
18 an employer who's essentially covering for an employee who  
19 was not hired to do electrical work, shouldn't have done  
20 it, and he doesn't want to disclose it, so now he's  
21 protecting him.

22 I guess that provides some culpability about that  
23 employer.

24 BOARD MEMBER BOWMAN: Mr. Moen just needs to learn  
25 how to say no in my mind.

1           BOARD MEMBER PREZEAU: Yeah, I mean, clearly this  
2 installation was completely egregious. I mean, to see the  
3 pictures this morning sort of hammered it home. But  
4 reading the -- the inspector did a tremendous job  
5 summarizing what exactly had happened and transpired.

6           He put himself and his entire crew at risk. You  
7 know, if the shell of that heater had become energized.  
8 You know, there was no grounding. There was no equipment  
9 grounding conductor. There was nothing. Right?

10          CHAIRWOMAN ASHFORD: Okay. If there's not further  
11 discussion -- oh, I'm sorry. Rocky.

12

13

Motion

14

15          BOARD MEMBER SHARP: I'd like to make a motion to  
16 reverse the ALJ's decision.

17          BOARD MEMBER BOWMAN: Second.

18          CHAIRWOMAN ASHFORD: Clarification. Do we need to in  
19 the record have every one of the citation numbers listed?

20 Or can we do a blanket reversal of the ALJ's decision?

21          ASSISTANT ATTORNEY GENERAL REULAND: I think the  
22 record is clear in terms of what the citations are on  
23 appeal.

24          A couple things you -- you specifically need to  
25 identify if you're reversing all of the findings of fact,

1 conclusions of law. Because the Board does -- but the  
2 Board's decision has to have findings of facts and  
3 conclusions of law.

4 You also need to make a finding regarding notice was  
5 timely to the company for purposes of this appeal.

6 So you can reverse all of the findings and the  
7 conclusions or you can say that certain of these findings  
8 are the correct facts.

9 And the reason we need to -- because there has to be  
10 something in terms of if the company wants to appeal it to  
11 superior court. There has to be findings by the Board as  
12 to what the facts are.

13 I know that's a little bit more complicated than  
14 you're used to. But I think what you could do is identify  
15 which findings correctly you adopt and then which  
16 conclusions are not.

17 CHAIRWOMAN ASHFORD: Does the maker of the motion --

18 ASSISTANT ATTORNEY GENERAL REULAND: Does that make  
19 sense?

20 BOARD MEMBER SHARP: So do I need to describe each of  
21 the citations and then --

22 ASSISTANT ATTORNEY GENERAL REULAND: No. It's part  
23 of the record already.

24 Unless there's a certain citation that's not going to  
25 be reversed.

1 ASSISTANT ATTORNEY GENERAL ERICKSON: May I speak to  
2 what the Department requests as far as that is concerned?

3 CHAIRWOMAN ASHFORD: Please.

4 ASSISTANT ATTORNEY GENERAL ERICKSON: The  
5 Department's position in this is that all of the findings  
6 of fact from the administrative law judge's proposed  
7 decision and order were correct because the facts are  
8 undisputed.

9 The conclusions of law are the portion that the  
10 Department disputes. And specifically the Department  
11 objected to the inclusion of -- conclusion of law number 8  
12 as being incorrect, conclusion of law number 9 as being  
13 incorrect, and conclusion of law number 5 as being  
14 inapplicable and irrelevant to this case, the householder  
15 exemption. Although it states the exemption correctly,  
16 the Department asserts that it does not apply and should  
17 not be adopted as a conclusion of law. And I have with me  
18 a copy of a proposed order. But those are the only three  
19 conclusions of law that the Department objects to, and the  
20 Department does not object to any of the findings of fact.

21 CHAIRWOMAN ASHFORD: Pam, then that is what needs to  
22 be in the record of the motion?

23 ASSISTANT ATTORNEY GENERAL REULAND: Correct. And  
24 probably it would be good to go through the citation  
25 numbers.

1 BOARD MEMBER SHARP: Okay. So to start with is the  
2 motion should say the conclusions of law -- we disagree  
3 with what you say the conclusions of law were on those  
4 numbers, and then list the citations that were listed as  
5 the citations, correct?

6 SECRETARY FULLER: Madam Chair?

7 CHAIRWOMAN ASHFORD: Yes, Ron.

8 SECRETARY FULLER: Could I suggest that maybe  
9 Courtlan propose what the Department would like to see the  
10 motion say, and then you can do "as so moved" and move on?

11 CHAIRWOMAN ASHFORD: That would help.

12 ASSISTANT ATTORNEY GENERAL ERICKSON: Members of the  
13 Board, the Department proposes that the Board reverse  
14 conclusions of law number 5, 8 and 9, adopt the remaining  
15 conclusions of law, and adopt all of the findings of fact,  
16 and adopt additional conclusions of law which affirm  
17 citations EMUTR00555, 556 and 587.

18 BOARD MEMBER SHARP: So moved.

19 BOARD MEMBER NORD: Second.

20 CHAIRWOMAN ASHFORD: All those in favor?

21 THE BOARD: Aye.

22 CHAIRWOMAN ASHFORD: Opposed?

23

24 Motion Carried

25 ///

1 CHAIRWOMAN ASHFORD: Thank you.

2 Now I would like to go back to the question that I  
3 proposed earlier.

4 If the general contractor was the owner and had taken  
5 out an electrical permit but had requested an electrical  
6 installation, somebody else working on the site, does that  
7 change the dynamics?

8 SECRETARY FULLER: Potentially. But in this  
9 particular case, even if that would have been true, the  
10 drywaller was not assisting; he was doing it all by  
11 himself. It has to be an assist. That means the  
12 contractor -- the general contractor/owner would had to  
13 have been there participating in the act.

14 BOARD MEMBER SIMMONS: Ron, I think one other thing  
15 that would play into that also is that since the drywaller  
16 was being paid to be there, doesn't that throw that  
17 exemption out the window?

18 SECRETARY FULLER: That would too.

19 There's multiple problems with this one.

20 BOARD MEMBER PREZEAU: In which case, that would have  
21 been very helpful if somebody would have asked him that  
22 question about whether or not he was compensated for the  
23 work. It would have completely clarified that. Going  
24 forward, that would have been very helpful if it would  
25 have been in the proceedings.

1 CHAIRWOMAN ASHFORD: I would assume there's a lot of  
2 that going on, though.

3 Okay. DJ Mechanical and James Hawk.

4 MS. FORSBERG: Mr. Hawk is running a little late. He  
5 should be here around 10:00.

6 CHAIRWOMAN ASHFORD: (Addressing Mr. Hall) Do you  
7 have an objection to waiting until after?

8 MR. HALL: No.

9

10 Item 3.C. Robert Goodlett

11

12 CHAIRWOMAN ASHFORD: Robert Goodlett and Nancy  
13 Kellogg.

14 Good morning, Nancy.

15 ASSISTANT ATTORNEY GENERAL KELLOGG: Good morning,  
16 Madam Chair, members of the Board. My name is Nancy  
17 Kellogg, and I represent the Department of Labor and  
18 Industries in this case.

19 There are two issues in this case. The first issue  
20 is whether or not Robert T. Goodlett, president of Troy  
21 Services, Inc., an electrical trainee, filed a false  
22 affidavit claiming experience when he was under the  
23 direct supervision of James Eylander, Junior,  
24 administrator.

25 The second issue is whether the inspector's action of

1 subtracting 2,000 training hours from Mr. Goodlett's  
2 training record was authorized under WAC 296-46B-985,  
3 subsection (4).

4 So the first issue, James Hylander, Junior, had an  
5 administrator certificate during the relevant time frame,  
6 and he was assigned to Troy Services, Inc. Mr. Hylander  
7 was a licensed journeyman electrician except for five  
8 months of the relevant time frame for which time his  
9 license had lapsed.

10 The Department did not dispute any of the findings in  
11 the administrative decision. However, it's the  
12 Department's belief that the findings actually support the  
13 Department's position.

14 One fact that the administrative law judge did not  
15 include nor comment upon was the fact that the  
16 administrator's electrical license had lapsed during part  
17 of the time frame that was claimed in the affidavit. You  
18 will find this information in Exhibit 7 and 11.

19 Consequently, at least as to those five months, the  
20 administrator could not have legally supervised  
21 Mr. Goodlett, even if he was a member of the firm or a  
22 full-time supervisory employee.

23 Even without considering that fact, the Department  
24 believes that it's clear that the findings of fact support  
25 the fact that Mr. Goodlett filed a false affidavit based

1 on specific requirements of the electrical laws.

2 RCW 19.28.061 and WAC 296-46B-930 govern the  
3 determination of what is valid supervision. To be  
4 supervised under the electrical laws, the supervising  
5 individual, in this case, the administrator for Troy  
6 Services, Inc., must be a member of the firm or a  
7 full-time supervisory employee. It's undisputed that  
8 Mr. Eylander was not reported to the Department of  
9 Employment Security. So it's the Department's position  
10 that he cannot be considered a full-time supervisory  
11 employee.

12 WAC 296-46B-930 designates how a member of the firm  
13 is to be determined. That would be the second prong. If  
14 he's not an employee, then he would have to be a member.

15 The administrator under this regulation must be  
16 listed in the electrical license and also with the  
17 Department of Licensing or with the Department of -- or  
18 Secretary of State. It is undisputed, in fact, that  
19 Mr. Eylander was not listed on the electrical license.  
20 And you can see that in Exhibit 12. Nor was he listed  
21 with the Department of Licensing or with the Secretary of  
22 State.

23 Consequently, it's the Department's position that the  
24 citation that was issued under RCW 19.28.061 to  
25 Mr. Goodlett which is EMEHU03227 was issued correctly for

1 failure to perform electrical work while under the proper  
2 supervision because the firm's administrator was not  
3 listed as a member of the firm nor was he a full-time  
4 supervisory employee as required.

5 The IHA indicated that Mr. Goodlett was excused from  
6 this requirement because the Secretary of State does not  
7 require this information nor does the Department of  
8 Licensing. However, it's the electrical laws that apply  
9 in this situation. And, therefore, he was required to be  
10 listed both in the electrical licensing application and  
11 also with one or the other of those agencies.

12 The Department also correctly issued the second  
13 citation under RCW 19.28.061 for failing to ensure that  
14 the assigned administrator was a member of or a full-time  
15 supervisory employee of the firm.

16 In addition, Mr. Goodlett also failed to ensure that  
17 his administrator was licensed during the entire time  
18 frame that he was claiming for training purposes. And  
19 that would be under EMEHU03227.

20 The second issue is whether the inspector's action of  
21 subtracting 2,000 hours from Mr. Goodlett's training  
22 record was authorized under WAC 296-46B-985, subsection  
23 (4).

24 The inspector, Mr. Mehus, testified that 2,000 hours  
25 would be approximately a year's worth of time under normal

1 circumstances. And this affidavit certified two year's  
2 worth of training. Consequently, Mr. Mehus applied the  
3 maximum reduction allowed by the regulation. This amount  
4 is appropriate in the Department's position under the  
5 facts of this case, and the Department asks that this  
6 reduction also be affirmed.

7 Thank you.

8 MR. DALE: Good morning. I'm Brian Dale. I  
9 represent Robert Goodlett who's sitting here today with  
10 me.

11 As the Board is aware, the statute says that the --

12 CHAIRWOMAN ASHFORD: Excuse me for a moment. I know  
13 your name is very simple, but for our record purposes,  
14 would you please spell your name and --

15 MR. DALE: Brian Dale -- D-A-L-E.

16 And Goodlett --

17 THE REPORTER: (Nodding affirmatively.)

18 MR. DALE: You already have that one? All right.

19 As the Board is aware, the statute requires that the  
20 electrical administrator who supervises the apprentice has  
21 to be either a full-time employee of the company or a  
22 member of the firm. In this case, it's clear that  
23 Mr. Eylander was not a W-2 waged employee, but he was a  
24 member of the firm at all times. And that fact is not  
25 appealed by the State in this case.

1           Testimony was clear that Mr. Goodlett and  
2 Mr. Eylander had a 80 percent, 20 percent ownership in  
3 Troy Services. That's the corporation. That fact-finding  
4 has not been challenged on this appeal. The State accepts  
5 that fact-finding as being true.

6           There was substantial testimony in the record to  
7 support that. Mr. Eylander testified. Mr. Goodlett  
8 testified. And there was an exhibit -- we offered an  
9 Exhibit Number 3, which is on page 284 of your packets  
10 which shows a profit-and-loss statement with this 80  
11 percent, 20 percent ownership. So this unrebutted  
12 evidence -- the undisputed evidence was that there has  
13 always been an 80 percent, 20 percent ownership between  
14 those two gentlemen. So it's clear that Mr. Eylander was  
15 a member of the firm.

16           Now, there was some discussion at the hearing, "Well,  
17 what is a member?" Well, the word "member" is not  
18 described or defined anywhere in the statute, and so we  
19 have to look at the common-sense definition of what the  
20 word "member" means. If we have a corporation as in this  
21 case, it would be the shareholders who are participating  
22 in the profit or loss of the corporation. The  
23 common-sense approach is what the administrative law judge  
24 did in this case. If you apply the word "member," it's  
25 undefined. It's a corporation. What does that mean? It

1 must mean the shareholders who are participating in the  
2 profit or loss. That fact finding has not been challenged  
3 by the State. Mr. Eylander at all times was a member of  
4 the firm.

5 And the basis for the citation was that the member of  
6 the firm was not disclosed on the State's forms.

7 If you look at Exhibit 12, which is on page 214 to  
8 219 of your packet, these are the forms that Troy Services  
9 filed. And those forms do not require disclosure of the  
10 term "member" or define the term "member." It only asks  
11 you to identify who the license holder is. In this case,  
12 the corporation. It asks for the name of the apprentice.  
13 That's listed. And the name of the supervisor or the  
14 administrator, Mr. Eylander. That was listed. It asks  
15 for the name of the officers of the corporation. That was  
16 accurately and honestly listed also. It does not anywhere  
17 request the disclosure of who the members of the firm are.

18 The State's position here is really kind of a  
19 "Got'cha. We didn't ask for the information on the forms.  
20 We're going to cite you anyway. You didn't disclose who  
21 the members of the firm were."

22 The administrative law judge disagreed with that  
23 approach and said, No. If Mr. Goodlett filled out the  
24 forms accurately and honestly and listed out who the  
25 officers were and what the name of the license holder was,

1 who the administrator was, did all those things correctly,  
2 he can't be cited for not disclosing information that was  
3 never requested by the State. The State did not request  
4 on these forms who were the members of the firm.

5 Mr. Mehus is the Department's representative who  
6 issued these citations. And I asked him on page 59 of  
7 your packet -- it's the transcript -- I asked him:

8 Question: Mr. Mehus, "Would you agree with me that  
9 if Mr. Eylander were found to be a member of Troy  
10 Services, both of these violations would not have been  
11 issued?"

12 And his answer on page 60 is: "That is correct."

13 That was the only basis for the State's citation in  
14 this case is that the word -- the member was not disclosed  
15 in the way that they wanted on the forms. But the statute  
16 and the WAC do not require that the member be disclosed on  
17 these forms.

18 On page 65 and 66 of your transcript, again, I asked  
19 Mr. Mehus these questions:

20 I said, Question: "Isn't it true that person can be  
21 a member of a corporation yet not appear on the Department  
22 of Licensing, Employment Security, or secretary of state  
23 databases?"

24 And I'll just digress here. That's what Mr. Mehus  
25 looked at. He looked at those databases on-line to see if

1 Mr. Eylander was listed as a member.

2 And his answer was: "If there is documentation  
3 otherwise to that fact, sure."

4 Question: "... let me ask you this question, aside  
5 from the membership dispute we have here, otherwise  
6 Mr. Eylander is qualified and appropriately certified as  
7 the administrator and supervisor for Mr. Goodlett; is that  
8 correct?"

9 Answer: "If, indeed, he were in that position, yes,  
10 sir."

11 Question: "So we're not talking about, for example,  
12 licensing problems or any other issues of Mr. Eylander; in  
13 other words, he was qualified to serve as an administrator  
14 otherwise, correct?"

15 And the answer is: "... yes, sir."

16 So that's what this case was tried about is whether  
17 he was a member of the firm. The administrative law judge  
18 made a correct finding which is now challenged that he  
19 was, in fact, a member of the firm at all times.

20 The administrative law judge also made the correct  
21 finding and conclusion that the State never asked for  
22 disclosure of who the members were on Exhibit 12. All the  
23 forms that the corporation had to file did not list or  
24 request that information.

25 Mr. Goodlett accurately and honestly provided all

1 information requested by the State, so he should not be  
2 punished.

3 This case is not about Mr. Eylander's licensing hours  
4 or continuing education hours. That issue was never tried  
5 in this case. That issue is not in the citations. It is  
6 not in the prehearing order issued by the judge in this  
7 case. The issue to be tried was this membership issue.

8 The hours -- education hours only come up in closing  
9 argument from the State's attorney. And that really is a  
10 bit of trickery now to come to this Board and to say to  
11 you, "We wish you to affirm these citations because the  
12 licensing or education hours weren't there."

13 Mr. Eylander was never even asked those questions.  
14 It only came up in closing argument the first time from  
15 the State's attorney. That's a violation of due process.  
16 It's like getting a speeding ticket which you can beat in  
17 court, and the officer saying, "Well, your license tabs  
18 weren't good. I want to fine you for the same thing."

19 Well, it doesn't work that way. And that issue was  
20 not tried. It's not before you correctly. It would be a  
21 violation of due process for this Board to sustain  
22 anything on an allegation that was never tried.

23 So the State's request in its proposed order that  
24 there is to be a new finding now that the lack of  
25 education hours for a certain number of months supports

1 the finding that he was not a member of a firm, that  
2 cannot be before this Board correctly. It would be a  
3 violation of due process to even allow that argument.

4 The ALJ correctly made no such finding because that  
5 issue was not tried. It was not in the citations.

6 We're asking you to affirm the ALJ's decision in this  
7 case. He made the correct findings, correct conclusions,  
8 and the Board should affirm the order.

9 Thank you.

10 CHAIRWOMAN ASHFORD: Ms. Kellogg.

11 ASSISTANT ATTORNEY GENERAL KELLOGG: An administrator  
12 is responsible for knowing the electrical code per RCW  
13 19.28.061, subsection (5). Mr. Eylander should have known  
14 his responsibility to indicate that he was a member of the  
15 firm on some of the documents that are required as per WAC  
16 296-46B-930. It's not relevant that there isn't a  
17 specific question on the application because there is a  
18 requirement that it be indicated. Mr. Eylander or  
19 Mr. Goodlett should have indicated that Mr. Eylander was a  
20 member of the firm in the specific section that talks  
21 about the corporation on page 248 of the transcript.

22 The Department is not proposing an additional finding  
23 of fact regarding the fact that the license had lapsed for  
24 Mr. Eylander. The information, however, was presented at  
25 the hearing and is admitted as part of the transcript. So

1 argument is appropriate.

2 The Department does, however, offer this information  
3 as further support for affirming the citations.

4 Thank you.

5 BOARD MEMBER BOWMAN: I have a question for Ron.

6 Ron, do you see very many businesses being operated  
7 this way where the owner is the apprentice and somebody  
8 fills in as administrator?

9 CHAIRWOMAN ASHFORD: I don't think we can ask that at  
10 this time.

11 ASSISTANT ATTORNEY GENERAL REULAND: My concern to  
12 the Board is although you -- it's appropriate for  
13 interpretations, we need to be very careful about not  
14 expanding the evidence that's part of the record that you  
15 can make your decision upon. You do get to make a de novo  
16 decision, but it has to be based on the evidence that's  
17 contained in this record. And to the extent that  
18 Mr. Fuller might be construed as providing additional  
19 testimony or additional evidence, that would not be  
20 appropriate to consider at this point in time.

21 CHAIRWOMAN ASHFORD: Cathleen has a question.

22 BOARD MEMBER BRIGHT: Well, I have a question about  
23 the remedy that the judge has ordered. On page 238 of  
24 our packets, Exhibit 8, is a letter from the training  
25 agent, the IEC, and that states that -- you know, it

1 discusses "The experience hours reported to IEC of  
2 (Washington) were signed off by a licensed journeyman, Jim  
3 Eylander, Jr. ..."

4 And then in the fourth paragraph it says, "Therefore,  
5 IEC of Washington withdraws the Affidavits of Experience  
6 covering the above listed dates," which are April 2004 to  
7 July 2007.

8 So if those affidavits have been withdrawn, does he  
9 have any hours during this period of time in question to  
10 restore?

11 BOARD MEMBER PREZEAU: If you look at the letter, it  
12 says that the affidavits from April 2004 to July 2007 have  
13 been withdrawn. So then how do you restore hours that  
14 don't exist?

15 BOARD MEMBER BRIGHT: So my question is: If we --  
16 what we can do is affirm, rescind or modify the order; is  
17 that correct?

18 ASSISTANT ATTORNEY GENERAL REULAND: Correct.

19 BOARD MEMBER BRIGHT: Okay.

20 ASSISTANT ATTORNEY GENERAL REULAND: Affirm,  
21 reverse --

22 BOARD MEMBER BRIGHT: I'm sorry. Reverse or modify.

23 So if that's the case, and the remedy of restoring  
24 his 2,000 hours is kind of off the table, do either one of  
25 these citations have any merit one way or the other? I

1 mean, if there's no hours reported. We don't know if  
2 there's -- because the affidavits have been withdrawn. We  
3 don't know if there's -- there's no affidavit to have been  
4 falsified. And there's no hours that he would have been  
5 supervised or not, appropriately or not.

6 ASSISTANT ATTORNEY GENERAL KELLOGG: May I speak to  
7 that?

8 BOARD MEMBER BRIGHT: Please.

9 ASSISTANT ATTORNEY GENERAL KELLOGG: The affidavit  
10 was not withdrawn by Mr. Goodlett. It was withdrawn by  
11 the IEC.

12 The reason that the citations were issued is because  
13 he signed an affidavit saying that there was correct and  
14 proper supervision when there wasn't. So the fact that  
15 the affidavit was later withdrawn only goes to the hours  
16 and how you compensate for those hours. I don't think  
17 that it addresses the issue of whether he falsified his  
18 affidavit.

19 BOARD MEMBER BRIGHT: In order to be valid, does an  
20 affidavit have to be submitted by the registered training  
21 agent?

22 MR. DALE: Well, if I may respond? Thank you.

23 I think that's way outside the scope of our record  
24 and the evidence that was developed in this case. It may  
25 be a hypothetical question, but I don't think it bears on

1 the decisions the Board's going to make.

2 BOARD MEMBER PREZEAU: I really disagree with that.  
3 Because we get to make a decision based on all of this,  
4 not just what happened in front of the ALJ. Clearly this  
5 was one of the exhibits submitted. And so clearly I  
6 believe, unless, Pam, you tell me otherwise, that we get  
7 to make a decision based on everything in here. Is that  
8 correct?

