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STATE OF WASHINGTON

ELECTRICAL BOARD MEETING

TRANSCRIPT OF PROCEEDINGS

Thursday, July 30, 2015

BE IT REMEMBERED, that an Electrical Board meeting was held at 9:00 a.m. on Thursday, July 30, 2015, at the Department of Labor & Industries, 7273 Linderson Way SW, Tumwater, Washington, before CHAIRPERSON TRACY PREZEAU, BOARD MEMBERS ALICE PHILLIPS (Vice Chair), ROD BELISLE, JANET LEWIS, RANDY SCOTT, DYLAN CUNNINGHAM, DON BAKER, DAVID WARD, DENNIS TOWNSEND, BOBBY GRAY, KEVIN SCHMIDT, DOMINIC BURKE, and SECRETARY/CHIEF ELECTRICAL INSPECTOR STEPHEN THORNTON. Also present was ASSISTANT ATTORNEY GENERAL KEVIN ELLIOT 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, July 30, 2015

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CHAIRPERSON PREZEAU: Okay. Good morning, everybody. It is 9:02, and I would very much like to call the July 30, 2015, Washington State Electrical Board meeting to order.

So a couple of pieces before -- well, let's just do things out of order a little bit.

Item 2. Approve Transcripts From April 30, 2015,
Electrical Board Meeting

CHAIRPERSON PREZEAU: The Chair would love to entertain a motion to approve the transcripts from the April 30, 2015, Electrical Board meeting.

Motion

BOARD MEMBER BAKER: Motion.

BOARD MEMBER BELISLE: Second.

CHAIRPERSON PREZEAU: Motion and second to approve the minutes. Any discussion? All those in favor, signify by saying "aye."

THE BOARD: Aye.

CHAIRPERSON PREZEAU: Opposed?

Motion Carried

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CHAIRPERSON PREZEAU: The transcripts have been approved.

As one Board member has indicated, this is not Pam Reuland. This is Kevin Elliot, and he is our assistant attorney general for this meeting.

And as you may recall, Pam introduced him to this body at the April meeting. And I think we are in fine hands with Mr. Elliot to my left and would very much like -- although we did introductions for Kevin's benefit in April, if we could do them again because I think he's probably slept since then and it might be a good refresher. So if Board members would please introduce themselves and state what stakeholder group you represent, that would be greatly appreciated.

Dominic, we'll start with you.

BOARD MEMBER BURKE: Dominic Burke, Burke Electric, contractor seat.

BOARD MEMBER SCHMIDT: Kevin Schmidt, Interface Technologies, telecommunications contractor.

BOARD MEMBER GRAY: Bobby Gray, electrical contractor seat.

BOARD MEMBER TOWNSEND: Dennis Townsend, telecom industry.

1 BOARD MEMBER WARD: Dave Ward, Grays Harbor PUD, in
2 the utility seat.

3 BOARD MEMBER BAKER: Don Baker, E.C. Company,
4 contractor seat.

5 BOARD MEMBER CUNNINGHAM: Dylan Cunningham, M.W.
6 Consulting Engineers, engineering seat.

7 CHAIRPERSON PREZEAU: Tracy Prezeau. I represent
8 electricians.

9 BOARD MEMBER SCOTT: Randy Scott, public member.

10 BOARD MEMBER LEWIS: Janet Lewis, representing
11 electricians.

12 BOARD MEMBER BELISLE: Rod Belisle, representing
13 electricians.

14 SECRETARY THORNTON: Steve Thornton, Chief Electrical
15 Inspector, Department of Labor and Industries.

16 CHAIRPERSON PREZEAU: And Secretary to the Board.

17 SECRETARY THORNTON: And Secretary to the Board.

18 MS. RIVERA: Bethany Rivera, assistant to the
19 secretary.

20 CHAIRPERSON PREZEAU: Very good. Thank you,
21 everybody.

22

23 Item 1. Board Member Appointments

24

25 CHAIRPERSON PREZEAU: And then as you can see, the

1 Governor has taken some action on some Board appointments.
2 And Bobby Gray, Don Baker, and Dave Cornwall who's not
3 here have all been reappointed to the Electrical Board.
4 So congratulations on your reappointments.