9 ASSISTANT ATTORNEY GENERAL REULAND: That is correct.

10 BOARD MEMBER PREZEAU: All right. I think it has  
11 complete relevance.

12 MR. DALE: If I may, again, there was testimony in  
13 the record that at this time frame the Department's  
14 investigator, Mr. Mehus, was trying to reach Mr. Goodlett,  
15 but his phone had been turned off for connection problems  
16 or -- Mr. Mehus contacted the IEC apprenticeship program  
17 with his information in his proposed action, and the IEC  
18 withdrew -- did this letter.

19 That's the chain of events as I understand of what  
20 happened. That may not answer your question.

21 BOARD MEMBER BRIGHT: Well, there's some discrepancy  
22 between the time frames involved from the letter of the  
23 IEC which goes back to April of 2004 and the time period  
24 that we're examining which is June 1, 2005, through May  
25 31, 2007.

1           The affidavit that was submitted originally by the  
2           IEC because it's the person certifying that this  
3           information -- there's both Mr. Goodlett's signature and  
4           the registered training agent's signature. I think that's  
5           her signature. Is that -- I'm looking at Exhibit 7 on  
6           page 237. Or -- oh, that's the administrator. So that  
7           would be Mr. Eylander's signature. Okay.

8           So on this period of time, though, there's 1,385  
9           hours submitted. There may be additional affidavits that  
10          were withdrawn by the registered training agent, but for  
11          purposes of this one, we're looking at 1,385 hours that  
12          would be in question.

13          And if this affidavit has been declared invalid by  
14          the registered training agent -- I mean, I guess my  
15          question would be: Does the registered training agent  
16          have the authority to withdraw the affidavits?

17          CHAIRWOMAN ASHFORD: Ron, do you want --

18          BOARD MEMBER PREZEAU: I don't know if Ron would want  
19          this.

20          BOARD MEMBER SIMMONS: He doesn't.

21          BOARD MEMBER PREZEAU: They're the ones that are  
22          certifying the hours. And if you read the requirements  
23          for a training provider apprenticeship director to certify  
24          those hours, they're liable if they're not accurate.  
25          Which is why I would assume that Ms. Estes rescinded the

1 affidavits. It didn't threat -- her program or the IEC  
2 program would be held liable for those false documents.

3 BOARD MEMBER BRIGHT: So I guess my question is:  
4 Even if we did decide to affirm the administrative law  
5 judge's decision regarding the two citations, in other  
6 words, withdraw the citations, would we be able to restore  
7 the 2,000 hours?

8 BOARD MEMBER SIMMONS: I don't think that's up to us  
9 to decide. That's up to the Department.

10 But we're here to make a determination on the  
11 citations and the appeal that the Department has put  
12 forth, not whether to restore hours or not. That's not  
13 our place and our position.

14 So I want to comment on a couple things here and a  
15 couple -- the citations. The one that I have a challenge  
16 with is the one saying that he was not a full-time  
17 employee of the firm or supervisory position.

18 I think clearly he was a member of the firm. I don't  
19 know how you can say he's not a member. But the law says  
20 that you can be a member, you can be an officer, you can  
21 be et cetera, et cetera. I think that with all of the  
22 documentation that I've got in here, I don't think you can  
23 honestly say he was not a member of the firm. I have a  
24 big problem with that one.

25 Now, with the supervision and the hours for the

1 apprentice, obviously the problem I have with that is if  
2 his license lapsed during that time and yet he's crediting  
3 hours, he can't do that. But he's not crediting in this  
4 -- and the hours that are given here from 2005 to 2007,  
5 they're not 2,000 hours. So he could have not given hours  
6 during the time that he was lapsed.

7 CHAIRWOMAN ASHFORD: Okay, Jim. Then how --

8 BOARD MEMBER SIMMONS: Unless I'm missing something.

9 CHAIRWOMAN ASHFORD: Then how do we address on page  
10 11, 19.28.061, (5)? 1) partners must be on file with the  
11 Department of Licensing, or 2) corporate officers or  
12 members of an LLC must be on file with the Secretary of  
13 State. And that's my understanding going through this.  
14 Mr. Eylander's name is not listed.

15 If we go back to this documentation and possibly, you  
16 know, if we look at the profit-and-loss statement, he can  
17 declare verbally that he's a partner of the company or a  
18 20 percent owner, but he has not met this requirement.

19 BOARD MEMBER PREZEAU: Can I expand on that? So from  
20 a common-sense perspective, somebody that worked in the  
21 field and did some ground work, I maybe have a vehicle  
22 that the employer provides. I maybe have a gas card in  
23 order to maintain, you know, fuel for that vehicle. I may  
24 have a cell phone. Am I considered a member of that firm?  
25 I'm not an officer. I'm not decision maker. I'm not --

1 you know, I'm not any of those things. But do I have the  
2 ability to go to Platte Electric and the wholesale house  
3 and buy materials? I absolutely do. But am I a member of  
4 that firm? Am I an at-will employee? I absolutely am.  
5 Right?

6 So I read WAC -- this is what Gloria was just  
7 referring to -- WAC 296-46B-930, Assignment --  
8 Administrator or master electrician. "An administrator or  
9 master electrician designated on the electrical  
10 telecommunications contractor's license must be a member  
11 of the firm who fulfills the duties of an assigned master  
12 electrician administrator as required in RCW 19.28.061,  
13 subsection (5), or be a full-time supervisory employee.  
14 In determining whether the individual is a member of the  
15 firm, the Department will require that the individual is  
16 named on the electrical contractor application or at  
17 subsequent renewal and 1) partners must be on file with  
18 the Department of Licensing, or 2) corporate officers or  
19 members of the LLC must be on file with the Secretary of  
20 State."

21 So I read the record. I clearly understand that  
22 Mr. Eylander had the ability to estimate projects, to put  
23 out bids, to buy materials at a wholesale house. I don't  
24 necessarily in my experience as an electrician working in  
25 the field and having done some of those very same

1 responsibilities think of that as a de facto definition of  
2 a member of a firm. And as an administrator whose sole  
3 job is to make sure that the contracting entity lives up  
4 to the RCW and the WAC, it's pretty clear to me when I  
5 read 296-46B-930 that that is not the case.

6 BOARD MEMBER SIMMONS: I will add and clarify my  
7 opinion that I think that he was working there. Okay?  
8 But this clearly --

9 BOARD MEMBER PREZEAU: I agree.

10 BOARD MEMBER SIMMONS: 930 clearly does require some  
11 specific action to be taken by him that was not taken.  
12 And -- I clarify that. Thank you.

13 CHAIRWOMAN ASHFORD: That's the issue that I have,  
14 that Mr. Eylander as the administrator did not follow and  
15 meet all the requirements of the WAC or the RCW's.

16 MR. DALE: May I respond to that?

17 CHAIRWOMAN ASHFORD: Please.

18 MR. DALE: Thank you.

19 We think he did. The WAC doesn't require a member of  
20 a corporation to be listed unless he's an officer. He was  
21 not an officer. He was not an officer; he was a  
22 shareholder member.

23 The WAC says if you're an officer or a member of an  
24 LLC, those people in LLC have to be listed. Or if you're  
25 an officer of a corporation, you have to be listed. It

1 doesn't say a shareholder of a corporation has to be  
2 listed. That's what he was.

3 This definition that we have here today, he kind of  
4 fell between the cracks to be honest. That's what  
5 happened. It doesn't require that he identify himself  
6 other than as electrical administrator, which he certainly  
7 did on the license as the administrator. He's not  
8 otherwise listed as a member of a corporation, and this is  
9 a corporation.

10 CHAIRWOMAN ASHFORD: The partners must be on file  
11 with the Department of Licensing.

12 MR. DALE: The partners?

13 CHAIRWOMAN ASHFORD: Partners.

14 MR. DALE: Yeah, well, this is not a partnership.  
15 This is a corporation.

16 CHAIRWOMAN ASHFORD: Okay. Then we go to corporate  
17 officers or members.

18 MR. DALE: He was not a corporate officer.

19 CHAIRWOMAN ASHFORD: But he was a member.

20 MR. DALE: It says member of an LLC. It says  
21 corporate officers or members of an LLC. He was neither  
22 one of those. And the record's very clear on that.

23 BOARD MEMBER NEWMAN: This is on page 249, he signed  
24 his name as president.

25 MR. DALE: Mr. Goodlett, not Mr. Eylander. Eylander

1 signed as administrator on all the documents.

2 BOARD MEMBER NEWMAN: I have a question on the  
3 Employment Security Department certifications for the time  
4 period, there are two people listed. Anessa Goodlett and  
5 Robert Goodlett. So those are the people that basically  
6 were the employees of the firm. So if that's the case,  
7 why isn't Mr. -- the other guy, why isn't the  
8 administrator on this if he wasn't --

9 MR. DALE: Which page are you on?

10 BOARD MEMBER NEWMAN: 244.

11 MR. DALE: I think this is from the Department of  
12 Employment Security. And if you're a W-2 waged employee,  
13 the corporation would pay contributions to the Employment  
14 Security Department for employees for employment tax.

15 Mr. Eylander was not an employee. He's -- this  
16 gentleman took profit draws. That's the exhibit -- we  
17 talked about the profit draws being taken by Mr. Eylander  
18 and Mr. Goodlett. But they were not employees; they were  
19 shareholders in the company. They were members of that  
20 company.

21 BOARD MEMBER NEWMAN: What I don't understand here is  
22 that he's reporting --

23 MR. DALE: Yeah, it's president and spouse. It's  
24 corporate owners is what my client's pointing out is what  
25 the form says. Not as employees.

1 ASSISTANT ATTORNEY GENERAL KELLOGG: May I speak to  
2 the organization of --

3 CHAIRWOMAN ASHFORD: Please. Because we can have  
4 shareholders within our company that are not full-time  
5 employees or supervisors.

6 MR. DALE: You can have a shareholder who does  
7 nothing physically for the company other than just be an  
8 investor owner; that's true.

9 BOARD MEMBER NEWMAN: But you can't have an  
10 administrator that does that.

11 MR. DALE: You can have an administrator who administers  
12 actively the electrical --

13 BOARD MEMBER NEWMAN: They have to be a full-time --  
14 they have to be a member and they have to be actively  
15 involved in the business.

16 MR. DALE: There's substantial evidence that  
17 Mr. Eylander was actively involved in the business. Those  
18 are all the exhibits that we presented at the hearing how  
19 he was actively serving as the administrator of the  
20 company. I don't think that's disputed by the State  
21 either.

22 CHAIRWOMAN ASHFORD: Ms. Kellogg.

23 ASSISTANT ATTORNEY GENERAL KELLOGG: Yes. Finding of  
24 fact number 6 on page 9 indicates that they entered into a  
25 written agreement wherein the appellant was 80 percent

1 owner and Mr. Eylander was 20 percent owner of the  
2 company.

3 This is one of the findings of fact the Department  
4 did not dispute because, in fact, they did testify that  
5 way. However, individuals don't divvy up a corporation  
6 80/20; partners do. There were no shares issued. So  
7 there were no -- legally no owners of this corporation.

8 This was a very "lucy-ducy" kind of incorporation.  
9 There were no stock certificates. There's no articles of  
10 incorporation that were offered. There were no board of  
11 directors that was formed. There were no corporate tax  
12 filings. There were no annual reports. And there were no  
13 officers other than Robert T. Goodlett.

14 The Department questions whether this is a valid  
15 corporation anyway because there was only a president.  
16 There were no other officers of the firm.

17 But besides that point, the WAC is very clear that  
18 the individual has to be named on the electrical  
19 contractor application as a member of the corporation.  
20 There's a section that talks about corporation, and  
21 Mr. Eylander's name is not on there. Consequently, I  
22 don't see how he could be a member of the corporation when  
23 he's not listed in the section for corporation,  
24 irrespective of the argument of whether he wasn't an  
25 officer, was an officer, was a stockholder, wasn't a

1 stockholder.

2 MR. DALE: May I respond? Thank you.

3 I challenge the State's lawyer to show anywhere in  
4 Exhibit 12 which are the relevant documents where "member  
5 of the firm" is requested. It simply does not appear. It  
6 asks for employees. It asks for officers. Those are  
7 accurately filled out.

8 It is a falsehood to tell this Board that there's a  
9 member requirement disclosure in Exhibit 12. It does not  
10 exist.

11 Second, the State can't have it both ways. It agrees  
12 the fact findings are what they are. It does not  
13 challenge the fact finding that Mr. Eylander was a member  
14 of this corporation. That's what the issue is.

15 CHAIRWOMAN ASHFORD: Rod, I know your hand was up  
16 before Cathleen's.

17 BOARD MEMBER BELISLE: Well, I think this has turned  
18 into a law class. But unfortunately, what we have to deal  
19 with is what we have in front of us. And there's a lot of  
20 supposition of how this company was formed. But that's  
21 not in the document.

22 And I think the point is, if you're administrator of  
23 the firm, you have a responsibility to meet the WAC. And  
24 regardless of whether it's poorly written or whether  
25 there's a loophole or whether there's some definition

1 that's missing, the fact of the matter is, the WAC  
2 presides. And if you're going to be a member of the firm  
3 and be administrator, you have to meet the requirements of  
4 the WAC. And in the documents here, to the letter of the  
5 law, they did not meet that requirement.

6 If the WAC needs to be amended for a different  
7 company structure, that's a different conversation that  
8 needs to be held somewhere else.

9 CHAIRWOMAN ASHFORD: Cathleen.

10 BOARD MEMBER BRIGHT: On page 248 at the bottom of  
11 that page, it has a space under the corporation heading  
12 for registered agent. Would an administrator need to be a  
13 registered agent? I mean, to be -- where's the threshold  
14 for a member of the firm?

15 MR. DALE: Let me answer. A registered agent is  
16 simply what the Secretary of State requires, a person be  
17 identified for service of process on a corporation.  
18 That's all a registered agent is. It has nothing to do  
19 with electrical code or licensing. That's a corporate law  
20 requirement.

21 BOARD MEMBER BRIGHT: Okay. But if he's a member of  
22 the corporation, member of the firm, corporation, and he's  
23 not the president, the vice president, the secretary, the  
24 treasurer, so he's not an officer, does he have the  
25 authority -- I mean, he has the authority to do all these

1 -- to perform all these functions for the firm, to act as  
2 the administrator, to do the bids, to do this and that,  
3 but he doesn't have the authority to perform the duties of  
4 a registered agent?

5 MR. DALE: Yes.

6 BOARD MEMBER: Those are different rules.

7 BOARD MEMBER: It's one or the other.

8 MR. DALE: The electrical administrator has to  
9 supervise the apprentice. That's a different role  
10 entirely from the registered agent for corporation. You  
11 could name your lawyer as your registered agent for your  
12 corporation.

13 CHAIRWOMAN ASHFORD: The administrator unless he is  
14 an EL01 licensed electrician or a master electrician  
15 cannot supervise an apprentice.

16 MR. DALE: We agree with that, right. I think the  
17 question was asked, the difference between a registered  
18 agent for corporation and how that may affect or interplay  
19 with being an administrator of an electrical contractor.  
20 That's how I understood the question.

21 BOARD MEMBER BOWMAN: So in essence, Mr. Eylander has  
22 found some kind of gray area where he can skirt the law  
23 and still operate a business.

24 MR. DALE: Well, I --

25 BOARD MEMBER BOWMAN: I mean, --

1           MR. DALE: I -- I'm sorry. Go ahead and finish your  
2 question.

3           BOARD MEMBER BOWMAN: He's going around the law is  
4 what it sounds like to operate a business, and he can be  
5 -- he wants to be the administrator and not take any of  
6 the other responsibilities. I mean, I'm kind of confused  
7 what his position is here.

8           BOARD MEMBER NORD: That's my question.

9           MR. DALE: I guess I'm not taking that as a question,  
10 more an observation.

11           There is no finding of intent or malice or misconduct  
12 before you. It's not part of the law. I think it's  
13 unfair to characterize this as something nefarious.

14           These two guys ran a simple company. They got the  
15 forms from the State. They filled them out as best they  
16 could. They didn't have lawyers for legal advice or  
17 people like this second-guessing them at the time. They  
18 just started a business. That's what happened.

19           The definition that the State is using to apply to  
20 this doesn't apply. If you are a member of an LLC, you  
21 are to be listed as the WAC says. If you're an officer of  
22 a corporation, you are listed. The WAC doesn't talk about  
23 what happens in this case. It kind of fell between the  
24 cracks. That's what happened.

25           We have a member who's a shareholder of a corporation

1 who is also serving as the full-time administrator. That  
2 satisfies the RCW. And the WAC doesn't address the  
3 situation. If you're falling back on the RCW's and the  
4 intent of the RCW which is, are you a member of the firm,  
5 the ALJ said the WAC doesn't regulate this situation. The  
6 RCW does. And common sense interpretation of the term  
7 "member" applies to a corporation means you're a  
8 shareholder participant in a company. And that was the  
9 outcome of the case.

10 CHAIRWOMAN ASHFORD: So if we go back to that then,  
11 you state that this is a corporation but he's not a  
12 corporate officer.

13 MR. DALE: True.

14 CHAIRWOMAN ASHFORD: I have not seen anything in this  
15 packet that shows me he was a full-time employee or  
16 supervisor -- in a supervisor capacity which would be  
17 available during normal working hours to fulfill the  
18 duties of an administrator.

19 MR. DALE: The State agrees I think with us that he  
20 was acting as the administrator in a full-time capacity.  
21 The record was full of testimony, and all the exhibits  
22 that we've submitted in the packet showing he was working  
23 full-time as the administrator in fact.

24 This is not a case of bad workmanship or danger to  
25 the public because he was supervising the work of an

1 apprentice in the field. The record is full of that  
2 evidence and the testimony.

3 That wasn't the basis for the citation that he wasn't  
4 physically supervising Mr. Goodlett. The basis for the  
5 citation was the paperwork issued we have before us.

6 BOARD MEMBER NORD: So are you saying that he was an  
7 employee?

8 MR. DALE: No. He was never an employee. He was a  
9 shareholder, member owner of a corporation, administrator.

10 BOARD MEMBER NORD: My question to you is: If he's  
11 not a corporate officer, he's not an employee, he's a  
12 shareholder -- and I'm a shareholder of a lot of companies  
13 too -- what was his day-to-day responsibilities and duties  
14 to the company?

15 MR. DALE: He was the electrical administrator who,  
16 in fact, performed electrical administrator work. That's  
17 in the transcript if you've read it, and it's in all of  
18 the exhibits we've presented, which is under tab starting  
19 at page 221 of your packet, that he actually supervised  
20 electrical work. He signed the contracts for the company.  
21 He did the bidding for the company. He supervised the  
22 apprentices in the field. Those facts are not disputed by  
23 the State.

24 BOARD MEMBER NORD: But if I'm supervising people,  
25 bidding for a company, and I'm signing documents,

1 contracts, whatever, doesn't that make me an employee?

2 MR. DALE: No.

3 BOARD MEMBER NORD: Not a shareholder?

4 MR. DALE: No.

5 BOARD MEMBER NORD: As a shareholder of a company, I  
6 don't have those responsibilities.

7 MR. DALE: I think -- and this goes back to the other  
8 comment by the Board member a moment ago. If you have a  
9 gas card and you have a truck and so forth, what happens.  
10 That's agency. That's the common law of agency.

11 If I have someone who has my truck with my company  
12 name on it, and I give them the gas card, and they go out  
13 and get into a traffic accident, the law's going to hold  
14 me liable because they are my agent. It doesn't matter  
15 whether they were a shareholder or whether they were an  
16 employee or they were an independent contractor. If  
17 they're under my control as an agent under agency law, I'm  
18 liable. That's the scenario that you asked. But it isn't  
19 the scenario we have presented to you before the Board.

20 The issue of the RCW is: Are you a member of the  
21 firm? The word "member" not being defined in the statute.  
22 The common-sense dictionary term of it is. The profit and  
23 loss and ownership interest, that's what the ALJ applied,  
24 that he is a member of the firm. The State does not  
25 challenge the finding that he was a member of the firm.

1           So the question is: Was he the administrator? if  
2           that's what you're asking. Yes, he was. Full-time  
3           administrator for the electrical work for this company and  
4           he supervised the apprentice. The record's undisputed  
5           that's what he did on a daily basis.

6           BOARD MEMBER TURNER: So are you suggesting that  
7           instead of getting hourly or a monthly salary, what he was  
8           working for was profits of the firm?

9           MR. DALE: True. And that's in the transcript.

10          Both gentlemen were asked, Mr. Goodlett and  
11          Mr. Eylander: What did you get out of this company?

12          Well, the answer truthfully was a lot of loss, not a  
13          lot of profit. But that's their -- their compensation  
14          base was profit or loss. They did not draw wages.

15          You can be a shareholder or participate in a  
16          corporation, not an employee, and participate in the  
17          operation of that company and take profit or loss and  
18          never be a W-2 waged employee. That is commonly done.

19          BOARD MEMBER NORD: If a shareholder, as you're  
20          suggesting, is not an employee, if he's negligent, as a  
21          shareholder, can he be held to the same responsibilities  
22          as though he was an employee?

23          MR. DALE: No. I think your question would be  
24          negligent as an agent. Under the common law of agency, if  
25          he has the car accident, if he's the -- let's take the

1 scenario of he's the shareholder administrator, not an  
2 employee. He drives the company truck and has the car  
3 accident. He's an agent acting on behalf of the  
4 corporation. He would have common law -- the corporation  
5 would have common law tort liability in that car accident.

6 That's not the issue before the Board today. These  
7 are all nice hypotheticals, but they aren't the issue.  
8 The issue is the RCW definition of what you have to do to  
9 to be an administrator/supervisor.

10 BOARD MEMBER NORD: Does he have an office at this  
11 company?

12 MR. DALE: Does he have an office? Mr. Eylander?

13 BOARD MEMBER NORD: Yes. Does he have a physical  
14 presence at the company?

15 MR. DALE: He had a physical presence. That's in the  
16 transcript. It's undisputed. He was there supervising  
17 the work, yes.

18 BOARD MEMBER NORD: If, for example, he had an  
19 accident on the job site, is he covered under state  
20 industrial under your scenario?

21 MR. DALE: He would probably be exempted as an -- I  
22 believe both gentlemen elected to exempt themselves as  
23 officer/owners -- or as owners I should say of L & I  
24 coverage. But that's a side issue.

25 CHAIRWOMAN ASHFORD: That brings up another question

1       then.  If he was supervising the apprentice, he would have  
2       to be on site.

3               MR. DALE:  And there was testimony that he was.  And  
4       the State didn't challenge that at all.  The State agrees  
5       that he was on site physically supervising the work.

6               I asked Mr. Mehus, the State's representative, this  
7       is not an issue of physical safety or quality of work  
8       performance?

9               He said, No, it's not that at all.  It's just the  
10       paperwork trail we have to have of who's the member of the  
11       firm.  It wasn't about quality work or safety.

12              CHAIRWOMAN ASHFORD:  We need to start wrapping this  
13       up.  A quick question.

14              BOARD MEMBER BRIGHT:  So Mr. Eylander supervised all  
15       the work that Mr. Goodlett did?

16              MR. DALE:  Yes.  And that's undisputed.

17              BOARD MEMBER BRIGHT:  Did Mr. Eylander perform work  
18       that Mr. Goodlett -- did he perform work on his own, in  
19       other words, for this firm?

20              MR. DALE:  I don't know.  But it wasn't part of the  
21       citations or argument.

22              BOARD MEMBER BRIGHT:  I'm just trying to clarify  
23       whether Mr. Goodlett was doing all the work and  
24       Mr. Eylander was supervising the entire time or was he  
25       also performing other work.

1 MR. DALE: I think Mr. Eylander testified he did work  
2 in the field also.

3 BOARD MEMBER BRIGHT: In the field without  
4 Mr. Goodlett there?

5 MR. DALE: As an electrician. Mr. Eylander also did  
6 work I think as an electrician.

7 That was not part of the citations. And I think he  
8 did say that in the transcript.

9 CHAIRWOMAN ASHFORD: And that brings up another  
10 question. If he's not an employee of an electrical  
11 contractor, but he's working as an electrician.

12 BOARD MEMBER BELISLE: Yeah.

13 BOARD MEMBER: That's the same question I had.

14 CHAIRWOMAN ASHFORD: We need to start wrapping this  
15 up.

16 ASSISTANT ATTORNEY GENERAL KELLOGG: Madam Chair, may  
17 I offer what appears maybe as a simplified version of the  
18 issue? And that is whether the administrator who was a  
19 member of the firm can be relieved of his responsibility  
20 under 296-46B-930 of notifying the Department in the  
21 license application that it's a member of the firm because  
22 there's no specific section that says "member." It says  
23 vice president, secretary, treasurer, et cetera. That  
24 appears to be the argument is that there's not a space for  
25 member; therefore, Mr. Goodlett was relieved of putting

1 Mr. Eylander down as a member.

2 Thank you.

3 CHAIRWOMAN ASHFORD: Final comment.

4 MR. DALE: The ALJ applied the RCW to this case  
5 because the WAC does not apply. There isn't a scenario  
6 under the WAC that fits this fact pattern of being a  
7 corporation, a member shareholder or the administrator.  
8 So you have to fall back onto the RCW. And that's what  
9 the ALJ did, correctly holding that Mr. Eylander was a  
10 member and the full-time administrator. He satisfied the  
11 law.

12 CHAIRWOMAN ASHFORD: Okay, Board members. Any  
13 discussion? Are we ready for a motion?

14 BOARD MEMBER PREZEAU: I just -- so I am not a labor  
15 attorney. I don't know -- I have no understanding or --  
16 well, no legal understanding of whether or not this  
17 business relationship is a violation of wage and hour laws  
18 or -- I don't even want to go there. And I think -- and I  
19 also don't want to get bogged down into too much detail.

20 My opinion is that when the statute was written, it  
21 was not the intention for somebody to be an administrator  
22 and not have -- and the Department not be made aware that  
23 that individual's the administrator. Now, whether or not  
24 -- you know, I have no idea -- again, I'm not an attorney  
25 -- as to whether or not this arrangement meets the legal

1 definition of a corporation with shareholders without a  
2 quarterly statement or anything else. That's not what I'm  
3 here to determine.

4 For me, what the detail's come down to is, again, I'm  
5 going to read from 296-46B-930. "In determining whether  
6 the individual is a member of the firm, the Department  
7 will require that the individual is named on the  
8 electrical contractor application."

9 Now, just because it doesn't say "member" on the  
10 application, I don't think tells me that that exempts an  
11 individual from not being named because there is no field  
12 that says "member." There's plenty of other fields on  
13 there. And it clearly says the individual -- whether the  
14 individual's a member of the firm, which is what they're  
15 advocating that he is, the Department will require that  
16 the individual is named on the electrical contractor  
17 application.

18 Now, the other thing I want to say is when it comes  
19 to whether or not it is appropriate to deduct -- for the  
20 Department appropriately deduct the 2,000 hours from his  
21 -- because of the Department's contention that the  
22 affidavits were falsified, that is not -- if you look at  
23 WAC 296-46B-985, penalties for false statements for  
24 material misrepresentations, subtracting up to 2,000 hours  
25 is not the maximum penalty that can be levied under the

1 WAC. The Department can also refer the individual to the  
2 county prosecutor for criminal prosecution, and there's a  
3 number of RCW's. They also may file civil action under a  
4 number of others. They may also revoke or suspend a  
5 certificate. So revoking 2,000 hours is not the maximum  
6 penalty that can be enforced. There are clearly other  
7 avenues that I feel -- revocation is much more serious a  
8 penalty than subtracting 2,000 hours of on-the-job  
9 training -- recorded hours.

10 So I just wanted to make that point for the Board as  
11 well. Since that is also I believe under consideration or  
12 in the -- it was definitely under consideration as to  
13 whether or not that -- at least in the transcript as to  
14 whether or not that was an appropriate decision made.

15 MR. DALE: If I may respond, page 215 of your packet  
16 is the application. Mr. Eylander's name does appear as  
17 the administrator. He was disclosed. He was listed.  
18 When the State asked for it, he gave his name.

19 CHAIRWOMAN ASHFORD: Do we have a motion?

20 BOARD MEMBER KOPCZYNSKI: Madam Chairman, I would ask  
21 that counsel restates the Department's position here so  
22 that we're clear.

23 ASSISTANT ATTORNEY GENERAL KELLOGG: The Department  
24 believes that the affidavit that was issued by  
25 Mr. Goodlett was false. And it was false because James

1 Eylander, Junior, as the designated administrator for Troy  
2 Services, Inc., was required to be a member of the firm or  
3 supervisory employee and because he failed to place his  
4 name upon, at minimum, the electrical license application,  
5 he was not to be considered a member of the firm or a  
6 full-time supervisory employee.

7 I also have a proposed order that I can offer with  
8 substitute conclusions of law.

9 BOARD MEMBER PHILLIPS: Which electrical license  
10 application are you referring to?

11 ASSISTANT ATTORNEY GENERAL KELLOGG: I'm sorry?

12 BOARD MEMBER PHILLIPS: You said he didn't put his  
13 name on the electrical license.

14 ASSISTANT ATTORNEY GENERAL KELLOGG: Yes. Exhibit  
15 12, which is the application for the electrical  
16 contractor's license. The section that says  
17 "Corporations" on the second page -- and I'm looking at  
18 page 248. It's actually in the packet twice.

19 BOARD MEMBER PHILLIPS: Page 248?

20 BOARD MEMBER SIMMONS: 215.

21 ASSISTANT ATTORNEY GENERAL KELLOGG: Either one. 248  
22 or 215.

23 BOARD MEMBER PHILLIPS: It's on the front.

24 BOARD MEMBER SIMMONS: Right.

25 ASSISTANT ATTORNEY GENERAL KELLOGG: Yeah. And then

1 if you turn to the back where it says "Corporation,"  
2 Mr. Goodlett is issued but no one else. And it's the  
3 Department's position that if you're going to be a member  
4 of the firm, you need to indicate because this firm is a  
5 corporation.

6 BOARD MEMBER TURNER: So just so I understand, had he  
7 put his name on front and back, there would be no issue  
8 here?

9 ASSISTANT ATTORNEY GENERAL KELLOGG: If he had  
10 indicated on the application, that would have been the  
11 first step.

12 But he also, according to WAC 296-46B-930, needed to  
13 be listed with the Department of Licensing and the  
14 Secretary of State. However, you don't even need to go  
15 that far to overturn the ALJ's ruling. You just need to  
16 find that he did not place his name or Mr. Goodlett did  
17 not place his name as a member of the firm in the  
18 electrical application itself.

19 So there's two requirements that he hasn't met either  
20 one.

21 MR. DALE: May I respond to one point? I've already  
22 talked to you about why he's not an officer. But I do  
23 want to point out, it was clear in the transcript, the  
24 Secretary of State and the Employment Security Department,  
25 and Department of Licensing databases, if you go on-line

1 and look at them, nowhere list shareholders. They list  
2 officers of the corporation. They list members of an LLC.  
3 They list sole proprietors. But nowhere does the state  
4 publicly list who are members of a corporation.

5 And so the State's approach is if you look at these  
6 databases and you weren't there, the ALJ did not accept  
7 that as being dispositive. You have to look at the facts  
8 of the case to see who was a member of the entity under  
9 the RCW. That's what he did.

10

11

Motion

12

13 BOARD MEMBER KOPCZYNSKI: Madam Chairman, I'd like to  
14 make a motion to support the Department's position in  
15 regard to citation numbers EMEHU03225 and 227.

16 BOARD MEMBER NORD: Second.

17 ASSISTANT ATTORNEY GENERAL KELLOGG: Does the Board  
18 also have a position on the reduction of hours?

19 BOARD MEMBER KOPCZYNSKI: I'll deal with that in a  
20 separate motion.

21 ASSISTANT ATTORNEY GENERAL REULAND: Do you want the  
22 Department to clarify the findings and conclusions as we  
23 did in the previous case that they are asking you to  
24 affirm or reverse?

25 BOARD MEMBER KOPCZYNSKI: Sure.

1           CHAIRWOMAN ASHFORD: Don, would you like Ms. Kellogg  
2 to state --

3           BOARD MEMBER KOPCZYNSKI: I think it would be helpful  
4 as confusing as this might be if maybe you could state  
5 that for us so we're all clear on it.

6           ASSISTANT ATTORNEY GENERAL REULAND: Just so we're  
7 clear, have the Department articulate which findings of  
8 fact the Department is suggesting you affirm, which  
9 conclusions the Department is suggesting that you either  
10 reverse or affirm?

11          BOARD MEMBER KOPCZYNSKI: My motion is intended to be  
12 directly supportive of what counsel has outlined. So it  
13 would be helpful for me if she would just restate what it  
14 is specifically so we can get that in the record  
15 correctly.

16          ASSISTANT ATTORNEY GENERAL KELLOGG: The Department  
17 proposes that findings of fact 1 through 8 be affirmed,  
18 and that the conclusion of law number 3 be affirmed, but  
19 that the other conclusions 1 and 2, 4 through 6 be  
20 stricken, and instead that the Board make findings to  
21 support both the citations EMEHU03227 and EMEHU03225 and  
22 also affirm the subtraction of 2,000 hours from  
23 Mr. Goodlett's training record.

24          BOARD MEMBER KOPCZYNSKI: With that inclusion, in  
25 regards to the hours, that's fine.

1           So my motion then would be in support as outlined by  
2           counsel to cover the items that she just covered.

3           BOARD MEMBER BRIGHT: A point of clarification. You  
4           said that we're not to support conclusions of law 1, 2 and  
5           4; is that correct?

6           ASSISTANT ATTORNEY GENERAL KELLOGG: Yes.

7           BOARD MEMBER BRIGHT: Conclusion of law 1 is that the  
8           Office of Administrative Hearing has jurisdiction.  
9           Conclusion of law 2 is that the electrical contractor's  
10          board may delegate to the ALJ responsibility to preside  
11          over the hearing. You want to reconsider that?

12          BOARD MEMBER SIMMONS: Also number 3 is accurate.

13          BOARD MEMBER BRIGHT: Well, she said that 3 is --  
14          it's 4, and I'll get to that in a second.

15          I agree. So we're upholding 1, 2 and 3, yes. And  
16          you're challenging 4.

17          Could you tell us specifically what the issue is with  
18          conclusion 4?

19          ASSISTANT ATTORNEY GENERAL KELLOGG: With 4, the law  
20          is accurately stated. It is the conclusion that follows  
21          on the bottom of page 11 that the Department objects to.

22          MR. DALE: Could you read aloud the --

23          ASSISTANT ATTORNEY GENERAL KELLOGG: "Here, the  
24          Mr. Eylander was not named on the electrical contractor  
25          application or subsequent renewals. As to the other

1 requirements set forth in WAC 296-46B-930, Mr. Eylander  
2 maintains that he was a shareholder of the company, but  
3 has provided to written evidence of his ownership. The  
4 company is a corporation, and not a limited liability ...  
5 LLC." This is the part the Department objects to.  
6 "Nevertheless, Mr. Eylander was not a corporate officer of  
7 the company. As a result, as a shareholder and owner, his  
8 name would not have been required to be filed with the  
9 Department of Licensing or Secretary of State."

10 The Department's position is that's not an issue,  
11 that the Department is not seeking to uphold Department of  
12 Licensing or Secretary of State laws, only the electrical  
13 laws. And the electrical laws require that the name be  
14 listed with the Department of Licensing and Secretary of  
15 State.

16 In this case, the testimony was undisputed that  
17 Mr. Eylander was not listed with the Department of  
18 Licensing or the Secretary of State.

19 BOARD MEMBER BRIGHT: Okay. I mean, I'm getting hung  
20 up here because that's exactly what the first three  
21 sentences say. That's the portion that you said -- part  
22 of the portion you said you were challenging.

23 So you're saying the last two sentences of that is  
24 the portion that you're challenging, but the rest of it  
25 you -- is that correct?

1 ASSISTANT ATTORNEY GENERAL KELLOGG: I wasn't  
2 prepared to go line by line with each of the conclusions  
3 of law and prepared an order with substitute conclusions  
4 of law just so it's not as confusing that sentence number  
5 5 is taken out but substitute another sentence in, I would  
6 like to offer the order at this point so Madam Chair and  
7 the members can review it to see if it says what the Board  
8 would like it to say.

9 BOARD MEMBER SIMMONS: Do we have a copy to view --

10 ASSISTANT ATTORNEY GENERAL REULAND: I have a copy  
11 here.

12 And Mr. Dale, you have a copy?

13 MR. DALE: I have one.

14 ASSISTANT ATTORNEY GENERAL REULAND: Did you want to  
15 pass it around, take a break while that's being reviewed?

16 CHAIRWOMAN ASHFORD: Yes, why don't we take a break.

17 ASSISTANT ATTORNEY GENERAL REULAND: My concern with  
18 taking a break is that you cannot discuss this case in any  
19 way before you make a decision. That's the only concern  
20 about taking a break is that that may create the  
21 appearance that you're discussing it before a decision is  
22 made, and we can't let that happen.

23 CHAIRWOMAN ASHFORD: We'll pause to review the  
24 material. We'll go off the record.

25 (Off the record.)

1 CHAIRWOMAN ASHFORD: We are back on the record.

2 And for the record, the Board has had the opportunity  
3 to review both proposed orders from both parties.

4 BOARD MEMBER BRIGHT: I have a procedural question.  
5 So if I get this straight, then the motion would be to  
6 adopt this as it is, and we could discuss and maybe amend  
7 the document? Or is it just as it stands with no  
8 amendments or changes?

9 CHAIRWOMAN ASHFORD: It is up to the maker of the  
10 motion.

11 BOARD MEMBER KOPCZYNSKI: As written.

12 ASSISTANT ATTORNEY GENERAL REULAND: I think the  
13 appropriate way to phrase that, if I may, Board members,  
14 is that the proposed order as drafted by the Department  
15 accurately reflects the findings and conclusions of this  
16 Board, that you're actually making this as a finding as  
17 supported by the record. That's what I think needs to be  
18 the proper procedural text, if, in fact, that's what you  
19 are doing.

20 BOARD MEMBER BRIGHT: Right. But my question is if  
21 that's how the proposal is made, do we have the  
22 opportunity to make amendments to change this document  
23 before we vote whether or not to --

24 ASSISTANT ATTORNEY GENERAL REULAND: Yes. You -- as  
25 the reviewing board in this case, you have the same

1 decision-making power as the administrative law judge.  
2 You have to give due deference to the law judge, but you  
3 can modify the proposed findings to be the findings of the  
4 Board.

5 BOARD MEMBER SIMMONS: Well, the concern that some of  
6 us have is there are a couple errors on the conclusions of  
7 law.

8 ASSISTANT ATTORNEY GENERAL KELLOGG: Regarding the  
9 conclusions of law 1 and 2?

10 BOARD MEMBER SIMMONS: Yes, it is.

11 ASSISTANT ATTORNEY GENERAL KELLOGG: And I believe  
12 Pam has proposed an alteration.

13 BOARD MEMBER SIMMONS: Okay.

14 BOARD MEMBER PHILLIPS: Let's second the motion, then  
15 we can open it for discussion.

16 BOARD MEMBER SIMMONS: Okay. Thank you.

17 MR. DALE: I don't know what the alteration is.

18 ASSISTANT ATTORNEY GENERAL REULAND: All we did,  
19 Mr. Dale, is I clarified that we -- we just said that  
20 conclusion of law 1 and 2 were correct, and that proposed  
21 conclusions of law 4 through 6 were not adopted, just  
22 interlineated.

23 MR. DALE: So I wish to point out that the motion  
24 before the Board doesn't say what your paper order says is  
25 what I'm pointing out.



1           BOARD MEMBER BRIGHT: Okay. So for the purposes of  
2 discussion, I have multiple issues with the order as  
3 written.

4           First of all, I'm inclined to agree with Mr. Simmons  
5 that I believe that the evidence indicates that  
6 Mr. Eylander was a member of the firm within the laws that  
7 exist now. And I think that there's some problems with  
8 that, but that's not something that we can consider at  
9 this point.

10           I do take issue with section 2.12 which -- wait.  
11 Yeah. In that -- it is a statement of fact that the  
12 Department subtract the 2,000 hours from Mr. Goodlett's  
13 training record. I would argue that whether the issue of  
14 the validity of the hours in light of the withdrawal from  
15 the training agent are appropriate, that the affidavit  
16 itself that's Exhibit 7 only had 1,385 hours. So in my  
17 mind that would be the maximum amount that the Department  
18 would be able to withhold for this period of time. I  
19 don't know how you can subtract additional hours that were  
20 never claimed.

21           So those are my concerns. I am inclined not to  
22 support this order as written.

23           CHAIRWOMAN ASHFORD: Tracy.

24           BOARD MEMBER PREZEAU: I am reading from 296-46B-985,  
25 Penalties for false statements or material

1 misrepresentations. There are four subsections of 985,  
2 and I don't know, Madam Chair, that you want me to read  
3 all of them.

4 BOARD MEMBER SIMMONS: Please don't.

5 BOARD MEMBER PREZEAU: Okay. But I will read, "The  
6 department may file a civil action" -- this is subsection  
7 4; excuse me. "The department may file a civil action  
8 under RCW 19.28.271 against both the trainee and the  
9 contractor, apprentice training director or other entity  
10 verifying the training hours and may subtract up to 2,000  
11 hours of employment from a trainee's total hours if the  
12 department determines a false statement or material  
13 misrepresentation has been made in an affidavit of  
14 experience."

15 The reason I read that is there is no -- it gives the  
16 Department in my understanding the ability to assess up to  
17 2,000 hours but is not required -- it doesn't stipulate,  
18 you know, up to 2,000 hours or the maximum number of hours  
19 that were submitted in the affidavit. It doesn't say  
20 that. It just says that they have the ability to subtract  
21 up to 2,000 hours.

22 They also have the ability to do a litany of other  
23 things in addition to that. And I would argue that the  
24 Department was actually quite restrained in the actions  
25 that it took because it could have filed a civil suit. It

1       could have revoked or suspended the certificate. It could  
2       have done a number of other things. And in my opinion,  
3       considering the fact that in looking at the record, it's  
4       quite clear that there was a lapse in Mr. Eylander's  
5       certification for the exact same period of time that this  
6       affidavit was submitted. And, you know, I think that the  
7       Department in my opinion was, again, restrained in the  
8       action that they took, considering they could have taken  
9       much more.

10           CHAIRWOMAN ASHFORD: Does that clarify?

11           BOARD MEMBER BRIGHT: Well, it -- yes and no. I  
12       mean, it is -- we're talking about a two-year period of  
13       time, and the Department invalidated 2,000 hours.

14           Now, in a two-year period of time, I mean, there's an  
15       opportunity to make 4,000 hours or maybe even more than  
16       that, depending on the economic climate and the work and  
17       all of that. So I think that the 2,000 hour limitation in  
18       my -- the way that I look at it is intended to say that we  
19       can't take away all of your hours, but we can take what is  
20       the equivalent of one year's worth of full-time  
21       employment.

22           And being that Mr. Goodlett didn't have -- didn't  
23       even meet that threshold as far as the hours that were  
24       submitted during the time period in question, that's why I  
25       take issue with that.

1 I don't understand how you can take away hours that  
2 he didn't. Earn in other words, in this time period,  
3 you've got 1,385 hours that he presumably earned. And to  
4 take away anything in excess of that is a penalty that I  
5 think doesn't apply because it's a time period --

6 CHAIRWOMAN ASHFORD: You're looking at hours during  
7 that period. But we do not know how many hours over a  
8 number of years. There's --

9 BOARD MEMBER BRIGHT: Exactly. Because the  
10 affidavit --

11 CHAIRWOMAN ASHFORD: So the penalty would still  
12 apply.

13 BOARD MEMBER PREZEAU: And the other piece is just  
14 because -- you know, let's say for the sake of argument  
15 that there was more than 2,000 hours. Well, actually no.  
16 Let me -- so there's less than 2,000 hours contained in  
17 this affidavit. Well, penalty, right? This is a penalty,  
18 right? for submitting false documents from the  
19 Department's perspective is not necessarily limited to  
20 taking away the hours that were included on this affidavit  
21 that's falsified, but that you can take -- strip  
22 additional hours away as a penalty for submitting a false  
23 document. It's a fine, if you will.

24 CHAIRWOMAN ASHFORD: We have a motion and a second on  
25 the table. Is there any further discussion? We have a

1 motion or a second on the table. Do the parties involved  
2 have something further, any further questions or comments?  
3 I'm not sure.

4 ASSISTANT ATTORNEY GENERAL REULAND: I'm not sure  
5 either. But I don't think so.

6 CHAIRWOMAN ASHFORD: Because once a motion becomes  
7 active --

8 BOARD MEMBER SHARP: I call for the vote.

9 MR. DALE: We so far have not had a chance to respond  
10 to the proposed order. I haven't told the Board what I  
11 think of the order. I'm asking for that opportunity. The  
12 State's order I'm talking about.

13 ASSISTANT ATTORNEY GENERAL REULAND: Well,  
14 procedurally you would have to stay the motion I think.  
15 And you -- it's up to you whether you want to accept any  
16 further comment in which -- then you've got to  
17 procedurally go back and allow for that.

18 CHAIRWOMAN ASHFORD: I'll take a show of hands by  
19 Board members. Do you want to allow Mr. Dale to make  
20 comment or -- yes?

21 (Board members Prezeau, Guillot, Howell, Bowman,  
22 Turner, and Ashford indicated by a raise of hands.)

23 Do you want to proceed with the motion? Okay.

24 This is new territory for us.

25 BOARD MEMBER SIMMONS: So we need to stay the motion.

1 Do we need to stay the motion?

2 CHAIRWOMAN ASHFORD: Would the maker of the motion do  
3 that?

4 ASSISTANT ATTORNEY GENERAL REULAND: Sure.

5 BOARD MEMBER KOPCZYNSKI: You want me to restate --

6 CHAIRWOMAN ASHFORD: Stay the motion.

7 BOARD MEMBER SIMMONS: Just stay the motion. Table  
8 the motion temporarily.

9 BOARD MEMBER KOPCZYNSKI: I will do that.

10

11 Motion Tabled/Stayed

12

13 MR. DALE: So I'm allowed to make some comments  
14 now?

15 BOARD MEMBER SIMMONS: Yes.

16 MR. DALE: Thank you.

17 The State's order, section 2.11, it's on page 3.

18 It's lines 16 through 20. You've had no discussion today  
19 about that really from the Board.

20 The State is here trying to slip in a new conclusion  
21 that Mr. Eylander's hours were deficient -- that his  
22 education hours were deficient. And that's a basis now to  
23 punish Mr. Goodlett as the license holder. There was no  
24 finding that that's occurred. There was no conclusion of  
25 law that that's occurred.