5 So Jose', Mr. Rodriguez is here.

6 SECRETARY THORNTON: We should --

7 CHAIRPERSON PREZEAU: Oh, yes.

8 SECRETARY THORNTON: We should probably do a -- if a
9 fire drill goes off, we can exit through the doors into
10 the hallway, take a right, go down. There's an exit right
11 there on your left, and then you'll want to proceed out
12 across the parking lot away from the building. We've had
13 a couple of those in the last month. So if we would
14 happen to get another one ...

15 CHAIRPERSON PREZEAU: Yeah. So in the event that we
16 actually have a fire alarm, we are going to operate under
17 the notion that it is a real fire alarm and we will exit
18 through those doors (indicating) --

19 SECRETARY THORNTON: Yes.

20 CHAIRPERSON PREZEAU: -- and go out into the parking
21 lot.

22 SECRETARY THORNTON: Yeah.

23 CHAIRPERSON PREZEAU: Very good. All right.

24 ///

25 ///

1 Item 3. Departmental/Legislative Update

2
3 CHAIRPERSON PREZEAU: So departmental/legislative
4 update.

5 Mr. Rodriguez, I was under the impression that you
6 would not be joining us today. I'm thrilled that you're
7 here. Would you like to come up and chat with us?

8 MR. RODRIGUEZ: I would.

9 CHAIRPERSON PREZEAU: We'd love to have you.

10 MR. RODRIGUEZ: I'm sorry we miscommunicated somehow
11 that I was not going to be here. But I do try to make
12 them.

13 I'm Jose' Rodriguez, the Assistant Director for Field
14 Services and Public Safety. The electrical program is
15 obviously one of the programs that I have responsibility
16 for.

17 Today, I have a couple of issues. I think the
18 challenge with my agenda today was we'll be overlapping --
19 Steve and I -- the Chief and I will be overlapping on some
20 subjects, so you might hear some things twice. But I'll
21 try to keep my remarks brief.

22 First of all, on the FY15 to '17 biennium budget, the
23 budget that was just passed, the electrical program had
24 requested and the legislature provided the authorization
25 and the funding from the electrical licensing account to

1 invest 3.5 million into the development of the replacement
2 of our mobile inspection program. So I believe I have --
3 we had given you all plenty of notification about that.
4 So that's done.

5 But the goals now of the new system are going to be
6 to increase the productivity of our electrical inspectors,
7 decrease the response time for our customers, make the
8 inspector workloads more manageable, and simplify the
9 scheduling and documenting of the inspections, and last
10 but not least is to provide inspection results to our
11 customers immediately on the Web. So that's kind of the
12 general framework of what we want this new system to do
13 for us.

14 CHAIRPERSON PREZEAU: Jose', if I may interrupt you.

15 MR. RODRIGUEZ: Sure.

16 CHAIRPERSON PREZEAU: The system that we're operating
17 on now is at least ten years old I believe and is --
18 obviously there's no more support for it because of its
19 age.

20 MR. RODRIGUEZ: Correct.

21 CHAIRPERSON PREZEAU: And I think I remember the
22 Chief indicating -- it might have been April; it might
23 have been last year; I can't recall -- but how long is it
24 going to take to develop this -- what do we estimate how
25 long it's going to take to develop the new mobile

1 inspection system?

2 MR. RODRIGUEZ: The funding is for this biennium.
3 The planning already began -- it actually began this last
4 biennium. We had a variance because of our vacancy rate.
5 So we were starting to do some scoping on the project.
6 The project officially began on July 1st with the funding.
7 And we will have it operational by July 1, 2017.

8 CHAIRPERSON PREZEAU: That's fantastic. Thank you.

9 MR. RODRIGUEZ: Knock on wood.

10 So right now where we're at in terms of the project
11 is we have done the business development and investment
12 plans. Those are undergoing review right now. So we've
13 done some initial assessments and some interviews with the
14 business areas; those have begun. We've got a project
15 manager, and that project manager is now in the final
16 phases of hiring the project programmers. So it's moving
17 along quite well up to this point. It's in the beginning
18 stages.