1           Now it's being slipped in here at the 11th hour  
2           without that issue having never been tried by the hearing  
3           judge. No record developed. It was not a basis for a  
4           citation. I'm suggesting to the Board that that sentence  
5           that starts with the words "In addition, Robert T.  
6           Goodlett" through the end of that sentence where it says,  
7           "license had lapsed," lines 16 through 19 on page 3 of the  
8           State's order, I'm suggesting that be stricken. The Board  
9           has not made that finding that I've heard today, nor did  
10          the ALJ.

11          BOARD MEMBER BELISLE: Madam Chair?

12          CHAIRWOMAN ASHFORD: Rod.

13          BOARD MEMBER BELISLE: If I could respond to that, on  
14          page 245 there is proof of evidence from the Department of  
15          Labor and Industries that he had a suspended license for  
16          five months in the documentation. Whether it was  
17          discussed today or not, it's in the finding of fact. I  
18          read it a week ago. I read it this morning. And I'm  
19          aware of it in making my decision.

20          MR. DALE: And we had a due-process objection I've  
21          already made about that on the record today.

22          BOARD MEMBER PREZEAU: Additionally, it was in the  
23          statements also included in the prehearing brief --  
24          Department's prehearing brief which is on page 158, 159  
25          through 165.



1 the State.

2 Again, I thank you for your patience.

3 ASSISTANT ATTORNEY GENERAL HAWK: Good morning, Madam  
4 Chair, members of the Board. For the record, my name's  
5 James M. Hawk, assistant attorney general representing the  
6 Department of Labor and Industries from our Seattle  
7 office.

8 I'm representing the Department today, and I  
9 represented the Department during the course of the  
10 hearing and prehearing matters as is evidenced in the  
11 Electrical Board appeal packet.

12 The Department in its appeal will petition for review  
13 asking that the decision of the administrative law judge  
14 be reversed based on the record.

15 As the letter that brings us here today indicates,  
16 the first tab of the packet, either party is permitted an  
17 opportunity to argue the merits of their position based on  
18 the evidence already in the record. The Department has no  
19 intent to offer new evidence today. The evidence in the  
20 record is substantial and sufficient the Department argues  
21 in order to affirm the citations issued by the electrical  
22 inspector and also to affirm the assessed penalties as the  
23 inspector testified to those. And the evidence and the  
24 information in the record shows the penalties were  
25 correctly assessed as second-offense penalties.

1           There is a fundamental legal argument that the  
2 Department has as to its burden of proof. The Department  
3 immediately acknowledging it does have the burden of proof  
4 now and also then at the time of hearing does not find in  
5 the law a need to prove actual knowledge by a contractor  
6 of every specific instance of conduct at a specific work  
7 site. So the Department is stating by argument here that  
8 the Department's proof burden did not include the  
9 inspector or other testimony showing that the employer, or  
10 contractor here, DJ Mechanical Inc., had actual knowledge  
11 of every particular activity.

12           Maybe the most important sentence in the judge's  
13 order, which is part of the materials that you all have,  
14 the beginning of finding of fact number 5, quote, "There  
15 was no permit on site for the electrical work performed by  
16 Mr. Wilson on behalf of the appellant."

17           The administrative law judge in this finding of fact  
18 that the Department did not appeal says the work was  
19 performed by Mr. Wilson on behalf of the appellant. I'm  
20 assuming with this discussion and argument that you are  
21 familiar with the findings of fact and also have read the  
22 entire transcript, but I can point to specific instances  
23 in the transcript for testimony if that's required.

24           And so because the work was on behalf of the  
25 appellant, DJ Mechanical, the conduct of that work is

1 attributed -- the way the law works RCW 19.28 and various  
2 other laws -- to the employer who sent him there.

3 Mr. Wilson was a new employee which is relevant and  
4 interesting in this record as to his conduct and also as  
5 to the appeal which the contractor brought.

6 The evidence shows that the employee performed  
7 electrical work, the installation of conduit, on behalf of  
8 the appellant. And how much Mr. Hall knew is not part of  
9 what the Department had to prove. And various people  
10 based on backgrounds and experience with the industry  
11 could derive different interpretations of what Mr. Hall  
12 did know from this subcontractor or other evidence in the  
13 record. Again, that's not part of the Department's proof  
14 burden.

15 So when the inspector testified as to why he was  
16 there and who he talked to, Mr. Wilson, also the  
17 contractor, the other work he performed there, and that he  
18 was not persuaded that the notice of appeal was sufficient  
19 to change his mind, the inspector stated quite simply in  
20 testimony on page 97 of the packet, "Patrick Wilson told  
21 me that he, as an employee of DJ Mechanical, had installed  
22 this electrical conduit between the two HVAC units on  
23 October 17th, therefore DJ Mechanical and Patrick Wilson  
24 were both in violation of our RCWs as far as licensing and  
25 certification and permitting."

1           The judge with this record took almost a year and  
2           came up with the wrong determination based on that  
3           information and the inspector's interpretation.

4           The Department's petition for review is here  
5           (indicating), and the Department particularly pointed out  
6           the judge's failure in writing the fine. Patrick Wilson  
7           made a mistake in running the conduit.

8           This is one of the findings that the Department ask  
9           the Board reverse.

10          The appellant, in testimony of the record at page  
11          114, Mr. Hall testified as to the worker who did the  
12          conduit install, inherently electrical equipment install,  
13          quote, "... he assumed instead of just making the phone  
14          call."

15          The worker, according to Mr. Hall, just assumed that  
16          was part of his work.

17          The subcontractor which is part of the appeal you've  
18          all had an opportunity to read, and there are specific  
19          inclusions, specific exclusions. There's no reference to  
20          the subject matter of the installation of conduit. But  
21          there's quite a lot of information in that subcontract  
22          that didn't reach the record in terms of testimony or  
23          interpretation, but as finders of fact you can look at.

24          The Department argues that either on behalf of DJ  
25          Mechanical Inc. that that install occurred or it was a

1 mistake. And the mistake interpretation is the wrong one  
2 based on this evidence.

3 If there was a mistake, it was on the part of DJ  
4 Mechanical. Mr. Hall sending a new employee out there  
5 without supervision according to Mr. Hall's own testimony  
6 without introducing that employee to the subcontract,  
7 without talking about the particulars of the job, without  
8 supervision. Mr. Wilson was out there doing the work  
9 that's attributable to the contractor here, a contractor  
10 who had according to this record and on appeal of  
11 conclusion of law, violated the same violations before a  
12 couple of years earlier. And that's why these are  
13 properly denominated as second offense penalties with the  
14 higher penalty according to the civil penalty schedule.

15 So that was an earlier time.

16 Testimony by Mr. Hall was the economy was booming. I  
17 guess that's part of his excuse for why Mr. Wilson, the  
18 worker present, didn't have appropriate supervision.

19 So that is the basic argument of the Department.

20 And the Department today with the final order  
21 proposes changing findings of fact to include those  
22 unappealed findings of fact being part of the findings.  
23 And then basically finding that in February of 2008 DJ  
24 Mechanical entered into a subcontract whereby it agreed to  
25 perform work at the site. The subcontract contains a

1 scope of work section. And the subcontract contains  
2 specific inclusions and specific exclusions. The  
3 subcontract scope of work included ductless split system  
4 air conditioning. Installation of the subject conduit for  
5 a thermostat cable is not specifically addressed in the  
6 subcontract.

7 DJ Mechanical's employee, Patrick Wilson, was working  
8 unsupervised at the time he installed the conduit. Dan  
9 Hall, in parenthesis, DJ Mechanical, failed to adequately  
10 supervise his new employee. Dan Hall failed to advise him  
11 that the conduit install was part -- was not part of the  
12 work DJ Mechanical had contracted to perform.

13 And then the conclusions of law the Department  
14 proposed based on its arguments and the record is that the  
15 Department approve the RCW as alleged, specifically having  
16 to do with failing to be a electrical contractor at the  
17 time of the install, the violation for failure to obtain a  
18 electrical work permit, and then the violation for the  
19 contractor not ensuring that Mr. Wilson had the right  
20 relationship with the Department having to do with  
21 certificate of competency or training certificate to  
22 perform any electrical installation work.

23 Based on the law and prior experience, the Department  
24 for the Board -- I believe it is well understood in the  
25 definition of electrical equipment that conduit is

1 electrical equipment, and therefore, the installation of  
2 conduit imposes all of these various laws whether or not  
3 the employer is an electrical contractor or not.

4 So that is the argument. I can clarify points of the  
5 record if members of the Board need that.

6 Mr. Hall is here. He has seen for the first time the  
7 Department's proposed final order. And I've also provided  
8 that to counsel for the Board.

9 CHAIRWOMAN ASHFORD: Mr. Hall.

10 MR. HALL: First off, I did not recklessly send  
11 Patrick out.

12 CHAIRWOMAN ASHFORD: Excuse me, for the record, I  
13 would ask you to state your name.

14 MR. HALL: Dan Hall, DJ Mechanical.

15 We went over the job in the shop with the blueprints,  
16 loaded the material up. So there was nothing as far as  
17 sending him out recklessly unsupervised. I mean, he's a  
18 journeyman sheetmetal worker. He was instructed to go out  
19 and install a split system. There was fire dampers that  
20 also were part of the project, exhaust fans. We never got  
21 to talk about running controls.

22 Patrick in the past --

23 BOARD MEMBER SIMMONS: Can you just speak up and  
24 clearly enunciate. We want to make sure he (the court  
25 reporter) is getting your testimony accurately.

1 MR. HALL: Okay.

2 Patrick -- uhm -- I'm sorry.

3 BOARD MEMBER PHILLIPS: You were talking about  
4 whether controls were involved.

5 MR. HALL: Okay. I'm sorry.

6 Anyway, so we went over the drawings and everything,  
7 and Patrick went out to do the job. For Patrick to run  
8 the controls does nothing for me. I mean, I clearly  
9 excluded the control work on my contract. So it would  
10 make no sense for me to have my guy run controls to do the  
11 control work because obviously I don't have that in my bid  
12 to do that work. And it's clearly in this contract states  
13 out as far as controls being excluded which would mean the  
14 wiring between the outdoor unit and the indoor unit,  
15 running to thermostat, what have you.

16 All I can say is Patrick's previous job, the company  
17 he worked for, they did complete install, all residential  
18 units. And at the time he did have a electrical card that  
19 was current at the time. So he just assumed he was  
20 running the conduits, which I agree he should have called  
21 me. We should have brought the question up, and it just  
22 didn't happen.

23 And my first violation which is several years ago had  
24 nothing to do with running conduit. It was moving a low  
25 voltage thermostat. But it's a violation; I agree. We

1 did do it.

2 CHAIRWOMAN ASHFORD: Thank you, again, for your  
3 patience in coming here today.

4 When I read this packet, I felt your pain. Because  
5 I'm an employer. Jim's an employer. We have another  
6 employer down here. And we're where the buck stops  
7 unfortunately.

8 MR. HALL: I take full possibility for what Patrick  
9 did. I mean, it's the joy of being a contractor.

10 We were working at Bellevue Community College, and  
11 Monday they broke a sprinkler line and it flooded the  
12 basement garage. I mean, I do take responsibility for the  
13 company. It's my company. I just -- I just feel that the  
14 fines that are brought forth I think is a little extreme I  
15 guess.

16 CHAIRWOMAN ASHFORD: So if I understand, your issue  
17 is not directly with the citation; it's with the monetary  
18 fines associated?

19 MR. HALL: Correct. And I guess I'm looking as far  
20 as for my company standpoint, I never had the intentions  
21 of running conduit, doing control work. And yet Patrick  
22 is my responsibility because he's my employee. But at the  
23 same time, you know, I don't have 100 percent control over  
24 these guys either.

25 CHAIRWOMAN ASHFORD: It would be nice if we did.

1 MR. HALL: Yeah.

2 CHAIRWOMAN ASHFORD: Cathleen.

3 BOARD MEMBER BRIGHT: On page 114 of our packets,  
4 during the testimony, I believe this was Mr. Hall's. It's  
5 discussing his -- Patrick's electrical card, and it says  
6 on line 7, "It just had expired. And that was why he went  
7 forward and went and purchased the conduit and started  
8 doing the install."

9 I don't work in the construction field. So I wanted  
10 to ask you: If Patrick is dispatched out to a job and --  
11 I mean, is it common for him to purchase the conduit  
12 himself? Or how does he pay for that?

13 MR. HALL: No. I believe the conduit, he actually  
14 just took it from an electrician on the job site. We  
15 didn't actually purchase it. There was only -- I think  
16 there was like 25 feet of conduit.

17 BOARD MEMBER BRIGHT: So it's already there? The  
18 supplies are already there?

19 MR. HALL: Correct.

20 Which is kind of -- the electrician that gave him the  
21 conduit is also the guy that called the inspector on.

22 ASSISTANT ATTORNEY GENERAL HAWK: The Department  
23 would object. This is new information that's not in the  
24 record. That's all new stuff.

25 BOARD MEMBER BRIGHT: Well, that was touched on in

1 the testimony. But my question was about purchasing the  
2 conduit, I didn't understand that. So I was asking for  
3 clarification.

4 MR. HALL: There was never any conduit purchased. It  
5 was just -- it was at the job site.

6 ASSISTANT ATTORNEY GENERAL HAWK: That's new  
7 information in the record. The Department would argue the  
8 electrical inspectors didn't ask the question who  
9 purchased the conduit and didn't provide testimony on that  
10 subject matter.

11 BOARD MEMBER BELISLE: I have a question. On page  
12 240, the citations written, there are three citations  
13 written to DJ Mechanical and then the fourth one written  
14 to Patrick Wilson for doing electrical without a valid  
15 competency certificate. I don't know if it's relevant or  
16 not, but I'm seeing that the one regarding Patrick  
17 Wilson's not on our finding of fact here. So I have to  
18 assume that was carried forward and applied.

19 CHAIRWOMAN ASHFORD: He did not appeal.

20 BOARD MEMBER BELISLE: He did not appeal. That was  
21 my question. Thank you.

22 BOARD MEMBER SIMMONS: Mr. Hall, I also, as Gloria  
23 stated, I am an electrical contractor. I have employees.  
24 I feel your pain.

25 But reading the testimony, I am also concerned that

1 you would send an employee out on a project without  
2 clearly going out there with him, laying out the job.  
3 Yeah, so you looked at some plans in the office and said  
4 we're going to do A, B, C. This being a new employee for  
5 you and coming from the non-union side, which you said in  
6 here, you know, from Poulsbo, he hadn't worked over here  
7 before, et cetera, et cetera, I question very, very  
8 strongly the management of that employee. And to say that  
9 you are not -- you shouldn't be fined for the actions of  
10 an employee when you didn't take a reasonable level of  
11 responsibility in laying that employee out on the job,  
12 that's where I have a problem.

13 I do want to discuss one issue here, whether you want  
14 to reply to that or --

15 MR. HALL: The project itself, I mean, it's a very  
16 simple job. I mean, you look at the drawings, you know,  
17 the splits just before the elevator machine room. So it  
18 wasn't like something was really confusing. The unit sits  
19 right there inside the elevator machine room, and the  
20 outdoor unit sat on the outside. So it wasn't like there  
21 was, you know, a lot of information that was needed to put  
22 the system in. It was a very simple job.

23 BOARD MEMBER SIMMONS: All right.

24 I do have one question for Mr. Hawk. One of the  
25 citations is for not purchasing a permit for the work.

1 And my question is: Could Mr. Hall have walked in to the  
2 city and purchased a permit for the work if he wanted to?

3 ASSISTANT ATTORNEY GENERAL HAWK: There may be  
4 testimony by the inspector on that very point.

5 BOARD MEMBER SIMMONS: There was.

6 ASSISTANT ATTORNEY GENERAL HAWK: And the question  
7 was: If he walked in there, could he buy the permit?

8 And the way the system works, RCW 19.28, and this  
9 allowance that cities have their own electrical work  
10 permits issuance and jurisdiction, as counsel for the  
11 Department understands it, he should have been declined by  
12 the city. If he walked in without having an electrical  
13 contractor license and made application for an electrical  
14 work permit to do this conduit install or anything else.

15 So that's my understanding how the law works. And I  
16 believe the inspector's testimony was consistent with  
17 that.

18 BOARD MEMBER SIMMONS: I believe it was also. Thank  
19 you for clarifying that.

20 BOARD MEMBER GUILLOT: I'm just trying to get a grip.  
21 Are you objecting to the citations or are you objecting to  
22 the amount of the fines? I thought I heard you say that  
23 that was your concern that you felt that the fines were  
24 unnecessary, at least the elevation in the fines.

25 MR. HALL: Yeah, part of it, yeah.

1 BOARD MEMBER GIULLOT: So it's the fines that you're  
2 asking us to take a look at?

3 MR. HALL: Correct.

4 BOARD MEMBER BELISLE: I'll throw my two bits in. I  
5 worked in shops where we did a lot of service work, and  
6 you do exactly what he said. You look at a blueprint.  
7 You ask if there are any questions. Here's your work  
8 order. There's the ductwork. Go do the job.

9 I would be probably in trouble if I went out as an  
10 electrician and did some plumbing work on the side because  
11 I thought I should do that. And I certainly don't think  
12 an electrical contractor would want to be responsible for  
13 an electrician who decided to replumb a water heater while  
14 he was out there changing a breaker.

15 I have compassion for the employer here. I think  
16 there's a lot of evidence here to say this was clearly  
17 excluded from the scope of work. It was not intended that  
18 this guy do this work. The fact that the employee that  
19 did the work did not contest the penalty because he  
20 clearly had an expired certificate, he knew what he was  
21 responsible for.

22 CHAIRWOMAN ASHFORD: Well, Jim and I would probably  
23 eventually retire if we hadn't paid for employee mistakes  
24 over the years.

25 BOARD MEMBER TURNER: I think I understand why the

1 citations were written. I guess the struggle I have, the  
2 citation 782 about not purchasing a work permit, in a way  
3 it almost seems like it's double jeopardy, being written a  
4 citation for something you did not intend to do. And I  
5 can understand citations for doing work that you shouldn't  
6 have done, but then to also be written a citation for  
7 doing something that you never intended your company to  
8 do. So it seems a little bit like double jeopardy.

9 CHAIRWOMAN ASHFORD: Unfortunately, if this  
10 Mr. Wilson did have a trainee card, he was fully aware  
11 that to do any electrical work, a permit will be required.

12 BOARD MEMBER TURNER: But if he wasn't the one  
13 purchasing the permit, he wouldn't have ...

14 BOARD MEMBER PREZEAU: I just want to -- understand,  
15 I have some sympathy for the employer as well, but I just  
16 wanted to point out that 19.28.101 which deals with that  
17 citation is not just about buying a permit that this  
18 entity couldn't buy. Right? I mean, because he is not an  
19 electrical contractor. It is about getting the work  
20 inspected. That's -- I mean, there's -- it's not  
21 exclusive to hey, he didn't buy a permit. Well, he can't  
22 buy a permit because he's not an electrical contractor,  
23 therefore, he shouldn't be cited? It has to do with  
24 preserving the inspection. Technically that's the heart  
25 and soul of 19.28 is inspecting electrical work. I think

1 that's where that citation comes from. It's not lack of  
2 buying a permit. It's lack of getting the work inspected.

3 CHAIRWOMAN ASHFORD: David.

4 BOARD MEMBER BOWMAN: Do you ever check trainee cards  
5 -- invalid?

6 MR. HALL: No. The work I do, I do all the plan spec  
7 work. I do a lot of schools. So anything that has to do  
8 with controls on our work is usually done by Siemens, ADS  
9 and stuff. So none of my guys actually have cards. We  
10 don't -- it's just something common on my bid document  
11 that we always just excluded. It's just easier to exclude  
12 it than to have the cost of trying to keep a guy with a  
13 card because, you know, you're slow, you lay a guy off --  
14 you know. You go through so many guys. It's really  
15 tough.

16 CHAIRWOMAN ASHFORD: So you do not have a specialty  
17 electrical contractor's license to do the controls?

18 MR. HALL: No.

19 BOARD MEMBER BELISLE: Well, you bring up that point.  
20 And that was -- what I tried to say was one of the  
21 citations was for employing an uncertified employee for  
22 the purpose of installing electrical equipment.

23 I don't think Patrick was ever employed with the  
24 purpose of installing electrical equipment. He's not an  
25 electrical contractor. They didn't take out a permit.

1 They didn't have the ability to take out a permit. I  
2 mean, sure, the inspector showed up. Yes, the work was  
3 done. That's not in debate here. But I think -- again,  
4 applying liability to somebody for something that was  
5 never intended nor wanted and was clearly excluded from  
6 contract documents, this is a stretch.

7 MR. HALL: We are a signatory contractor, Local 66.  
8 So we assume our journeymen -- (inaudible) -- qualified  
9 workers, which they are.

10 CHAIRWOMAN ASHFORD: Cathleen.

11 BOARD MEMBER BRIGHT: Well, I think that there's no  
12 dispute about whether or not this employee performed the  
13 work. And I think there's no dispute that DJ Mechanical  
14 as employer was remiss in not being clear about what  
15 happens. I think that the reason that -- as he stated  
16 earlier, the reason that he's here is because the fines  
17 are high. And the reason the fines are high is because  
18 there was previous citations for the exact same RCW. It  
19 may have been different circumstances, but the same  
20 statutes have been violated. So that's why the Department  
21 imposed the higher fine. We need to consider, you know,  
22 if we find that that's appropriate.

23 CHAIRWOMAN ASHFORD: And we'll have to refer to Pam  
24 as we had the discussion earlier.

25 ASSISTANT ATTORNEY GENERAL REULAND: That would be --

1 and I believe Ms. Bright has summarized that correctly is  
2 that in order to make any modification to the fine imposed  
3 by the Department, and you need to give due deference to  
4 the Department in making this consideration because they  
5 are the authority charged with outlining and determining  
6 the appropriate penalties, but in order to make any  
7 modification, you would have to find that the basis for  
8 the seriousness or the increase is incorrect, that it's  
9 not supported.

10 Does that make sense?

11 BOARD MEMBER BRIGHT: It does. But there's nothing  
12 in our -- there's nothing giving us any information about  
13 the previous citation. I don't know -- I know what  
14 statutes were violated, but that's about it.

15 MS. FORSBERG: Can I clarify that? I happen to be  
16 the one that also processed the citations. They have to  
17 commit the same offense within the three-year phase for us  
18 to quote it as a second. So it was within the three-year  
19 mark.

20 BOARD MEMBER NORD: Was the employee specifically  
21 told that there was no control or electrical conduit work  
22 to be done as part of this?