19 So any more questions on the mobile?

20 CHAIRPERSON PREZEAU: Board members?

21 MR. RODRIGUEZ: We're also now preparing for the
22 supplemental FY2016. And what we're doing is taking a
23 look at our workloads, and we're developing a budget
24 package that would fund additional FTE's. We haven't come
25 up with a hard number yet. There's still a lot of work

1 that needs to be done internally to verify our workload
2 numbers and then to make an agency decision to move
3 forward with that package. So it's still internal at this
4 time, but I just wanted to give you all a heads up that we
5 are looking at a potential for a supplemental.

6 I think right now one of the biggest challenges that
7 we have within the Department and the electrical program
8 is hiring and retention. The construction boom has really
9 taken a hit on our inspectors that generally come out of
10 the trades. And so there's -- and we also have an aging
11 workforce. So it's really created a situation where we
12 would need to develop some plans and strategies to hire
13 and retain electrical inspectors going forward.

14 So Steve will give you a more detailed briefing today
15 on that. But we've had about a 10 percent vacancy rate
16 for the past two years. And we project we're going to
17 need about 23 additional inspectors by 2019 if the
18 workload continues at the pace it's going at now. And we
19 have about 42 of our current staff that will be eligible
20 for retirement within five years. So -- and we've also
21 done quite a bit of hiring recently. So I think what we
22 said, Steve, it would be about 90 percent of our staff
23 will have turned over by 2019. So ...

24 CHAIRPERSON PREZEAU: And I think -- are we -- we're
25 anticipating an actual -- a more in-depth presentation on

1 this subject matter later in the agenda. Is that --

2 SECRETARY THORNTON: Yes, correct.

3 CHAIRPERSON PREZEAU: Because I can see Board members
4 -- like these statistics are very interesting, and I'm
5 writing them down and other people are writing them down.
6 But just for the Board, there is going to be a much
7 broader conversation that will add to Jose's comments
8 later in the meeting.

9 MR. RODRIGUEZ: So we've run this by some project
10 teams to see if we can come up with some recommendations
11 for our leadership, and we're going to continue to work
12 through some of them. Obviously our internal things that
13 we can do and will do, and there are some places where
14 we'll need some help. So that's what we're trying to
15 identify for our agency leadership.

16 And again, Steve will brief you on that in a little
17 more depth today.

18 I heard you all had an interest in the conflict-of-
19 interest policy to see where that's at.

20 CHAIRPERSON PREZEAU: I cannot wait to hear these
21 words come out of your mouth.

22 MR. RODRIGUEZ: Yeah, it just keeps coming --

23 But we did -- as you all know, we had a working group
24 that was formed and met in June of 2014. They reviewed
25 the policy and the ethics board criteria and their

1 determinations. We proposed some scenarios to the ethics
2 board that would mitigate some of those potential
3 conflicts.

4 We heard back from the board now. We've briefed our
5 agency leadership, and we are considering moving towards
6 at least reevaluating the policy. I can't say it will be
7 changed because it does impact not just the electrical
8 program but a lot of other programs within the agency.
9 But it would be a -- if it's permitted, it would be under
10 some more restrictive criteria than we've had in the past.

11 CHAIRPERSON PREZEAU: Yeah, there would be some side
12 board.

13 MR. RODRIGUEZ: So our next step is to convene the
14 policy group here in the agency, take a look at what we
15 want to do with that policy. And then it would obviously
16 have to go to the ethics board for a formal review. And
17 then it could end up being a policy change for the agency.
18 So it's a very slow process, but I'm optimistic at this
19 point.