23 MR. HALL: It was never part of the conversation.  
24 The conversation was to run the refer lines, set the  
25 equipment. It was never brought in --

1           BOARD MEMBER NORD: Did you tell your employee  
2 exactly what the scope of work was to be done?

3           MR. HALL: I did not tell him not to run the conduit.  
4 That was never brought up because that was never the scope  
5 of work.

6           ASSISTANT ATTORNEY GENERAL REULAND: Can I go back  
7 and -- if I could interrupt and also clarify is that the  
8 citation was issued by the Department. And then Mr. Hall  
9 would have had the burden -- or excuse me -- it would have  
10 been the Department's burden at the hearing. But your  
11 review is limited to what was challenged at the time of  
12 the hearing and the evidence that was presented at that  
13 point in time. And I think that's what you really need to  
14 focus on in terms of what were the issues and what the  
15 evidence is to support those issues.

16          BOARD MEMBER PHILLIPS: Madam Chair?

17          CHAIRWOMAN ASHFORD: Yes, Tom.

18          BOARD MEMBER PHILLIPS: To Rod's point, I think this  
19 is different from a sheetrocker running a cord and hooking  
20 up a heater. The mechanical industry has historically run  
21 control wires, and that's why there's been a lot of  
22 changes in the RCW's and the WAC's recently to clean that  
23 up and say when they can and when they can't.

24                 And to use the excuse -- and I have no reason to  
25 doubt what you're saying -- but to say that, Well, I

1 didn't tell him or he didn't know, I mean, that's like you  
2 didn't know the speed limit when you went over the speed  
3 limit. The fact is somebody did electrical work. And I  
4 would argue that it was for profit because there was a  
5 contract there. Whether or not the contract specifically  
6 mentioned control wires, I don't think that's so much the  
7 point. Somebody could easily say, you know, a turnkey  
8 operation or something or just, you know, be an  
9 understanding that maybe we're doing it. So I think it  
10 would be a slippery slope to start using that as a way to  
11 get around the contracting laws saying that I didn't know  
12 or I didn't know.

13 CHAIRWOMAN ASHFORD: Any further comments or  
14 questions?

15 BOARD MEMBER BRIGHT: I just had a quick question  
16 about the conclusions of law on page 9. It says 9A. The  
17 numbering is abnormal. It goes 1, 2, 1, 2. So I'm  
18 assuming that the Department proposal is challenging the  
19 conclusions, the second number 1 and 2, not the first  
20 number 1 and 2. Right?

21 ASSISTANT ATTORNEY GENERAL HAWK: The Department's  
22 proposal in the final order does recognize this error and  
23 substitutes the conclusions of law as the Board might  
24 entertain. So that the first one finds the Board has  
25 jurisdiction. The second one, the Department had the

1     burden of proof.  Also, an added sentence, "The Department  
2     was not required to prove that DJ Mechanical had actual  
3     knowledge that Patrick Wilson would be installing the  
4     conduit at DJ Mechanical's job site."  And the next three  
5     having to do with DJ Mechanical violated the RCW and  
6     Patrick Wilson installed conduit, electrical equipment, et  
7     cetera, and then the finding that the second offense  
8     penalties were appropriate under the civil penalty  
9     schedule.

10           And on that subject matter, that's part of the law,  
11     the civil penalties schedule because these are second  
12     offense, and there's no evidence to the contrary.  The  
13     penalties are for that 2008 time appropriately documented  
14     here and assessed, and that's what the Department is  
15     requesting be affirmed.

16           BOARD MEMBER BRIGHT:  My issue was on page 6 which is  
17     your appeal document, it just refers to conclusions of law  
18     numbers 1, 2, 4, 6 and 7.  It doesn't make the distinction  
19     that there's two number 1's and two number 2's.

20           ASSISTANT ATTORNEY GENERAL HAWK:  That's true.  The  
21     ALJ made a mistake there, and the ALJ made a mistake in  
22     her ultimate findings.

23           BOARD MEMBER BRIGHT:  But it's fixed on your new  
24     proposal.

25           ASSISTANT ATTORNEY GENERAL HAWK:  The Department's

1 proposal that we'll have the Electrical Board Chair sign  
2 today fixes that.

3 BOARD MEMBER BRIGHT: Right. Thank you.

4 CHAIRWOMAN ASHFORD: Any further questions? Are we  
5 ready for a motion?

6 BOARD MEMBER BRIGHT: I'd like to request that we see  
7 the Department's proposal.

8 ASSISTANT ATTORNEY GENERAL HAWK: I have provided two  
9 copies to counsel for the Board. There's a third copy I  
10 think being handed over. I've recited the important  
11 differences from the initial order as much as the initial  
12 order is adopted here at least having to do with findings  
13 of fact.

14 CHAIRWOMAN ASHFORD: We will take a silent pause to  
15 review the proposed orders.

16 ASSISTANT ATTORNEY GENERAL HAWK: And also just for  
17 the record, the Department can capture everything today  
18 and not have this as a matter for the next meeting. The  
19 way it is prepared if this is the order to be signed does  
20 state "Copy received when order entered at January 27  
21 meeting."

22 And the Department would request that the Chair ask  
23 Mr. Hall to sign this document in the event it's entered.

24 (Pause in proceedings. Off  
the record.)

25 ///

1 CHAIRWOMAN ASHFORD: Back on the record.

2 And it will be noted that the Board members had an  
3 opportunity to review the Department's proposed order.

4 BOARD MEMBER SIMMONS: There's been an issue with me,  
5 and it is one that citing somebody for not getting a  
6 permit when legally they can't walk in and get a permit,  
7 I'm not sure how that works. I've got a problem with that  
8 personally. Because if legally he cannot walk into L & I  
9 and buy a permit or into the city of Mount Vernon or  
10 wherever he's working and buy an electrical permit, and  
11 we're going to cite him because he didn't, I'm not sure  
12 how we can justify that. I've got a problem with that.

13

14 Motion

15

16 BOARD MEMBER BELISLE: I would make a motion that we  
17 adopt the ALJ's proposed decision.

18 BOARD MEMBER NORD: I'll second it.

19 CHAIRWOMAN ASHFORD: Any discussion?

20 BOARD MEMBER PREZEAU: I just wanted to point out I  
21 know in the packet the ALJ sort of bristles with the fact  
22 that there's no case law that sort of supports I think  
23 what Jim's sort of -- his concept of holding the  
24 contractor liable.

25 But what I wanted to share with the Board is I've sat

1 on this body since 2005, and it has always been Department  
2 policy if my memory serves me correctly that when  
3 infractions like this and similar to this occur that they  
4 initiate three citations. And that's always -- the  
5 Department has been consistent in that. And this Board  
6 has been consistent in that. And we've had some  
7 difficulty with that.

8 And some of you guys remember some of the appeals we  
9 have where one of the employees put a piece of conduit in  
10 this ditch and -- you know, we've had this conversation  
11 before. And I appreciate the concerns, you know, the cost  
12 to the contractor, in this case, Mr. Hall, and I too find  
13 them to be especially in cases like this, right? When you  
14 think that we're dealing with generally honest folks,  
15 unfortunately it's not about intent, right? It's about  
16 the statute, and it's about what procedurally has happened  
17 historically and what this body has upheld historically.

18 If this body decides they want to change that pattern  
19 of behavior, that history or that Department policy, then  
20 that's -- I'm not objecting to that. I'm just offering as  
21 a historical perspective that the Department's position  
22 has always been as far as my institutional history is that  
23 this is the consistently applied expectation when issues  
24 -- when violations of this same situation come to  
25 fruition.

1           BOARD MEMBER SIMMONS: And I agree with you because  
2 she's talking to my situation.

3           But I want you to think about this: The next step  
4 above us is superior court. If I come to you -- you're  
5 the judge, and I come to you and say, Here's my citations  
6 that I got, and I stand behind these, one of them is for  
7 him not buying a permit, Your Honor, and the judge says,  
8 "Well, I see in the testimony here prior that he couldn't  
9 buy a permit. How do you justify that?"

10           I'm just asking the question. Because we have a duty  
11 here to do the right thing.

12           BOARD MEMBER PREZEAU: Oh, I completely agree. I  
13 completely agree. Which is why I offered before it's not  
14 solely that statute; it's solely about purchasing of the  
15 permit and recognizing that Mr. Hall, you know, and DJ  
16 Mechanical could not. But it's about having the work  
17 being inspected. That's also part of the statute. And we  
18 have a tendency in that -- if you look at 19.28.101, it's  
19 focused on failure to buy a permit. It's not the only  
20 portion of that statute.

21           The other piece is really the driving force is that  
22 the work was not inspected. It's not -- which is what  
23 happens once a permit is purchased, right? And that's the  
24 way it's supposed to work. But it's that second piece of  
25 having to -- the work was never inspected.

1           BOARD MEMBER BOWMAN: The difference as I see it is  
2 all the findings before -- and I've been on this Board  
3 since 2000 -- it was all within that company's scope of  
4 work. Like, for instance, if somebody with a backhoe  
5 threw some conduit in, they could throw water pipe, any  
6 kind of pipe in except what -- (inaudible) -- under their  
7 scope of work. An electrical contractor's going to be  
8 held accountable for their workers doing something they  
9 weren't supposed to, it was within their scope of work.  
10 This was not within his scope of work.

11           He can't -- to Jim's point, he couldn't even buy the  
12 a permit. So how can he call for an inspection if he  
13 can't even buy the permit? You know, I mean, they're not  
14 going to come out.

15           CHAIRWOMAN ASHFORD: Jim has an issue with that.

16           I have issue with the citation 00783 with regard to  
17 employing an uncertified person for the purpose of  
18 installing electrical equipment. He did not hire him to  
19 install electrical equipment. So that's my issue.

20           BOARD MEMBER NEWMAN: I don't know. I mean, you guys  
21 are professional contractors. You're out there in the  
22 commercial building trades every day, and you had to know  
23 that you got to get that thermostat wire out there  
24 somehow. And a split system means inside and outside. So  
25 physical protection of that cable is usually going to be

1 in conduit, is it not?

2 MR. HALL: It is not.

3 BOARD MEMBER NEWMAN: But did you have no  
4 responsibility for the thermostat at all?

5 MR. HALL: Correct. We totally excluded all  
6 controls.

7 BOARD MEMBER NEWMAN: Totally excluded any of that?

8 MR. HALL: Exactly. That's in the subcontract.

9 BOARD MEMBER NEWMAN: So why not just the guy putting  
10 the piece of pipe in, but then he's going to -- he's  
11 putting the piece of pipe in; he's going to run the  
12 thermostat wire also, right?

13 MR. HALL: Correct. The electrician would or the  
14 control guy. Not my guy.

15 BOARD MEMBER NEWMAN: See, it's not jibing why the  
16 guy would -- why he would want to do that. Why would he  
17 spend the time to put the pipe in if he's not going to --  
18 if it wasn't his deal to put the wire in.

19 MR. HALL: What Patrick said was his other job that  
20 he came from, which was residential, is they did the full  
21 install. So Patrick just assumed that he was running the  
22 conduit. It was never discussed when I told him what we  
23 were doing on the job, where the unit sat, the refer  
24 piping, there was never nothing ever talked about the  
25 controls.

1 ASSISTANT ATTORNEY GENERAL HAWK: I would object at  
2 this point, again, for the Department as that sounds like  
3 testimony. It sounds a whole lot like hearsay as well.  
4 And we're confined to the record.

5 There was an important finding that Mr. Wilson  
6 employed -- was an employee at the time of the hearing.  
7 The Department may be entitled to some appropriate  
8 inferences on why he didn't show up to corroborate DJ  
9 Mechanical's version of events.

10 CHAIRWOMAN ASHFORD: We have a motion and a second on  
11 the floor.

12 Cathleen.

13 BOARD MEMBER BRIGHT: I would like -- so I'm going to  
14 speak in opposition to the motion. I understand that the  
15 core issue here is that the employer failed to adequately  
16 supervise and direct a new employee. And that really is  
17 the crux of the matter. The employee went out and did  
18 this stuff that wasn't specifically directed by the  
19 employer to do, but at the same time he also wasn't  
20 specifically instructed not to do it. And we confirmed  
21 that. The testimony reflects that. And I would be  
22 inclined to probably be a little bit more lenient if it  
23 wasn't for the fact that this is a second offense. If it  
24 was a first offense -- you know, maybe you can claim  
25 ignorance or that kind of thing. But the fact that it's a

1 second offense of the same statute, whether or not the  
2 details are identical, is in my mind irrelevant. It's the  
3 exact same statute that was violated in the past. It's a  
4 circumstance similar enough that the Department has seen  
5 fit to impose citations of violation of the exact same  
6 statute. So that's why I speak in opposition to the  
7 motion that's on the floor.

8 CHAIRWOMAN ASHFORD: Any further comments? Are we  
9 ready for the question?

10 BOARD MEMBER PREZEAU: Are we voting on Rod's motion?  
11 Is that what we're voting on?

12 BOARD MEMBER PHILLIPS: I forgot what --

13 BOARD MEMBER SIMMONS: His motion as presented.

14 CHAIRWOMAN ASHFORD: All those in favor?

15 (Board Members Belisle, Turner, Howell and Guillot  
16 raised hands.)

17 CHAIRWOMAN ASHFORD: Opposed?

18 (Board Members Sharp, Newman, Prezeau, Bowman, Nord,  
19 Simmons, Kopczynski, Bright raised hands.)

20 CHAIRWOMAN ASHFORD: Motion failed.

21

22 Motion Failed

23

24 Motion

25 ///

1 BOARD MEMBER SIMMONS: I would like to propose a  
2 motion. And I think that -- before I propose it, I think  
3 that -- you know, there's been a lot of discussion. I  
4 think there clearly was no malice intent even though he  
5 has had a previous incident, I think clearly the employee  
6 took this on himself, and I have issue with the two  
7 citations, primarily the permit one. But I agree that he  
8 did not employ him for the intent of installing electrical  
9 equipment which is what the law says. I would propose a  
10 motion to uphold citation EJONV00781 for installing  
11 electrical equipment without a valid electrical  
12 contractor's license and I would waive the other two.  
13 That would be my ...

14 BOARD MEMBER BELISLE: Second that.

15 BOARD MEMBER NEWMAN: Is that the second-offense  
16 level?

17 BOARD MEMBER SIMMONS: Yes, as written.

18 CHAIRWOMAN ASHFORD: We have a motion and a second to  
19 uphold citation 00781. And --

20 BOARD MEMBER PREZEAU: May I speak to the motion?

21 CHAIRWOMAN ASHFORD: Please.

22 BOARD MEMBER PREZEAU: I understand the reservation.  
23 But with all due respect, I'm going to oppose the motion  
24 only -- and my opposition stems from a concern that if a  
25 similar violation would occur in the future, not

1 necessarily by anybody employed by DJ Mechanical, that  
2 nearly all -- we're potentially setting a precedent that  
3 all the employer has to do is sufficiently separate  
4 themselves from the act that that employee made and then  
5 no longer is liable for the act that that employee took.  
6 And I think that is a very dangerous precedent is all.  
7 And I for one refuse to set that precedent. So I will be  
8 voting no on the motion.

9 BOARD MEMBER SIMMONS: I'll speak to that because I  
10 disagree with you. Because we are upholding the one  
11 because he's doing work without a valid contractor's  
12 permit. I think we're sending a clear message that this  
13 is a violation, and we're not going to stand for it. I  
14 think it does clearly state that.

15 And the issues I have with he can't buy a permit  
16 legally, how can you cite him for buying a permit?

17 And secondly, intentionally -- and I think that the  
18 law says clearly that he's -- with the intent of employing  
19 a uncertified worker for the purpose of installing  
20 electric equipment, I have to agree with the Chair on that  
21 one that that was not his intent.

22 I do think that we need to send him a message. This  
23 is a second violation. He needs to pay attention to what  
24 he's doing. And by upholding the one citation, I think we  
25 clearly are stating that we're not going to stand for

1 this. My opinion.

2 CHAIRWOMAN ASHFORD: Any further discussion?

3 BOARD MEMBER TURNER: I just have a question just to  
4 clarify. We would be agreeing with the administrative law  
5 judge for 782 and 783?

6 BOARD MEMBER SIMMONS: Correct.

7 CHAIRWOMAN ASHFORD: Correct.

8 Geoff.

9 BOARD MEMBER NEWMAN: Well, I just -- I basically  
10 didn't have a problem that -- I mean, he knows he messed  
11 up. He knows he made a mistake.

12 CHAIRWOMAN ASHFORD: He does.

13 BOARD MEMBER NEWMAN: He has a problem with the  
14 fines. Would this be more appropriate for him to go have  
15 a discussion with the Chief and work out some type of  
16 settlement before we go down this road of changing our  
17 precedence, how we deal with these things on the big  
18 picture?

19 BOARD MEMBER SIMMONS: He had the opportunity to do  
20 that.

21 BOARD MEMBER NEWMAN: It's already been approached?

22 BOARD MEMBER BRIGHT: Well, the Department has --  
23 that's their position that they think that these fines  
24 should be imposed. I mean --

25 CHAIRWOMAN ASHFORD: But what we have -- this is what

1 we have to rule on today. This is the decision that we  
2 have to make. So we have --

3 ASSISTANT ATTORNEY GENERAL REULAND: That's correct.

4 CHAIRWOMAN ASHFORD: James, go ahead.

5 ASSISTANT ATTORNEY GENERAL HAWK: Excuse me, Madam  
6 Chair.

7 Perhaps it calls for a ruling by the attorney and  
8 counsel representing the Board. But if the parties were  
9 interested in settlement discussion, that can occur  
10 anytime before entering an order.

11 CHAIRWOMAN ASHFORD: We will go back. We have a  
12 motion and a second on the table. Any further discussion?

13 BOARD MEMBER BRIGHT: Okay, so now I'm confused. I'm  
14 sorry. So what would we do procedurally? Table the  
15 motion until -- so you guys can go and talk? Or how would  
16 that work?

17 ASSISTANT ATTORNEY GENERAL REULAND: I don't think  
18 there's any motion before the Board to ask for a recess by  
19 either the Department or the appellant for any further  
20 discussion, and therefore, there's -- there's been no  
21 request by the Department or the appellant to do that, and  
22 therefore, the Department needs -- or the Board should  
23 proceed with its role and responsibilities.

24 SECRETARY FULLER: Madam Chair, we haven't been  
25 approached for settlement. And as I've stated before at

1 Board meetings, once we get to this stage, I'm not  
2 inclined to do settlements. We've spent a lot of time and  
3 effort and money on this, and we don't do settlements at  
4 this point in time unless there's really a major, major  
5 extenuating circumstance. I don't see that here.

6 CHAIRWOMAN ASHFORD: Call for the question. All  
7 those in favor?

8 THE BOARD: Aye (numerous).

9 CHAIRWOMAN ASHFORD: Opposed?

10 THE BOARD: Nay (numerous).

11 THE REPORTER: Let's get some hands. This is for the  
12 nay?

13 CHAIRWOMAN ASHFORD: The nays.

14 (Board Members Guillot, Prezeau, Nord, Kopczynski,  
15 Bright raised hands.)

16 THE REPORTER: Now for the yeas.

17 (Board Members, Newman, Howell, Bowman, Turner,  
18 Simmons, Belisle raised hands.)

19 CHAIRWOMAN ASHFORD: Motion carried.

20

21 Motion Carried

22

23 CHAIRWOMAN ASHFORD: Are we done on this one?

24 ASSISTANT ATTORNEY GENERAL REULAND: So I think  
25 procedurally, the appropriate thing to do would be to give

1 Mr. Hawk back the order to interlineate pursuant to the  
2 Board's findings in this case. And then I will review it  
3 and Mr. Hall can review it to make sure that the order  
4 reflects what the Board has just done, and then we'll  
5 present it to the Chair. But you guys can do that -- we  
6 can proceed with the --

7 CHAIRWOMAN ASHFORD: Tom.

8 BOARD MEMBER PHILLIPS: I agree with Jim's concern.  
9 And I'm not concerned about setting a precedent because  
10 we've done all sorts of things. But I think maybe at a  
11 future meeting we could talk about the approach that the  
12 Department takes. And maybe it's a WAC change that gives  
13 some discretion on compounding fines -- citations on  
14 citations. You know, it is a violation, so you go  
15 straight black and white, you end up writing it up. So  
16 when do you and when do you not I think might be a good  
17 discussion in the future.

18 BOARD MEMBER PREZEAU: Completely agree.

19 SECRETARY FULLER: We've had this discussion multiple  
20 times.

21 Because this citation is so old, it took so long at  
22 the law judge, it was issued under previous guidelines  
23 from us, which was to write the text in as being for no  
24 permit.

25 We've had this discussion before with the Board.

1 We've changed our policies. We've aligned the text to  
2 where Tracy's at. And the citation now is for very  
3 clearly for no inspection. We wouldn't write this  
4 citation any more. But it's still the same violation.  
5 It's just a word. The statute doesn't require permit  
6 actually.

7 And it really -- I get so frustrated with this  
8 conversation because the statute doesn't require a permit;  
9 the WAC rule does. He violated the statute. But it's  
10 done.

11 CHAIRWOMAN ASHFORD: In 12:15. We still have several  
12 agenda items. What -- and I know, Ron, you have employee  
13 issues and lunch breaks, et cetera.

14 SECRETARY FULLER: I don't know how long it'll take  
15 for the teleconference discussion, but for the four that  
16 I've got, it'll probably take at least an hour.

17 CHAIRWOMAN ASHFORD: What's the Board's pleasure? Do  
18 you want to take a lunch break?

19 BOARD MEMBER PREZEAU: How about we take a 45-minute  
20 break for lunch.

21 CHAIRWOMAN ASHFORD: All in favor?

22 THE BOARD: Aye.

23 CHAIRWOMAN ASHFORD: We will return at 1:00 p.m.  
24 sharp and continue.

25 (Lunch recess.)

1 CHAIRWOMAN ASHFORD: Okay, the Board meeting is ready  
2 to reconvene.

3 Mr. Fuller, the floor is yours.

4

5 Item 4. Budget Discussion

6

7 SECRETARY FULLER: All right. We'll talk about  
8 budget first.

9 The budget report for December is in your packet.

10 The fund balance at the end of December was \$3,988,254.

11 That's about \$500,000 ahead of our projections. The fall  
12 was -- through December was actually a pretty solid set of  
13 months for us. So we've been exceeding our revenue  
14 expectations up to January actually. The first couple  
15 weeks of January took a pretty heavy dip, but last two  
16 weeks are picking up again. So right now we're in an  
17 upward trend. So that's really good information for us to  
18 have.

19 We have moved forward with adding two members to the  
20 ECORE team to do compliance. One will be in region 5 in  
21 either Yakima or Kennewick, and the other's in King  
22 County. That position's already filled. He's been  
23 working since the first of January. And we'll probably  
24 make an appointment this week for the one in region 5.

25 Also, in December we made a decision to bring back

1 two non-permanent inspectors. One of those FTE's will be  
2 shared with King County and the Spokane office. They'll  
3 each get six months of a non-permanent. And then the  
4 second non-permanent is going to go to the Vancouver  
5 office because they have the heaviest workload  
6 requirements down there. So recruitment's underway for  
7 all that at this point in time.