20 CHAIRPERSON PREZEAU: So am I, Jose'.

21 That's why I -- I heard that there was positive --
22 there's movement. And what I and others on this Board I
23 think have voiced is a positive direction, which is
24 allowing inspectors to serve the industry as instructors
25 with respect to continuing education classes. And it's my

1 understanding that some of those side boards are the
2 pieces that the workgroup suggested, maybe not all of
3 them. But, you know, you guys -- you know, it's pretty --
4 they seem pretty reasonable in that, you know, inspectors
5 -- potentially a scenario that has less conflict of
6 interest is one where an inspector is allowed to teach --
7 deliver a continuing education class if it is organized by
8 a third party where they are not compensated for the
9 number of human beings that take the class, but it's a
10 flat stipend for delivery of the material regardless if
11 there's one person or 100 people, their compensation is
12 not tied to head counts. And that there's another -- you
13 know, there's a third-party agency, whether it's an
14 apprenticeship facility or an association that is actually
15 organizing the training and then the inspectors brought in
16 for that. Right? So they seem highly reasonable, and if
17 that's what it -- from my perspective if those side boards
18 allow for inspectors to return as valuable assets, we all
19 recognize in delivering -- helping deliver that training,
20 then I'm all for it.

21 MR. RODRIGUEZ: Well, we have a obligation obviously
22 to make sure that we're in compliance with the ethics
23 board rules. And more importantly, we have a
24 responsibility to our employees to protect them because
25 this is personal liability.

1 CHAIRPERSON PREZEAU: Absolutely.

2 MR. RODRIGUEZ: So we want to make sure that they
3 understand if there is a policy change what the parameters
4 are so they can be in compliance.

5 That's all I had to report. I'm willing to answer
6 any questions you all might have.

7 CHAIRPERSON PREZEAU: All right.

8 Any -- so knowing that we're going to have a much
9 broader conversation around the recruitment and retention
10 piece -- because I know that Jose' threw out some very
11 interesting statistics, but we'll have those again. But
12 any questions for --

13 Rod, go ahead.

14 BOARD MEMBER BELISLE: Not necessarily a question,
15 but just a comment.

16 I really appreciate you pursuing this conflict-of-
17 interest concern and the comments that the Board made,
18 with the ideas that it's difficult to hire inspectors to
19 give them some latitude to do something that they likely
20 very much enjoy doing as part of their job will probably
21 open the door to potentially more applicants, more
22 candidates to fill those positions. I think it's
23 fantastic. I appreciate you working on it.

24 MR. RODRIGUEZ: Yeah, that was part of our -- that
25 was one of the things that came up in our hiring and

1 retention events.

2 CHAIRPERSON PREZEAU: Yeah, very much related.

3 Any other questions/comments?

4 Thank you very much, Jose'.

5 MR. RODRIGUEZ: And again, I thank the Board for
6 everything you do to support the industry and the agency
7 and our program.

8 CHAIRPERSON PREZEAU: And to that end, actually we
9 had this chat last time you were here, Jose'. But going
10 forward with the recruitment and retention, the
11 supplemental budgets, I just -- I'm just going to say it
12 again. If there's any way that the Department or you feel
13 that this body could somehow -- if we weighed in on an
14 issue, whatever that arena is, we're always here to help
15 support the program. So just let us know.

16 MR. RODRIGUEZ: Okay. Thank you.

17

18 Item 4. Appeals

19

20 Item 4.a. Frank Dahmen

21

22 CHAIRPERSON PREZEAU: Okay. So very good. So we are
23 at appeals. And our first appeal is Frank Dahmen.

24 ASSISTANT ATTORNEY GENERAL KING: Good morning. My
25 name is Linda King. I represent the Department of Labor

1 and Industries. And it is the Department which is
2 appealing from the dismissal of a citation issued to
3 Mr. Frank Dahmen.

4 CHAIRPERSON PREZEAU: Thank you, Ms. King.

5 I'm actually going to go through and start off with
6 this little script and lay out the rules of engagement.
7 And you got out in front of me just a little bit, but
8 that's just fine. So --

9 And I'm assuming you're Mr. Dahmen?

10 MR. DAHMEN: Yes, ma'am.

11 CHAIRPERSON PREZEAU: We'll do introductions in just
12 a moment.

13 So my name's Tracy Prezeau. I'm the Chair of the
14 Electrical Board. The matter before us today is an appeal
15 of the matter of Frank Dahmen and the Department of Labor
16 and Industries, which is OAH Docket Number 2014-LI-0234.

17 This hearing is being held pursuant to due and proper
18 notice to all interested parties in Tumwater, Washington
19 on July 30th at approximately 9:18 a.m.

20 This is an appeal from a proposed decision and order
21 issued by the Office of Administrative Hearings on March
22 27, 2015. It is my understanding that decision both
23 affirmed and reversed citations and notices, affirmed
24 citation EBIEA01283 and dismissed citation EBIEA01284
25 issued by the issued by the Department of Labor and

1 Industries on August 28, 2014. It is further my
2 understanding the Department has timely appealed the
3 reversed decisions to the Electrical Board.

4 So at this time the original appellant which is
5 Mr. Frank Dahmen who is present today -- right? So
6 Mr. Dahmen, if you would please spell your name for the
7 court reporter please.

8 MR. DAHMEN: You want both my names --

9 CHAIRPERSON PREZEAU: Yes, sir.

10 MR. DAHMEN: -- or my last name?

11 CHAIRPERSON PREZEAU: Well, Frank, what is your last
12 name, please, sir.

13 MR. DAHMEN: D-A-H-M-E-N.

14 CHAIRPERSON PREZEAU: Thank you.

15 And you are representing yourself?

16 MR. DAHMEN: Yes, ma'am.

17 CHAIRPERSON PREZEAU: And then obviously Ms. King,
18 you've already introduced yourself and indicated that you
19 are the assistant attorney general representing the
20 Department this morning.

21 ASSISTANT ATTORNEY GENERAL KING: Yes.

22 CHAIRPERSON PREZEAU: Great.

23 So some procedural pieces.

24 The Electrical Board is the legal body authorized by
25 the legislature to not only advise the Department

1 regarding the electrical program, but to hear appeals when
2 the Department issues citations or takes some other
3 adverse action regarding an electrical license,
4 certification or electrical installation. The Electrical
5 Board is a completely separate entity from the Department,
6 and as such will independently review the action taken by
7 the Department. When the Department issues penalties, the
8 hearing is assigned to the Office of Administrative
9 Hearings to conduct the hearing pursuant to the
10 Administrative Procedures act. The ALJ who conducts that
11 hearing then issues a proposed decision and order. If
12 either party appeals, that decision is subject to review
13 by the Electrical Board. Please keep in mind that while
14 our review is de novo, we sit in the same position as the
15 administrative law judge and will review the entire record
16 regardless of whether a certain piece of evidence is
17 referenced by the ALJ. We are bound by the evidence in
18 the record and no new evidence can be submitted at this
19 hearing. Each party will be given approximately 15
20 minutes today to argue the merits of your case. Any Board
21 member may ask questions and the time may be extended at
22 the discretion of the Board. At the conclusion of the
23 hearing, the Board will determine if the findings and the
24 conclusions reached by the ALJ are supported by the facts
25 and the laws and rules pertaining to electrical

1 installations.

2 Are there any questions before we begin? Mr. Dahmen,
3 do you have any questions regarding the process?

4 MR. DAHMEN: No, ma'am.

5 CHAIRPERSON PREZEAU: Thank you.

6 Ms. King, do you have any questions regarding the
7 process?

8 ASSISTANT ATTORNEY GENERAL KING: No.

9 CHAIRPERSON PREZEAU: Thank you.

10 Okay. So again, just a reminder to the Board that we
11 are bound to only the material that is contained within
12 the Board packets. No -- sometimes Board members, there
13 are questions that they wish people would ask that would
14 give you -- furnish new information. If somebody asks a
15 question that will provide new information or if either of
16 the representatives start to enter new information, I will
17 interrupt you. Right? Because we can't have it. So as
18 frustrating as sometimes that may be.

19 Okay. Any questions from Board members? We clear?
20 Very good.

21 And so Ms. King, as you indicated, you are the
22 appealing the party, so you have the burden of proof. So
23 I'm going to ask that you begin your arguments. And
24 again, you have approximately 15 minutes to support your
25 case.