8 So the budget is doing much better than we thought it  
9 would be at this point in time.

10 Any questions on the budget?

11 CHAIRWOMAN ASHFORD: In the permits, is there a break  
12 -- do you see a breakdown of residential versus commercial  
13 or industrial? Or is it just --

14 SECRETARY FULLER: We do track it that way. I don't  
15 have the numbers off the top of my head, though, to be  
16 honest with you, Gloria. Most of our work is residential,  
17 though, by far. Always is every year, no matter what.

18 We're seeing more permits inspections than we did in  
19 the past per permit. So workload for the inspectors is  
20 actually going up faster than the sale -- the number of  
21 permits sold. So that always indicates more remodels and  
22 things like that that can be done by homeowners or  
23 contractors that really aren't quite used to the process  
24 and require more inspections or corrections or whatever.

25 BOARD MEMBER SIMMONS: The good point is at least

1 they're buying permits.

2 BOARD MEMBER PREZEAU: And it's nice to see another  
3 month of, you know, over a million dollars in revenue. We  
4 haven't had a huge number of those months, so it's nice to  
5 see that happening.

6 SECRETARY FULLER: Right. And December was actually  
7 a little under. It was 985 -- \$985,000. January is going  
8 to be much lower. It's going to be about \$800,000. But  
9 again, it looks like we're going to start picking up  
10 again.

11 In February, if the weather stays pretty decent on  
12 the east side of the mountains, we know that there is  
13 going to be a lot of irrigation systems that are going in  
14 over there. So typically March -- the end of February,  
15 March, April and May are pretty big months for us because  
16 of the irrigation systems that go in in Eastern  
17 Washington.

18 There was a new siphon system that was put in over  
19 there. So that one system alone could potentially be a  
20 thousand or more center pivots all by itself. So it's a  
21 whole new water source for the farmers over there. So  
22 we're looking for a lot of work from that area, especially  
23 from around Kennewick to Moses Lake.

24 Questions on the budget? Anything?

25 BOARD MEMBER SIMMONS: One, Ron. How come we have so

1 much money left in equipment? Is that something you're  
2 planning on doing and didn't? Or -- because I'm seeing an  
3 allotment of \$27,000, and we only spent \$5,787.

4 SECRETARY FULLER: Correct. Most of that variance is  
5 in my account in central office.

6 BOARD MEMBER SIMMONS: So it's your personal slush  
7 fund?

8 SECRETARY FULLER: No. Things that I don't spend  
9 money for.

10 If you look -- if you turn the page and look at that  
11 first page, central office, that's the central office  
12 staff and what we spend money on. Because we were  
13 discussing at lunch; I'm pretty frugal.

14 But we haven't had to print WAC books this cycle that  
15 we had in the budget expense. We've also had some  
16 vacancies that we've held open. So we've got some  
17 variance there in staffing also. So we're counteracting  
18 some of the things that happened in the regions.

19 On that third page, if you look there, region 1,  
20 electrical, you can see that they're \$73,000 overspent in  
21 benefits. But they're actually positive on salaries. The  
22 reason for that is over the biennium that's pretty much  
23 what their unemployment costs were for the layoffs.  
24 Region 1 really got hit hard with unemployment costs  
25 because the people they laid off didn't go back to work.

1           So we're at the point right now where all those  
2           unemployment costs will pretty much come to a stop because  
3           they've run out of the state benefits and now they're  
4           moving into the federal benefit, the extension part of it.  
5           So we won't be seeing those anymore. But if you look  
6           through all the pages, you'll see that trend in several of  
7           the different regions. So they've had some things come up  
8           that they didn't expect. But I've been able to help the  
9           program by cutting back inside central office.

10           It's the pennies that add up, you know. We don't --  
11           we've made a conscious effort, for instance, to eliminate  
12           printers to not print letters -- so many duplicate  
13           letters. We're using electronic certified mail now which  
14           saves us money. So it's just a lot of little efficiency  
15           things that we've done to really streamline the process at  
16           central office.

17           A good example actually was the argument when the  
18           Goodlett hearing was going on there a while ago. One of  
19           the things you heard was there was no place on that  
20           affidavit for the administrator to sign that he was  
21           active. Well, there's a reason for that because we don't  
22           want that duplication. His rule was that he needed to  
23           sign the contractor application form and the renewal form  
24           and put the name on there. So we only make people do it  
25           once.

1           So we've done a lot of that kind of streamlining to  
2 speed us up and save the process, save paper, everything  
3 involved with it.

4           BOARD MEMBER SIMMONS: Thank you.

5           SECRETARY FULLER: So the only other thing that I'd  
6 mention on the budget is collections. We've really been  
7 tracking collection activity in the last couple of years  
8 very closely.

9           If you remember, last year we had an assessment made  
10 to us of almost a million and a half dollars of back  
11 collections that we weren't going to collect. Since then,  
12 we've continued to improve our collection rate. So on a  
13 month-by-month basis, I'd say in the last year we've never  
14 fallen below 80 percent collections of all of our  
15 penalties, fee dues, everything that we have a fee out  
16 there for basically.

17           So I don't think anybody in this building is higher  
18 than we are at this point. So we've changed those  
19 processes a lot too. So when we get a citation that comes  
20 from the field now, the demand letter goes out, there's a  
21 clock that starts ticking on that. We send the second  
22 demand. If they still haven't paid, everybody gets a  
23 phone call now. And if they don't pay, they go to  
24 collections. But before that happens, before that  
25 collection activity happens to the outside collector,

1 we're already up to over 70 percent collections usually.  
2 I can't remember being under 70 percent. So that's really  
3 a high number for a state agency. Some of the programs,  
4 you know, are well under 50 percent on their collection  
5 rates right now. So we do really good at that. And  
6 that's helping the revenue stream obviously to do that.

7

8 Item 5. Secretary's Report

9

10 SECRETARY FULLER: Okay. Move on to the Secretary's  
11 Report.

12 We've talked about the budget and the new positions.

13 We do have some retirements coming. We have a couple  
14 of inspector vacancies right now too that we'll be  
15 recruiting for, plus a lead. So there's a lot of -- with  
16 the senior staffing now that we have left after the  
17 layoffs, usually when a vacancy's created, it's a domino  
18 effect and there's two, three, four maybe, even sometimes  
19 more dominoes that fall by people moving into those other  
20 positions, so it's a shuffle, and you don't really get it  
21 all done for several months sometimes with the current  
22 process.

23 Right now if you haven't gotten OFM approval to hire  
24 a position number, you have to go through that process.

25 So we submit a form justifying why we need a position. It

1 gets approved at L & I. Then it has to go to revenue, and  
2 then it goes to OFM. So that alone can be -- it's a  
3 minimum of two to three weeks and sometimes six or seven  
4 weeks after you have a vacancy.

5 So, for instance, right now I theoretically know that  
6 Doug Erickson's going to retire June 30th.

7 BOARD MEMBER PREZEAU: He thinks.

8 BOARD MEMBER SIMMONS: Theoretically?

9 BOARD MEMBER PREZEAU: Theoretically?

10 SECRETARY FULLER: He's waiting -- we're not giving  
11 his present until July 1st because we don't want any false  
12 starts from him.

13 So we have two plan reviewers also scheduled that say  
14 they're going to retire. So last week, I submitted the  
15 request form for filling those positions. So we're trying  
16 to get proactive with it and do it up-front. Because I  
17 could theoretically recruit, make a hiring appointment for  
18 July 1st today. So we're trying to get ahead of that --

19 BOARD MEMBER PREZEAU: So it's seamless. We don't  
20 have the interruptions for the --

21 SECRETARY FULLER: So it's more seamless. So when  
22 July 1st happens, hopefully somebody will have been hired  
23 for Doug's position. If they're internal, somebody will  
24 have been hired for that position. And on down the road  
25 until it stops.

1           So we're trying to get a little bit smoother on that  
2           kind of thing too. It's a tough struggle because there's  
3           a lot of hoops you have to go through to hire anybody at  
4           this point, even if it's an existing position.

5           Customer service. We're still doing well on the  
6           electronic permit sales and inspection request systems.  
7           The numbers just speak for themselves. I wish we could  
8           get the inspection request numbers to rise up to the level  
9           of permits sold. It seems to be too easy for an  
10          electrician to pick up the cell phone on a job site and  
11          phone our phone line. And that can present problems  
12          because then we lose inspection requests sometimes; it  
13          takes longer. It would be a lot easier for anybody if we  
14          could get them to use the on-line request system and more  
15          foolproof by far. But we're still struggling to get those  
16          numbers up.

17          The WAC rules, we've got that on the agenda here in  
18          a little bit, so I'm not going to talk about that right  
19          now.

20          Testing lab report, we have no new lab applications.

21          The ScoreCard performance measures, I think we're  
22          doing pretty well on. We're getting 87 percent of the  
23          inspections still within two days at a maximum statewide.  
24          Some of the outlying areas are a little lower than that.  
25          But it's because they're outlying areas. So if there's

1 one job in Okanogan, the inspector may not go there. Once  
2 he gets two or three, then he'll go there.

3 So we're cutting down our mileage pretty  
4 significantly by doing that also because the inspector  
5 gets to concentrate work in an area everyday as much as  
6 possible. So it's just an organizational issue. But it  
7 does slow us down in some of the more remote areas.

8 The percentage of targeted citations is at 82  
9 percent. That one just continues to stay up at a high  
10 level, which I really appreciate from the inspectors  
11 because that means they're focusing on people that are  
12 related to that underground economy: the unlicensed  
13 contractors, the permit issues and the certification  
14 issues, and all the things that go with them.

15 When I can say that 82 percent of all the citations  
16 and warnings issued are for those three things or  
17 something that's related to them, I feel pretty good, that  
18 we're concentrating on the right people.

19 Even if they're a licensed contractor. You have a  
20 licensed contractor that's still hiring illegal people and  
21 not buying permits, they're in the underground economy  
22 too. That's what the ECORE team is about, though, is to  
23 really help that too.

24 Number of inspection stops per day is 10.7. That was  
25 for that last quarter. So it's up about 10 percent over

1 last year. That's why we're adding the two non-permanent  
2 FTE's.

3 Number of disconnect corrections is usually pretty  
4 consistently about that 13,000 or so number.

5 Licensing turnaround time is at 3.3 days.

6 Plan review sheets processed per review or per day is  
7 at 6.3. We're struggling with plan review a little bit  
8 right now. The workload for inspector -- or for reviewer  
9 is a little bit higher than it was last year. But our  
10 turnaround time has been dropping. So the plan review  
11 supervisor is working on a way to get those plans in and  
12 out of here faster. I suspect that we're falling into the  
13 trap of asking questions and letting a set of plans sit on  
14 a desk without either rejecting them or passing them.

15 So that's happened in the past I know where the  
16 reviewer's tried to be nice with the engineers, and  
17 sometimes that just doesn't work because it slows the  
18 whole process down for everyone. You have to get them,  
19 get your questions answered, and move them on. That's  
20 very critical with their process. So they're working on  
21 that.

22 Licensing volume has stabilized. It's pretty  
23 consistent every year through the quarters. Right now is  
24 a little bit higher than normal because we have to deal  
25 with the contractors that came on with the well driller

1 bill a few years ago. So they happened to all hit this  
2 month. So the licensing group is a little bit stressed  
3 right now. But they're getting the job done. A 3.3 day  
4 turnaround. It's about as good as we can do I think.

5 One of the other things that we are looking at is to  
6 change the way we print our licenses and certificate --  
7 not the licenses, but the certificates.

8 Contractor license we're not going to change. It's  
9 still going to be the paper printout that you can put on  
10 the wall. It doesn't need to be carried in the field for  
11 any reason. But we have gotten an RFQQ written to request  
12 bids for a totally different type of electrician  
13 certificate. So it will be more like a driver's license.  
14 It'll be much more durable. It will have colors. We're  
15 looking at green, yellow and red for 01 specialty  
16 electricians, and trainees get the red. So it will be  
17 something that can be worn on the outside of your jacket.  
18 And that's one of the bills that passed a couple of years  
19 ago is that we can require that. We're not doing that at  
20 this point in time, but -- the dilemma that I've got now  
21 is that the Federation challenged the contract. They have  
22 the right to do that as the bargaining unit. So that's  
23 going to slow us down by at least three months probably  
24 while they make a proposal that they can do it cheaper and  
25 better than an outside vendor can.

1           So we'll see where that goes. We were hoping to have  
2           it in place July 1st, but that won't happen now because of  
3           the Federation challenge. So we'll work through it. But  
4           we'll get there.

5           Once that happens, then when we do the next rule  
6           change, I would be probably proposing that we move into  
7           the wearing of the certificate at that point, with some  
8           restrictions for working in ditches, outside, attics,  
9           places where that thing might get lost, for instance, in  
10          the insulation pile. Because there are some issues with  
11          wearing a badge. If you lost your badge in the attic  
12          yesterday and come to work, how are you going to work  
13          today? So there's some things that need to go into that  
14          thought process. But I think we can hammer that out to  
15          make it usable for everybody. But that will be part of  
16          the next rule change probably.

17          So any questions on the Secretary's Report?

18

19                 Item 6. Certification/CEU Quarterly Report

20

21                 SECRETARY FULLER: Doug, did you want to come up and  
22                 do the exams?

23                 We're introducing a new Doug to you today because  
24                 that other one's a "has been" now. And he's liking it.  
25                 This is turn-over day. We're going from Doug Erickson to

1 Doug Griffith for the exam reports and et cetera.

2 So with the change in persons also comes a change in  
3 what you're going to get. But he can explain all that to  
4 you.

5 MR. GRIFFITH: Good afternoon. I'm Doug Griffith,  
6 electrical technical specialist. I've been asked to give  
7 the certification exam results to the group this  
8 afternoon.

9 It's been a while since I've been before you. The  
10 last time I think had to do with wind turbines. That's  
11 probably two to three years ago.

12 Anyway, what you have today in front of you is you  
13 have actually two reports in your package. You've got the  
14 old report, which you're used to seeing that was set up in  
15 a format a lot like -- I guess it was generated originally  
16 based on LaserGrade and the way that you would receive the  
17 information for that. It takes some doing I guess for us  
18 to create this thing. We take information from PSI and  
19 transfer that information into a format that matches up  
20 with what we had previously presented.

21 As you know, we're losing a technical specialist and  
22 we're down a technical specialist. So we're trying to do  
23 more with less. And one of the things that we found that  
24 we can do is we can use the PSI-generated reports. And so  
25 that's what this new one is. It's the one that has the --

1     it has the information on the left-hand side over here  
2     (indicating) and is blank on the right-hand side  
3     (indicating). And what it takes for that is we just  
4     simply log on-line and then we put in a date range and we  
5     say how long we want the report to run for, and it prints  
6     it out instantly, and we have that information available  
7     to us without any effort whatsoever.

8             And so we're going to move to that.

9             It's got some other nice features. What you see is  
10     the way it will be presented to you. It's got a lot of  
11     blank space to the right so you can make notes and things  
12     like that. And we're hoping that it'll be a lot easier to  
13     follow.

14            Anyway, that's what we're doing there.

15            There's additional PSI reports that we can also print  
16     out. This one's called "Statistic Summary." We can print  
17     out examination results. We can print out candidate  
18     feedback, survey reports, schedule of candidates with each  
19     test center. There's a number of different reports that  
20     we can generate.

21            I don't know if you guys already know a lot of this  
22     stuff or not, but I just wanted to go over it with you.

23            As far as the results, looking back on the last year,  
24     what we found here is it appears taking into account all  
25     the electricians and their exams, we have a 48 percent

1 success rate for taking the exam for the first time. So  
2 48 percent of the electricians taking it are passing. Of  
3 that 48 percent, 63 percent -- there's a 63 percent pass  
4 rate for journeyman electricians, those that are taking  
5 the examination for journeyman. It's only 38 percent pass  
6 for the specialties -- all the specialties combined. So  
7 there is a significant difference between the success rate  
8 of those who have studied for a journeyman exam and those  
9 who have studied for specialty exams and so forth. So  
10 that's what we found.

11 Additionally, there is a drop of 13 percent between  
12 the number of exams that were taken looking at one year  
13 ago -- two years ago, that one year period previous to  
14 this one. So we have dropped off in this last year 13  
15 percent as far as the number of exams taken.

16 Is there any questions regarding any of that?

17 Also, I wanted to talk to you about laboratories and  
18 engineers. We do have a new laboratory applicant. This  
19 is a company down in Richmond, California called ASC  
20 Engineering. If approved, they'll be our 21st laboratory.  
21 They are wanting to do field evaluations rather than  
22 listing equipment. They have applied. We've looked at  
23 all the information. They've submitted the proper fees  
24 and everything. Everything looks good. But we still need  
25 to go down there and take a visit down there and make sure

1 that it is, in fact, what they said that it's supposed to  
2 look like. Right now, we're waiting for approval for  
3 travel. Once that takes place, we go down, take a look,  
4 everything looks fine, then they will be approved as well.

5 From an engineer standpoint, we have just received  
6 word today that one of our engineers is going to be  
7 quitting the team. Gina Howe of Parker Messana has  
8 decided that she is no longer going to be doing the  
9 engineering evaluations. So we previously had three  
10 engineers. Now we will have two engineers.

11 But with that comes some good news. We have another  
12 engineer that has applied to us and been accepted. And  
13 this person's name is Leonard Whalen of LDW Engineering  
14 out of Renton. So he doesn't actually want to be -- he's  
15 approved, but he doesn't want us to release that  
16 information for a couple of weeks. He's got some things  
17 going on in his personal business life, so we're not  
18 actually going to announce that for a couple of weeks.  
19 But we will then have three engineers again.

20 So we'll have David Lacotti (phonetic) who is on the  
21 east side, and that's good for the folks over there. We  
22 have Sang Sankaran (phonetic) from PSI covering Shoreline.  
23 And then we'll have Leonard Whalen out of Renton. So  
24 we'll have three engineers to take care of that side of  
25 the business.

1           Any questions regarding anything with laboratories?  
2 engineers? reports?

3           Thank you.

4           CHAIRWOMAN ASHFORD: Welcome.

5           BOARD MEMBER PREZEAU: Madam Chair?

6           BOARD MEMBER GUILLOT: That was the best job I've  
7 heard in a long time.

8           BOARD MEMBER PREZEAU: Madam Chair, I just have a  
9 question.

10           Under "Certification/CEU Quarterly Report," the Chair  
11 may remember at the last quarter's meeting I made a motion  
12 regarding CEU and specifically correspondence courses and  
13 potentially increasing the -- or changing the requirements  
14 for correspondence CEU courses, but we tabled the motion  
15 due to lack of significant attendance of the Board.

16           Would now be a good time to have that conversation or  
17 would the Chair like to do that later?

18           CHAIRWOMAN ASHFORD: Unless Ron has an issue with  
19 wanting to continue on with the WAC at this point?

20           SECRETARY FULLER: It was tabled, so it's your choice  
21 when you bring it back.

22           CHAIRWOMAN ASHFORD: Please go ahead.

23           BOARD MEMBER PREZEAU: All right.

24           So for the Board members that weren't here in, what,  
25 October, there was a discussion -- Doug Erickson led us in

1 discussion a little bit about correspondence -- or excuse  
2 me -- actually it was in the meeting before that. The  
3 Board had a discussion at the July meeting about  
4 correspondence CEU courses and potentially we had as a  
5 Board and the Department had addressed or recently made  
6 changes to Internet-provided CEU courses, moving them to  
7 clock hours, but hadn't addressed correspondence CEU  
8 courses and wanted to sort of focus a little bit of the  
9 spotlight on them because none had been given to them in  
10 recent history as to whether or not the current system was  
11 working.

12 And the suggestion that I made at the October meeting  
13 was currently correspondence CEU courses, they are --  
14 somebody that requests that material has five minutes to  
15 complete a question. And there's only one question bank  
16 that goes with that material.

17 So the suggestions I brought up were if we -- when an  
18 individual takes the journeyman's test, they're given  
19 three minutes per question. So why is it in a  
20 correspondence course, you can give somebody who has  
21 already presumably passed the journeyman's test more time  
22 to answer questions relevant to their, you know, the WAC  
23 and the code and everything else after they've already  
24 spent some time in the field? You would think that they'd  
25 be more proficient than they were when they took their

1 journeyman's test.

2 So I thought that it would be -- my suggestion was  
3 that the time for questions should be tightened up and  
4 should match what it is for the certification exams.

5 And then additionally, prior to moving to PSI  
6 proctoring our examinations, when we had LaserGrade, we  
7 had five test banks. So it seems to me that it would be  
8 reasonable to require that correspondence CEU providers  
9 have at least a minimum of five question banks per course.

10 So one of the things that happens is all of us work  
11 in Eastern Washington and work for the same shop, and all  
12 of us request the same correspondence packet. So "You do  
13 questions 1 through 6. You do 7 through 14. I'll do  
14 this." And then it gets divvied up and nobody -- you  
15 know. So potentially a way to mitigate that from  
16 happening is having more than one set of questions per  
17 correspondence course.

18 So the motion that I made and was subsequently tabled  
19 at the last meeting, again, because we didn't have a full  
20 complement of the Board was to require correspondence CEU  
21 providers to have a question bank that is three minutes  
22 per question rather than five, and at minimum, five  
23 question banks per correspondence course that would be  
24 distributed in -- did you say, Ron, in numerical order?  
25 Is that correct? I want to -- let me look at --



1 with which way you go there. But I think that's where the  
2 five minutes came from actually is that there was an  
3 expectation that they would actually have to read some  
4 documentation too besides just answer questions.

5 So open for discussion. Beyond that, I don't really  
6 have any preferences one way or another on it.

7 CHAIRWOMAN ASHFORD: Jim.

8 BOARD MEMBER SIMMONS: One of the questions I had,  
9 Tracy, is are we going to allow -- if we knock it down to  
10 three minutes per question, is that going to cut into  
11 somebody's style so they don't have time to go to the  
12 fridge and grab a beer while they're answering the  
13 questions?

14 BOARD MEMBER: They could have a cooler next to them.

15 BOARD MEMBER PREZEAU: Yeah, I think accommodations  
16 could be made.

17 BOARD MEMBER SIMMONS: Plan ahead. And have a cooler  
18 next to you.

19 That was a good idea. Okay. Don't want to cause  
20 problems.

21 CHAIRWOMAN ASHFORD: Rod.

22 BOARD MEMBER BELISLE: I don't have a real strong  
23 opinion about the time allotment per question.

24 Ron brings up a good point that providing some  
25 ancillary material is probably a good way to study.

1           But I do have an opinion that I think there should be  
2 multiple question banks and be able to have randomly  
3 issued questions. That's a pretty easy thing to do in  
4 today's technology, and that should be required.

5           BOARD MEMBER PREZEAU: Just from the last meeting,  
6 Doug Erickson shared with us that basically the  
7 certification -- industry standards for certification  
8 exams are two minutes a question is what he said at the  
9 last meeting. So the Department, you know, putting the  
10 specialty and journeyman certificate exams together gave  
11 them, you know, an additional time allotment, you know,  
12 setting it up to three minutes. And so knowing that  
13 industry standard is two, knowing that for the  
14 certification exam is three, I just -- that's sort of  
15 where my -- how my mind works.

16           I'm not hugely married to the three-minute piece, but  
17 I do think that if this body thought it was important  
18 enough when the exams were proctored that there were five  
19 -- and I recognize we're talking about a difference  
20 between CEU and certification; I get that -- we had five  
21 different versions of the exam, I think it's reasonable to  
22 preserve the integrity of the course by having five  
23 question banks that are alternatively distributed.

24           CHAIRWOMAN ASHFORD: Rocky had a question.

25           BOARD MEMBER SHARP: Yeah, I agree that there should

1 be five different questions.

2 I do have a question. I've never taken these  
3 on-line, the CEU's. I always went somewhere in that kind  
4 of a class. In a class, I don't remember that there was  
5 any allotted time that you had to make. So I'm kind of  
6 questioning if I go to a class to get my CEU's, I've got  
7 all the time I need to do it. I'm just questioning why we  
8 would want to change it. Like I said, I've never done one  
9 on-line, so I don't know what the reason --

10 BOARD MEMBER PREZEAU: Well, this isn't -- on-line is  
11 a different situation. On-line has these clock hours.  
12 It's a different sort of -- to try to mimic the classroom  
13 environment.

14 This is for correspondence courses where you  
15 basically get something in the mail, and this is the  
16 material.

17 It used to be that -- and correct me if I'm wrong,  
18 Ron -- but it used to be that we sort of looked at all the  
19 materials that got sent out and approved the booklets and  
20 everything else, and the Board decided at one point they  
21 didn't want to have to deal with that anymore, and so  
22 there's sort of been a stripping down of some of the  
23 overview of the correspondence courses. Is that --

24 SECRETARY FULLER: No.

25 BOARD MEMBER PREZEAU: Okay.

1           SECRETARY FULLER: No. We took over the  
2 administration of it for the Board because it was so time  
3 consuming for the poor volunteers. Because it was a huge  
4 job because we do hundreds of these a year. But it --

5           BOARD MEMBER PREZEAU: So it still happens --

6           SECRETARY FULLER: It still happens.

7           In the WAC rule, I believe the highest the Board ever  
8 went to when we had a number of questions stated for a  
9 correspondence course -- or an Internet course; it was the  
10 same -- was 33, which was that's three minutes. So that's  
11 the highest level that we've ever been to.

12           It was at a lower level originally, went up to 33,  
13 then it went down a little bit. And then with the last  
14 rule change, we said -- we left it more open and said,  
15 "Show us how it demonstrates 8 hours equals 8 hours."

16           So it's pretty open for us to interpret at this  
17 point. And that's -- I think the dilemma that Doug was  
18 feeling was that he wanted more direction.

19           So that's what he was talking about was: How do we  
20 decide that eight hours in a correspondence is eight  
21 hours?

22           Even with an in-person class as you probably all  
23 know, some people sleep through them anyway. So if a  
24 person wants to be educated, they will be. If they don't,  
25 they won't anyway. So it's a dilemma about, you know,

1 pretty much what's fair for the guy that's trying I  
2 think.

3 BOARD MEMBER PREZEAU: No, I completely agree.

4 My motivation here is not to raise the bar to such a  
5 point that nobody will pass the correspondence course.

6 That's not the point.

7 My point was just -- you know, Doug asked for input.  
8 And I started to think about what's the expectation on a  
9 journeyman's exam and maybe that expectation should be the  
10 same. And then sort of, whoa, we used to have five  
11 question banks. Maybe, you know, that's making a minimum  
12 requirement for those correspondence providers. Again,  
13 I'm not trying to penalize them or hurt them. I just  
14 thought you want to try to preserve the integrity of the  
15 system for those that want to learn.

16 You're never going to be able to fix the guy that  
17 sleeps in class or the person that, you know, has somebody  
18 else do their Internet hours. You can't -- I just thought  
19 it's reasonable to I think require that those  
20 correspondence courses have a minimum of five question  
21 banks associated with their -- and if you guys have a  
22 heartache with the three minutes versus five minutes,  
23 that's not as crucial to me. What's crucial to me is the  
24 question bank.

25 CHAIRWOMAN ASHFORD: I think the question bank is

1 more important.

2 BOARD MEMBER NEWMAN: I have the same comment  
3 basically. I don't really care if it's three or five. As  
4 long as there's enough -- you cover enough content and you  
5 get the update class or whatever it is, you know, through,  
6 that's mostly what you're talking about with these CEU  
7 type classes.

8 CHAIRWOMAN ASHFORD: Well, five minutes would allow  
9 somebody with a certain amount of dyslexia to digest the  
10 questions.

11 BOARD MEMBER PREZEAU: Again, my motivation is not to  
12 prohibit somebody.

13 And if the Chief says -- hey, we've had a long day.  
14 I don't want to take much more. We're going to have a  
15 long comprehensive discussion in April, then, you know,  
16 let's move on to the next -- you know. I just wanted to  
17 keep it on the radar screen. And if we don't want to act  
18 today, then we'll wait till April when we have a more  
19 comprehensive discussion.

20 BOARD MEMBER SIMMONS: I think the discussion in  
21 April, though, is going to be possibly quite a bit  
22 different from what Ron said.

23 SECRETARY FULLER: It will be different but related.  
24 I just did some math. I guess from a provider standpoint  
25 and a candidate's standpoint, the difference in what

1 you're talking about here is -- for an eight-hour class,  
2 the difference between 160 question exam to a 96, I can --  
3 from a designer's point of view, I can tell you that five  
4 versions of a 160 exam will be really, really, really  
5 hard.

6 BOARD MEMBER PREZEAU: No, I agree.

7 SECRETARY FULLER: And it's beyond really.

8 To do the journeyman's test, which I think the code  
9 test has seventy-something questions on it now. Is that  
10 right, Doug?

11 MR. ERICKSON: 60.

12 SECRETARY FULLER: 60. That was a monumental task to  
13 get five versions of that that were good questions.

14 So that's one of the dilemmas that you're looking at  
15 here.

16 CHAIRWOMAN ASHFORD: Tom.

17 BOARD MEMBER PHILLIPS: So just to clarify how the  
18 correspondence test works, the person who is taking it  
19 gets written material and they have so many days to return  
20 it. Right?

21 BOARD MEMBER PREZEAU: That's my --

22 BOARD MEMBER NEWMAN: It's all on-line.

23 BOARD MEMBER PHILLIPS: I mean, it's not a -- they  
24 don't have three minutes per question; they can take an  
25 hour per question. It just means to get the "X" number of

1 CEU's, it's going to be more questions.

2 BOARD MEMBER PREZEAU: Correct.

3 SECRETARY FULLER: Correct.

4 Some of them probably have no time limit. So you  
5 could buy it and send it in six months later.

6 BOARD MEMBER PHILLIPS: So we're talking a lot of  
7 questions I think what Ron is saying.

8 SECRETARY FULLER: Yeah, we are. 100 at least. Even  
9 at five minutes -- it's a pretty substantial exam.

10 BOARD MEMBER PHILLIPS: I'm in favor on the face of  
11 it. It sounds good. And I think we should be able to  
12 have multiple copies -- to the scenario you were talking  
13 about.

14 CHAIRWOMAN ASHFORD: How many on-line course  
15 providers are there?

16 SECRETARY FULLER: Correspondence.

17 CHAIRWOMAN ASHFORD: Pardon me. Correspondence  
18 courses recognized by the State?

19 MS. FORSBERG: Not very much. We have probably about  
20 maybe four a month submitted now, if that, for  
21 correspondence. Internet is a lot more, going up.

22 SECRETARY FULLER: Correspondence is much more time  
23 intensive for the provider.

24 BOARD MEMBER SIMMONS: And more costly.

25 SECRETARY FULLER: More costly. So they have to

1 print, mail, receive, grade. They have to do all those  
2 things where the Internet's much faster and speedier.

3 BOARD MEMBER BELISLE: Well, I kind of have a  
4 question. I guess when I originally read through this --  
5 and I work at a training center, and we do test banks all  
6 the time. And we have a test generator system. I don't  
7 know how many questions we have. But we have the ability  
8 to produce a question, and it can have four multiple  
9 choice answers. And we can have a 20-question quiz. And  
10 then we can produce another one that can have those same  
11 20 questions in a different order. And then the four  
12 multiple-choice answers would be in a different order.

13 So realistically we can produce one 20-question quiz  
14 -- and I don't have the math here -- but probably 40  
15 different ways.

16 So then you take those 20 questions and make that 100  
17 questions, you know, pretty soon you can produce 1,000  
18 correspondence courses that each have 100 questions in  
19 there. And it's not 1,000 different questions; it's 100  
20 different questions that can be produced to where you  
21 can't cheat.

22 BOARD MEMBER PREZEAU: And that's the --

23 BOARD MEMBER BELISLE: Is that the intent?

24 BOARD MEMBER PREZEAU: That's the intent.

25 BOARD MEMBER BELISLE: That was my understanding.

1           BOARD MEMBER PREZEAU: I guess I sort of got tongue  
2           -- a little bit -- I don't care if all the questions are  
3           basically the same except for one, you know, it's  
4           negatively asked and one is positively asked, but that you  
5           have -- so people can't sit down and go, "Okay, our  
6           question banks are exactly the same. You do 1 through 5.  
7           You do" -- I mean, if they're going to cheat, they're  
8           going to have to invest a little bit more time to do that.  
9           Right? In a sense they will learn something and --

10          BOARD MEMBER BELISLE: They would read every question  
11          and read every answer.

12          SECRETARY FULLER: So your answer's -- that's a  
13          totally different thing than what we're talking about.

14          So 20 questions, you could have 1,600 different  
15          exams.

16          BOARD MEMBER PREZEAU: Correct.

17          SECRETARY FULLER: Because it's the same questions  
18          randomly generated.

19          BOARD MEMBER PREZEAU: Correct.

20          CHAIRWOMAN ASHFORD: In the correspondence courses,  
21          are there any -- is there a number of questions that have  
22          to be asked or is it just --

23          BOARD MEMBER PREZEAU: Depending on the number of  
24          CEU's. Right? Because that's how they determine -- if  
25          it's an eight-hour class, you have to have five minutes

1 per question. It's 96 questions, so --

2 MS. FORSBERG: It's for basic classroom. I don't  
3 know if we have any guidelines for correspondence yet.

4 Do we, Doug?

5 BOARD MEMBER BELISLE: We don't. That's what we were  
6 talking about.

7 MS. FORSBERG: Is it the five questions per --

8 MR. GRIFFITH: Five minutes per question.

9 MS. FORSBERG: Hour? Or two hours?

10 MR. GRIFFITH: 100 for eight hours.

11 BOARD MEMBER BELISLE: I guess my thought on the idea  
12 was: If we need 100 questions, I can't imagine any  
13 provider would only have exactly 100 and produce -- you  
14 know. But if you had three times that many, if you had  
15 300 questions, everybody in this room could get a  
16 different test, then it would be nearly impossible to  
17 cheat.

18 You know, maybe there's some ratio of, you know, the  
19 quantity of questions on a test, you have to have three  
20 times that number in your database or something of that  
21 nature; I don't know.

22 CHAIRWOMAN ASHFORD: If we're having some discussion  
23 in April that is relevant to this, would you like to --

24 BOARD MEMBER PREZEAU: Yeah, I don't have any  
25 heartache with that. I just wanted to bring it up since

1 we have a full complement of the Board pretty much so we  
2 don't lose track of the conversation. That's my  
3 motivation.

4 CHAIRWOMAN ASHFORD: Cathleen.

5 BOARD MEMBER BRIGHT: Well, I think that the concern  
6 would be that when is the contract for the correspondence  
7 course, what's the cycle on that?

8 SECRETARY FULLER: Three years.

9 BOARD MEMBER BRIGHT: And it's up when? This year?  
10 Or next year?

11 SECRETARY FULLER: No, there is no contract. A  
12 course is valid for three years.

13 BOARD MEMBER PREZEAU: Courses are validated  
14 independently. There's no PSI provider for a  
15 correspondence course.

16 BOARD MEMBER BELISLE: You could write a course and  
17 submit it for credit.

18 BOARD MEMBER BRIGHT: Oh, okay. Well then there's  
19 not a contractual issue and there's not a time frame.

20 CHAIRWOMAN ASHFORD: It's something that's phased  
21 in --

22 BOARD MEMBER BELISLE: It's a matter of guidelines to  
23 provide a CEU provider of what they have to meet in order  
24 to get it approved.

25 BOARD MEMBER SIMMONS: I have a quick question -- and

1 maybe for Tracy because this is an issue she's pushing.  
2 Do you have any -- are there any history notes or any  
3 reports on people cheating on these things or causing  
4 problems? Or what's the background I guess or why do you  
5 feel this is an important issue? Because when I deal with  
6 something, I like to feel that I'm fixing something that's  
7 a problem, not necessarily just imposing a new rule.

8 BOARD MEMBER PREZEAU: Yeah, and maybe my answer to  
9 your question, Jim, is not going to reach the threshold  
10 that you want it to, but basically in the July meeting of  
11 2009, Doug Erickson brought it to the Board's attention --  
12 excuse me -- in the April meeting -- no, in the July  
13 meeting, Doug brought it to the Board's attention that  
14 there is no real current -- he was looking for -- there is  
15 policy, but he was looking for continued guidance. Right?  
16 I was not able to attend that meeting and sort of  
17 reflected on that request, and then offered this as a  
18 suggestion at the October meeting.

19 I personally -- and I can't remember in the context  
20 of reading the testimony from July and then October if  
21 there were comments about -- I don't think there's  
22 evidence of rampant cheating or anything like that. But  
23 it's potentially certainly there.

24 Now, whether or not it needs -- whether or not I'm  
25 beating a horse that's -- you know, don't fix it unless

1 it's broken. I don't know if it's broken. I just started  
2 thinking, You know what? If there is no -- if the  
3 standard is just you have to have so many questions per  
4 CEU, and everybody gets the same questions 1 through 96 or  
5 1 through 100 and everything's the same, I just -- I think  
6 we can easily fix that. In fact, I like what Rod said,  
7 which is basically you got to have -- you can have 100  
8 questions, then you have to have a question bank that's  
9 three times that or something.

10 So you can reasonably -- you don't want to put an  
11 undo burden on the correspondence providers by any means.  
12 I get what Ron's saying about, yeah, to produce, you know,  
13 500 questions based on the subject matter. I'm not trying  
14 to create a barrier; I'm just trying to preserve some  
15 integrity and do so in the simplest way.

16 And I just -- I'm going to back off my motion, and  
17 I'm just going to ask that you continue to consider it.

18 And maybe we should move on.

19 CHAIRWOMAN ASHFORD: And if I -- correct me if I'm  
20 wrong. Crystal, I think you said there was four  
21 correspondence course providers right now? Approximately  
22 four?

23 MS. FORSBERG: No. There's four courses submitted a  
24 month.

25 SECRETARY FULLER: A month.

1 MS. FORSBERG: So not just four.

2 SECRETARY FULLER: So the reason that Doug brought  
3 this up was because he didn't have official guidance I'll  
4 call it from the Board. You own this process. And what  
5 he was looking for was guidance. Because what he had been  
6 doing was on his own pick five questions per hour -- or  
7 five minutes per question. Is that okay or not? That's  
8 -- we want the guidance because we don't want to be  
9 approving something that you're not going to be happy  
10 with.

11 So I'm looking for a motion to tell us what that's  
12 going to be at some point in time.

13 CHAIRWOMAN ASHFORD: Maybe Rod's suggestion --

14 BOARD MEMBER PREZEAU: Yeah, no, I think that's  
15 beautiful, right? Which sort of goes to -- it doesn't  
16 matter the length of the CEU requirement, whether it's a  
17 four-hour class or an eight-hour class or -- I don't know  
18 if there's longer than eight-hour correspondence courses.  
19 But it's sort of easily -- if there are or if there will  
20 be in the future, it easily addresses that, you know, that  
21 it's tied to the number of questions. You know, the  
22 overall question bank is tied to the number of questions  
23 rather than so many versions. And maybe that would be  
24 easier -- it would be easier for the providers to create.

25 SECRETARY FULLER: What about if we table it again,

1 and at the April meeting I come back with a proposal now  
2 that I've heard the discussion. And then you can vote on  
3 it.

4 BOARD MEMBER PREZEAU: Perfect.

5 BOARD MEMBER SIMMONS: Sound good.

6 CHAIRWOMAN ASHFORD: Thank you, Tracy

7 BOARD MEMBER SIMMONS: Do we need to --

8

9 Motion Rescinded

10

11 BOARD MEMBER PREZEAU: I rescind my motion to pull  
12 from the table my previous motion.

13 How does that grab you, Jim?

14 CHAIRWOMAN ASHFORD: I don't know. Pam, is that  
15 legal?

16 ASSISTANT ATTORNEY GENERAL REULAND: Well, she's  
17 going to have to repeat it.

18 BOARD MEMBER PREZEAU: I made a motion to pull from  
19 the table which was seconded. But now I rescind my motion  
20 to pull from the table.

21 BOARD MEMBER BELISLE: I'll rescind my second.

22

23 Item 7. WAC Review

24

25 CHAIRWOMAN ASHFORD: WAC review.

1 SECRETARY FULLER: Okay, WAC review --

2 CHAIRWOMAN ASHFORD: You have five minutes, Ron.

3 SECRETARY FULLER: That's all I need. I hope.

4 In your package you have the proposal for the WAC  
5 rules. As you know, the Governor issued an executive  
6 order to limit the WAC rule process for all State agencies  
7 and programs. That includes working on rules and  
8 implementing rules. The basic guidelines are that there  
9 needs to be a critical safety need. Not just a safety  
10 need, but a critical safety need or a mandated legislative  
11 activity.

12 We looked at all the rules that we had on our table  
13 before Thanksgiving. We stopped the TAC process. They  
14 were supposed to meet right after Thanksgiving. The order  
15 came out, so we stopped that. We reviewed what we had,  
16 and the only thing that we found that met the intent of  
17 the Governor's order was to implement the continuing  
18 education requirements. That was the bill that passed  
19 last year. So it increases the classroom hours that the  
20 trainees have to have. Things like adopting the code,  
21 increasing the ability for contractors to use the class B  
22 process even, some positive things were not critical and  
23 they weren't critical safety things and they weren't  
24 legislatively mandated.

25 Other things that were in there -- a good example of

1 the order is actually the class B process. One of our  
2 proposals expanded the class B usage to additional things.  
3 That would be -- you'd think that would be okay, that  
4 would be good. But there are people that oppose that. So  
5 part of her executive order was that if everybody doesn't  
6 support, you don't move forward.

7 So the gist of it in my opinion at least is that  
8 change, even good change, impacts the industry in a  
9 negative way. It's still a thought process. It's still  
10 something you have to learn, deal with, implement new  
11 stuff. So status quo is the preferred tool at this time  
12 rather than any kind of regulation, good or bad. So  
13 that's the way we've interpreted it, and that's the way  
14 our proposal is to go forward.

15 So that's why we only have this one little proposal  
16 for our WAC rule.

17 For instance, wearing the badges. Some people like  
18 that. Some people don't. As it works out, we're not  
19 quite ready anyway because of the printing process. But  
20 that was one of the things that isn't critical. And that  
21 piece of legislation is an option. It says you may  
22 require wearing of the certificates. So it's not a  
23 mandated thing. So it doesn't fit the criteria of the  
24 executive order.

25 I know Tom and I were talking before the meeting that

1 some of the city folks want to adopt the NEC. We  
2 evaluated that and decided that it wasn't a critical  
3 safety need. We have a good NEC right now that seems to  
4 work. And status quo is preferable. It will save the  
5 contractors and electricians a lot of money. It will save  
6 us a lot of money and a lot of time and heartache.

7 Our intent is that we won't even be in a rule-making  
8 process to take proposals or do anything until the  
9 executive order's lifted, and that's January 1st next  
10 year. So that would be when agencies can start even  
11 looking at new rules.

12 So things that were already done -- like the Building  
13 Code Council, for instance. Some of their rules were  
14 already completed. They were getting ready to implement.  
15 It didn't stop that implementation. It lets it happen  
16 because the process was already ended. It just was a  
17 matter of implementing. So you will see some exceptions.

18 The elevator program here is an exception. They  
19 actually have to do a rule because there's a Federal  
20 mandate tied to it. So they're going to be doing some  
21 rules. But ours is very limited.

22 So what you see before you is what we're intending to  
23 move forward with at this time.

24 BOARD MEMBER TURNER: So January 1, 2012, is the very  
25 earliest that the 2011 NEC could be adopted?

1           SECRETARY FULLER: No. That's the first day that I  
2 can proceed with getting it adopted.

3           The rule process then is a ten- or eleven-month  
4 process.

5           BOARD MEMBER TURNER: So realistically you might be  
6 looking at two years --

7           SECRETARY FULLER: Probably, probably.

8           And then you have to look at it -- especially with  
9 the NEC is when's the next one coming? And is it really  
10 worth it?

11           I mean, my printing costs for doing a WAC rule's  
12 almost \$100,000. Is it worth it? And I have to make that  
13 evaluation. It probably isn't if all I've got to wait is  
14 another six months anyway.

15           It might actually move us to -- you know, for a code  
16 situation, it would likely move us into adopting the next  
17 NEC way fast compared to what we normally do. We could be  
18 ready way earlier than we normally are. Because we  
19 usually don't start the process until it's published. But  
20 we can start the process before it's published this time.

21           BOARD MEMBER SIMMONS: So what am I supposed to do  
22 with my 2011 code book?

23           SECRETARY FULLER: Put it on your shelf with mine.

24           The gist of it is, though, is that it had to meet two  
25 criteria. 1) Is it mandated legislatively or from the

1 Federal government some way? Or is it a critical safety  
2 need? And we didn't feel any of those met -- any of the  
3 proposals we had met that, even the good ones.

4 CHAIRWOMAN ASHFORD: Do we have currently CEU classes  
5 on the 2011 code and --

6 SECRETARY FULLER: Uh-huh. And we're still accepting  
7 the 2011 NEC for code update classes because that is in  
8 our rule. So that hasn't changed.

9 A person renewing today could take the '08 or the '11  
10 class.

11 CHAIRWOMAN ASHFORD: Because I know that question's  
12 going to come up a lot.

13 SECRETARY FULLER: Because the rule says as soon as  
14 it's published we will accept that class. Remember, we  
15 changed that a couple of years ago. So that won't affect  
16 people at all.

17 Until we adopt the next code, whatever it may be, we  
18 will be accepting the '08 and the '11 update classes.

19 BOARD MEMBER SIMMONS: So just to clarify, us guys  
20 out in the field -- because I'll get this question -- so  
21 we're not incorporating or enforcing any of the new rule  
22 changes in the 2011 NEC until -- in the foreseeable future  
23 until and if that is adopted?

24 SECRETARY FULLER: Correct.

25 BOARD MEMBER SIMMONS: Okay.

1 BOARD MEMBER TURNER: Another question along those  
2 lines. Does that then preclude any cities from adopting  
3 the 2011?

4 SECRETARY FULLER: It doesn't preclude it.

5 I saw Tom had his hand up.

6 They're thinking that they may. I would hope that  
7 they don't. I would hope that they fall in line with the  
8 state. Because that's just going to make life even more  
9 miserable for people crossing jurisdictional boundaries.

10 BOARD MEMBER TURNER: But cities who do their own  
11 enforcement would have the option?

12 SECRETARY FULLER: They can the '11 if they want.

13 But it'll be a problem for business if they do.

14 BOARD MEMBER PHILLIPS: And that's what the cities  
15 are struggling with too. But it's -- the cities don't  
16 like the fact that the State makes these arbitrary  
17 decisions in a vacuum without input. There's reasons to  
18 adopt the 2011, and there's reasons not to. So, you know,  
19 it's -- pick your poison.

20 The State had made several amendments that would  
21 bring the cities codes much more in line together. So  
22 there would be some consistency issues that would be much  
23 improved with the adoption of 2011. There doesn't appear  
24 to be any really drastic changes in this cycle, the 2011,  
25 like there were in the '08 and the '05.

1           We do -- most building officials, most cities are  
2           tired of this three-year cycle that Ron and I were talking  
3           about. But -- and I'm not sure anybody's not opposed to  
4           skipping a cycle. But let's do it in a structured  
5           organized fashion, not right when we're in the middle of  
6           this. I mean, Ron's halfway through his process. We were  
7           halfway through our process.

8           So we don't want to make things worse. And for us to  
9           adopt -- cities to start adopting 2011 would I think cause  
10          some problems. But we can't stop every city from doing  
11          it. There's some big cities out there that are going to  
12          act unilaterally.

13          So we don't know what we're going to do. But I think  
14          what we might do is -- one shot at least is maybe send a  
15          letter to the Governor and just say, you know, here's the  
16          issues that this is impacting. And that the industry --  
17          most of the industry is geared up. You know, the  
18          electricians carry code books. They learn code books.  
19          Most of them get a jump on this stuff. It's just a  
20          decision that we don't like the way it was made and kind  
21          of forced down the cities.

22          BOARD MEMBER SIMMONS: Well, if you look at the  
23          impact on the industry that not adopting the 2011 code  
24          would have --

25          I just was -- stopped by and said "Hi" to my dad the

1 other day. Just happened to be out that way. He has  
2 three books that he's edited that are out in use for  
3 training nationwide. And -- I mean, if you look at it, he  
4 wouldn't be able to sell any in this state.

5 I mean, there are other industries training classes.  
6 This is going to impact potentially a lot of people that  
7 provide continuing education that are getting prepared and  
8 working up, and they've already got their training manuals  
9 set and everything. It really does have a lot of impact.

10 And I think Tom makes a very valid point that, you  
11 know, the State making decisions in a vacuum and saying  
12 what's best for the state is not necessarily always the  
13 best approach. And maybe even -- to add maybe to what  
14 Tom's saying, maybe even something that was appropriate  
15 from the Electrical Board to the Governor saying, Look,  
16 we'd like at least some discussion to take place on this  
17 issue might be appropriate.

18 BOARD MEMBER PHILLIPS: That would be great.

19 BOARD MEMBER SIMMONS: Ron, how do you feel about  
20 that?

21 SECRETARY FULLER: Well, I don't think it was a  
22 vacuum. I think we're operating under the executive  
23 order.

24 BOARD MEMBER SIMMONS: Well, I know it was an  
25 executive order. I know that.

1           SECRETARY FULLER: We have a boss. So it wasn't a  
2 vacuum.

3           Idaho is not adopting the '11 code. So we're not  
4 alone in this. They're doing it, I was told, for the same  
5 reason that we're not, is that they didn't want to impact  
6 the contracting economy basically. They're trying to keep  
7 people in the same position so that they can focus on  
8 their job which is contracting rather than a new code  
9 book, for instance. Or any other regulation that we might  
10 decide to put on, whether it's good or bad.

11           The feeling right now I think for the direction that  
12 we've been given is that people really need to concentrate  
13 on what they need to do which is do business in the state  
14 of Washington and not worry about what may or may not come  
15 at them from a regulatory point of view.

16           CHAIRWOMAN ASHFORD: Well, we need to move on. So  
17 Cathleen, I hope your question's quick.

18           BOARD MEMBER BRIGHT: Well, it's just a comment.

19           I think it's unfortunate that in a year that we have  
20 like almost no bills in the legislature where the people  
21 who do this kind of work would maybe actually have time  
22 that we're stymied; we can't move forward on any of it  
23 because of the executive order. I think it's a shame.

24           CHAIRWOMAN ASHFORD: Tom, you had a --

25           BOARD MEMBER PHILLIPS: Well, I was just going to say

1 that -- I don't know what happened in Idaho. But I'll bet  
2 it was a little bit more structured process than what has  
3 happened in Washington. I didn't hear the contractors  
4 coming to the State -- an industry coming to the State and  
5 saying, "Oh, stop, stop. We've had enough." Maybe, but I  
6 didn't hear it.

7 So I'm just saying I think it's worth a shot. I  
8 think the Governor's executive order from my understanding  
9 was sent to the departments, and those departments needed  
10 to figure out which rule making were affected, which  
11 wasn't and what defines critical.

12

13

Motion

14

15 BOARD MEMBER PREZEAU: I would like to propose a  
16 motion. I would move that we recognize the Department  
17 adoption of the Department's proposed WAC rule changes  
18 verbatim.

19 BOARD MEMBER BRIGHT: Second.

20 CHAIRWOMAN ASHFORD: Any discussion? All those in  
21 favor?

22 THE BOARD: Aye.

23 CHAIRWOMAN ASHFORD: Opposed?

24

25

Motion Carried

1                   Item 8. Teleconference Protocol

2  
3           CHAIRWOMAN ASHFORD: The last agenda item is  
4 teleconference protocol.

5           And this issue also came up in October, but because  
6 we were short so many Board members we decided to bring it  
7 up again.

8           Pam has comments with regard to teleconferencing.

9           ASSISTANT ATTORNEY GENERAL REULAND: And most -- a  
10 lot of you have heard these before. And I'll try to be  
11 brief because I know it's been a long day, and I'll try to  
12 speak up.

13           There was a request at the last Board meeting. A  
14 number of you were not present. And there was a request  
15 whether Board members could attend the meetings  
16 telephonically. So I was asked to evaluate that under the  
17 two sort of things that you do, which is the Open Public  
18 Meetings Act, which you must meet the criteria for, and  
19 then the hearings portion, like we did this morning, which  
20 is under the APA or the Administrative Procedure Act.

21           And so looking at that, I'll just tell you that under  
22 the Open Public Meetings Act, while telephone appearances  
23 by Board members is permitted, you have to meet the  
24 criteria.

25           And it's probably easier if I just read sort of what

1 I wrote. Is that the person attending telephonically must  
2 be at a location and have phone capacities that ensure  
3 that he or she could hear all members of the Board, be  
4 able to participate in the meeting, be able to hear and  
5 respond to any and all public input. And somebody needs  
6 to be designated to ensure that the people attending or  
7 the person attending telephonically can hear everything  
8 throughout the meeting. And the purpose is because you  
9 have -- there's problems with phones. I mean, there just  
10 is.

11 So that's -- you can do it, but it's difficult.

12 For the purposes of the hearing, when you're acting  
13 as a quasi-judicial body, that's under the APA. And  
14 again, telephone appearances are permitted for Board  
15 members and for witnesses and attorneys. But again,  
16 these hearings are open to the public. And the statute  
17 provides that at the discretion of the presiding officer  
18 and where the rights of the parties will not be  
19 prejudiced, all or part of the hearing can be conducted by  
20 telephone, but each party in the hearing must have an  
21 opportunity to participate effectively and to hear and if  
22 technically and economically feasible to see the entire  
23 proceedings while it is taking place.

24 So while it might be more feasible for a witness to  
25 provide testimony telephonically to you, it's -- you as

1 the Board members have to be able to participate in that  
2 hearing process. And sometimes, you know, you can't tell  
3 if somebody wants to have a comment or not. And you have  
4 to be given that opportunity.

5 So what I suggested last time is that the Board needs  
6 -- I think it's unclear in your bylaws. The bylaws don't  
7 say yea or nay. So the problem is is what if a Board  
8 member says, "Wow, I'm going to be" -- Tracy -- "I'm not  
9 going to be able to attend. But this is a very important  
10 issue. You're going to be talking about correspondence  
11 courses. And I have some thoughts on that, and I'd like  
12 to participate."

13 So my -- and it's -- my suggestion was the Board just  
14 needs to sort of make -- have some guidelines. And my  
15 recommendation is is that you actually put those  
16 guidelines in your bylaws.

17 I brought a couple examples from some other boards  
18 that have language.

19 Now, as sort of a sub-issue that I think may have  
20 been resolved in a lot of people's minds today, but we did  
21 get a request from one of the attorneys. Mr. Dale had  
22 requested to attend the hearing today telephonically. He  
23 happens to work out of Everett. And he had been given to  
24 understand that he would be giving about 15 minutes to  
25 just have his argument. I don't think he factored in the

1 Board's questions and all that time. But there's -- you  
2 know, that can be handled a little bit differently.

3 What I told Mr. Dale was that logistically we have to  
4 be able to meet the criteria. Can he hear and do we have  
5 the physical capacities. And we've had problems.

6 And we did check with the Department, with Ron. And  
7 the Department, it's my understanding, is not set up or  
8 this room really isn't set up to accommodate that. And  
9 we've had problems in the past.

10 So we do get those requests.

11 Again, it's different for witnesses and for attorneys  
12 as it is for the Board members.

13 In terms of the actual hearings, the statute provides  
14 that under the APA that the presiding officer -- and in  
15 this case for reviewing decisions the presiding officer  
16 would be the Chair unless she designates somebody else.  
17 And technically the Chair can make those decisions --  
18 procedural decisions, you know, telephone use, that sort  
19 of thing.

20 I think that's about it. I just think it's questions  
21 that are going to come up. And that an answer -- a  
22 decision would be helpful I think to everybody involved.

23 CHAIRWOMAN ASHFORD: As Pam said, we've had this  
24 discussion not in this great detail over the years, and  
25 there's a few of us that have been here a number of years,

1 and we've tried to have telephone testimony, and even  
2 looking at our packets how many times do you read the word  
3 "inaudible" in these things.

4 My personal feeling on it. We do not have our own  
5 facility. We move to temporary facilities where we could  
6 not set up a permanent teleconference structure.

7 So at this time I think until technology continues to  
8 progress where a system could be put in place that's very  
9 simple and easy to operate, I would not recommend  
10 teleconferencing.

11 BOARD MEMBER PREZEAU: So then is it appropriate to  
12 ask Pam to give us some suggested bylaws language that  
13 addresses this rather than us trying to draft it?

14 BOARD MEMBER NEWMAN: Just say we don't do it.

15 BOARD MEMBER PREZEAU: Well, I thought the  
16 recommendation was that the bylaws need to be altered in  
17 order --

18 BOARD MEMBER NEWMAN: Just say yea or nay.

19 ASSISTANT ATTORNEY GENERAL REULAND: Yeah, I guess  
20 the answer to your question is certainly I could draft  
21 some proposed language and submit it and you can address  
22 it.

23 I think the decision needs to be whether it's just  
24 absolutely not or is there any exceptions that you want to  
25 have written into that. That's what I would need to know

1 from you folks.

2 CHAIRWOMAN ASHFORD: Cathleen.

3 BOARD MEMBER BRIGHT: I have a question.

4 If a member wasn't able to attend the meeting -- and  
5 I'm not talking about hearings; I'm just talking about the  
6 meeting and the content -- when we get the agenda, would  
7 they be able to submit written comments that could be  
8 presented at the Board meeting if they were unable to  
9 attend?

10 ASSISTANT ATTORNEY GENERAL REULAND: You know, I  
11 haven't --

12 BOARD MEMBER BRIGHT: I mean, they can't participate  
13 in the discussion obviously, but --

14 ASSISTANT ATTORNEY GENERAL REULAND: And I haven't  
15 researched that particular, you know, specifically in  
16 terms of just submitting -- I think that that's -- you  
17 know, fundamentally as I understand the Open Public  
18 Meetings Act and the -- that that probably wouldn't be a  
19 problem because it's comments that are there, and then the  
20 group can discuss them. But I didn't look at that  
21 specifically.

22 SECRETARY FULLER: I don't think that would be any  
23 different than a stakeholder writing a letter to the  
24 Board. I mean, that's happened at the Building Code  
25 Council fairly regularly actually where a member won't be

1       there but wants to provide input, so they provide a letter  
2       in advance.

3             BOARD MEMBER BRIGHT:   So the hearings issue wouldn't  
4       necessarily be a problem unless we didn't have a quorum.

5             BOARD MEMBER NEWMAN:   How many do we physically need  
6       for a quorum?

7             SECRETARY FULLER:   Eight.

8             ASSISTANT ATTORNEY GENERAL REULAND:   Eight.

9             BOARD MEMBER NEWMAN:   Eight?  We always have plenty  
10       of people.

11            BOARD MEMBER GUILLOT:   Gloria, I'm opposed to holding  
12       it -- and maybe I'm old school.  There's a lot of value in  
13       sitting around like we are, not only hearing them but  
14       reading the body language, you know.

15            BOARD MEMBER HOWELL:   I'd like to make a comment too.  
16       I sit in on a lot of conference calls, and we're going  
17       through whatever the agenda is.  And being on those calls,  
18       you're always saying -- somebody asks the question, "What  
19       was that again?"  Everybody's multi-tasking.  Nobody's  
20       paying attention.  So I'm against it.

21            BOARD MEMBER SIMMONS:   I agree with the opinions that  
22       are flying around here.  Just in this -- in the DJ  
23       Mechanical, if you look at page 17, I just marked out six  
24       places just on one page of testimony that's inaudible.  
25       And I can't tell you how many times we've had these, and

1 some of them that -- I remember one that we had like six  
2 months ago. I mean, it was like --

3 BOARD MEMBER PREZEAU: You couldn't read it.

4 BOARD MEMBER SIMMONS: -- a third of the words were  
5 missing. You couldn't really tell what was said even.

6 And I think that it's -- I agree. I think it's  
7 important for us to be here. I think it is important we  
8 make a -- part of our interview process is, Can you make  
9 the meetings? Will you sacrifice the time? And we all  
10 plan, you know, overly -- the time I've been on the Board,  
11 there's been very little times that we haven't at least  
12 had a quorum. And if somebody's gone, as I have missed a  
13 few meetings, but they usually have a good reason, and  
14 it's not been an issue. And I just don't think it's a  
15 good precedent to set. I think we're better off just  
16 saying something in our policy that says, Hey, members  
17 will attend meetings, and telephone testimony is not  
18 admitted.

19 And to answer your question (addressing Board Member  
20 Bright), I have submitted when I was gone, you know,  
21 something, "Hey, this is an important thing to me, but I  
22 cannot be at the meeting. Here's my opinion on it." And  
23 it was read during the meeting. So that can happen.

24 BOARD MEMBER BRIGHT: Yeah, I have -- you know, I've  
25 participated in hundreds of hearings by phone. Because

1 when the OAH does these hearings, you know, they do these  
2 by telephone predominantly. At least they've shifted that  
3 way over the last probably decade or so.

4 But having said that, you know, you're dealing with  
5 one judge, and you're dealing with maybe two or three  
6 people testifying on either side. You're not dealing with  
7 a 14-member panel that's going to be making a decision.  
8 And I think logistically it's not feasible with the  
9 technology that's available right now.

10 BOARD MEMBER TURNER: I have a question for Pam.

11 The two pieces of legislation that was cited that  
12 allows us to have them, if we decide that it's not going  
13 to happen if it's allowable, is that a problem?

14 ASSISTANT ATTORNEY GENERAL REULAND: No. Because the  
15 statute allows you to make the decision of whether or not  
16 you're going to permit it or not.

17 My only suggestion would be that -- I think this  
18 morning was a very good example in terms of the  
19 interaction between the Board and the attorneys. And I've  
20 seen that kind of interaction between the Board and also  
21 witnesses.

22 But there are going to be times -- just for  
23 clarification, if you want -- in terms of the Board  
24 members versus witnesses, there may be times where a  
25 critical witness, either for the Department or for the

1 company or the electrician, is simply not available or  
2 able to come, you know, costs, taking off time from work.  
3 And while the Department, for instance, could obtain an  
4 affidavit or a statement of that witness, technically  
5 that's hearsay, and the opposing counsel would be able to  
6 argue that. You're able to make -- hearsay is admissible  
7 in these situations, but you'd have to have corroborating  
8 evidence. You cannot make a finding based purely on  
9 hearsay. But the parties could stipulate to that.

10 So there may be times where a witness would need to  
11 testify telephonically. And I think that's a little bit  
12 different than other things. And I'm just -- you may want  
13 to make -- I don't know if you want to make a blanket rule  
14 about all telephone appearances or if you want to leave an  
15 opening for maybe a witness or something like that. We  
16 just address it as the Board members.

17 BOARD MEMBER PREZEAU: Under extenuating  
18 circumstances, we would allow --

19 CHAIRWOMAN ASHFORD: It really is two separate  
20 issues:

21 ASSISTANT ATTORNEY GENERAL REULAND: Yeah.

22 CHAIRWOMAN ASHFORD: Participation as a Board member  
23 at the meeting and then testimony.

24 BOARD MEMBER BOWMAN: I'm going to play devil's  
25 advocate here because there could come a time where we're

1 going to have to hold one of these Board meetings  
2 telephonically. I mean, we're not going to be able to all  
3 make it here. Or maybe weather conditions or whatever  
4 reason. I think we need to leave that door open and  
5 develop rules that will allow it to happen for emergency  
6 purposes. But I agree with everybody else. I mean, there  
7 is no substitution like being here so you can hear it  
8 live.

9 CHAIRWOMAN ASHFORD: That brings up the question.  
10 Ron, to your knowledge in the past, has the Board  
11 ever not met quorum?

12 SECRETARY FULLER: No. The closest we came was that  
13 year in that blizzard and we had to wait a little bit.

14 CHAIRWOMAN ASHFORD: And Pam, a question for you. If  
15 the Board does not meet quorum, would the meeting be  
16 rescheduled?

17 ASSISTANT ATTORNEY GENERAL REULAND: Well, you have  
18 the authority to set special meetings. If you don't make  
19 a quorum, then you can't render a decision, and you'd have  
20 to then continue the matters to the next Board meeting.

21 Interestingly enough, though, I'll just say this in  
22 terms of the hearings. There are certain -- the issue  
23 would then become if it was an original hearing -- see,  
24 you could set a special meeting and set it within a week  
25 or a couple weeks. Because there's certain times when the

1 Department takes action where the person continues -- gets  
2 to continue to operate until the Board makes a decision.

3 So if you've got somebody that you're concerned  
4 about, you may not want to kick them over, wait four  
5 months while they're still going out and doing electrical  
6 installations or whatever. So you -- the remedy would be  
7 to set a special meeting, which you can do at any time.

8 Does that answer the question?

9 SECRETARY FULLER: And that's what we've done before.

10 If you'll remember the one appeal that we had because  
11 of a variance, we wound up meeting up in Tacoma. But that  
12 was a special meeting. That's one of the few that we've  
13 ever had I think. I think we've maybe only had one other  
14 one in 11 years. So special meetings are okay. You get  
15 to choose to set them as the Chair.

16 And I don't believe we've ever done a full meeting  
17 telephonically for any reason. The Building Code Council  
18 does do that on occasion. But I don't believe they have a  
19 guarantee of who's on the line when. I don't think they  
20 quite meet the rules probably.

21 BOARD MEMBER BOWMAN: There's a company -- Brian  
22 Services -- where you can call in, and then if you don't  
23 answer the question, you just hit a button, and the chair  
24 will get the --

25 SECRETARY FULLER: Right. There's a way to do that.

1 I mean, Microsoft Live Meeting comes really close to  
2 letting us do it now. Live Meeting is -- it's  
3 computer-based obviously because it's Microsoft. But I've  
4 participated in a few of those audio now only, and you  
5 have -- as the meeting coordinator, you have a list of  
6 who's on-line. So theoretically they're there and  
7 available. They may be off somewhere doing something, but  
8 they're logged in.

9 There is another feature that has video on it that  
10 I've seen a couple of times, but I haven't seen it work  
11 yet. It's a little starship looking pod that if I set it  
12 out in the middle of the room here, it will focus on who  
13 is speaking. So the camera literally will go 360 degrees.  
14 I haven't seen that one work yet.

15 ASSISTANT ATTORNEY GENERAL REULAND: Well, I think  
16 that you're --

17 SECRETARY FULLER: But they're -- we're getting  
18 closer.

19 ASSISTANT ATTORNEY GENERAL REULAND: I can tell you  
20 that our office has videoconferencing. So you have a big  
21 TV set and everybody sits in the room, and you've got  
22 three different rooms, and you -- I think many of you  
23 probably know this. And you can see everybody. And you  
24 watch them eat their lunch or whatever else. And  
25 facilities do rent out -- and you can go to like a

1 community college or something, but there's a fee for  
2 those videoconferencing unless you have your own system.

3 So I hear what you're suggesting in terms of if  
4 technology permits or something like that.

5 BOARD MEMBER BOWMAN: I just think we need to leave  
6 the door open because you never know what's going to  
7 happen.

8 CHAIRWOMAN ASHFORD: Maybe we could put that in the  
9 bylaws: "If technology permits."

10 BOARD MEMBER PREZEAU: Well, or -- I think -- so  
11 who's definition of "technology permitting"? Right?

12 So I mean I just sort of think it -- for both the  
13 witnesses and for Board members, there has to be some  
14 threshold of emergency situation or due to extenuating  
15 circumstances that will be evaluated by -- I mean, there's  
16 got to be some responsibility tied to it. But I'm a  
17 little bit reluctant to say absolutely no because of the  
18 example that Pam just gave that you may have, you know, a  
19 credible witness who can't physically be here or --  
20 whatever. Due to extenuating or emergency circumstances.

21 CHAIRWOMAN ASHFORD: Well, the witness is really  
22 separate from conducting the Board meeting.

23 BOARD MEMBER PREZEAU: Only the threshold should be  
24 accepted.

25 SECRETARY FULLER: It may or may not technology-wise.

1 For instance, in April we have to know where we're going  
2 to meet. So remember that. It's not going to be here.  
3 So we don't know what capability we're going to have in  
4 April. And we may not know for another two months. So  
5 that's --

6 In my mind, this is a great conversation, but I truly  
7 don't think we need to do anything.

8 BOARD MEMBER GUILLOT: Amen.

9 SECRETARY FULLER: Because you've got the ability as  
10 the Chair now to do it if you want at any point in time.

11 CHAIRWOMAN ASHFORD: I don't think at this point it's  
12 usable because we do not have a permanent meeting  
13 facility.

14 (Addressing a Board member) Was that your motion to  
15 adjourn?

16

17 Motion to Adjourn

18

19 BOARD MEMBER PREZEAU: So moved.

20 BOARD MEMBER: Second.

21

22 Motion Carried

23

24 BOARD MEMBER GUILLOT: Yes, it was.

25 SECRETARY FULLER: So that leaves David's option too,

1       though.  If we need it, you can do it.  You can require it  
2       to be done.

3                                       (Whereupon, at 2:24 p.m.,  
                                      proceedings adjourned.)

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