1 ASSISTANT ATTORNEY GENERAL KING: Okay.

2 Good morning.

3 The Department of Labor and Industries issued two
4 non-compliance citations in this matter. One of them was
5 for a violation by Mr. Frank Dahmen of RCW 19.28.041,
6 which required Mr. Dahmen to be a licensed electrical
7 contractor for if he was going to perform electrical
8 installation.

9 The other non-compliance citation was for violation
10 of 19.28.101 for not having an electrical work permit
11 prior to beginning electric installation.

12 The electric installations took place in Lacey at
13 1117 Willow Street. The property owners of that house
14 that was under construction where the electrical work was
15 done were Richard and Kathy Peregrin. Richard and Kathy
16 Peregrin went to the City of Lacey and got a building
17 permit. That building permit included an electrical work
18 permit. That electrical work permit would serve to allow
19 the Department to know that electrical work needed to be
20 inspected at that place. The electrical work permit may
21 be issued to homeowners who live in the house where the
22 electrical work is going to be done, and when that
23 homeowner who's living in the house does the electrical
24 work himself. In this case, Kathy and Richard Peregrin
25 got an electrical work permit as homeowners when they

1 should not have. That electrical work permit was invalid.
2 It was invalid because the house where the electrical work
3 was being done was being built for rent, sale or lease and
4 was not for the personal residence of those homeowners.

5 Mr. Dahmen went to that location and did electrical
6 installations that constituted work that would require him
7 to be a licensed electrical contractor. The
8 administrative law judge found that to be true and upheld
9 the citation ending in 84. And so that citation is not
10 being appealed.

11 The citation that is being appealed is the one ending
12 in 83 for Mr. Dahmen having done electrical installations
13 without an electrical work permit.

14 It's the Department's position that the
15 administrative law judge was incorrect in finding that
16 since there was an invalid electrical work permit by the
17 homeowners, that would excuse Mr. Dahmen from having to
18 get his own electrical work permit.

19 The administrative law judge dismissed the citation
20 ending in 83, and that's the only citation that the
21 Department is appealing.

22 It's the Department's position that the RCW's and the
23 WAC's all require anyone who is going to do an electrical
24 installation to get an electrical work permit. Anyone who
25 performs the electrical installation is required to do

1 that for themselves. They can't share another person's
2 permit.

3 There is some confusion in the record that goes along
4 these lines. Electrical contractors are licensed, and
5 they can be a person or a business entity, and that
6 licensing of electrical contractors does have some
7 exemptions. The exemptions that are found in 19.28.091 I
8 believe do not cover the kind of situation that the
9 Electrical Board is hearing about today.

10 In the WAC's -- in 296-46B-925 (14), there is an
11 assisting a homeowner exemption for a friend, a neighbor
12 or relative to assist a homeowner. That exemption doesn't
13 apply under the facts of this case because that exemption
14 only applies when it is at the personal residence of a
15 homeowner, the homeowner is always present during the
16 electrical work that's being done, and no money changes
17 hands. It's a volunteer position. That exemption is only
18 from the requirement that the person performing the
19 electrical work be licensed as an electrical contractor.
20 That exemption does not apply to an electrical work permit
21 at all. There are no exemptions from the requirement that
22 if you do electrical work you need to get your own
23 electrical work permit.

24 So the Department gave that information to the
25 administrative law judge. He dismissed that citation

1 because he felt that Mr. Dahmen really wouldn't/shouldn't
2 be required to know whether or not his friend, the
3 property owner, had a valid electrical work permit or not
4 because his friend, the property owner of the construction
5 site, did have an electrical work permit which was part of
6 the building permit from the City of Lacey.

7 So if there are questions about the exhibits or about
8 any of the interplay with exemptions to the requirement
9 that whoever does the electrical installation needs to get
10 their own electrical work permit, I would be happy to take
11 them.

12 The Department is asking that the administrative law
13 judge's legal conclusion that Mr. Dahmen did not need to
14 get an electrical work permit to do the electrical work he
15 says he did as a volunteer for his friend, reverse that
16 and affirm this citation and its associated penalty.

17 Thank you.

18 CHAIRPERSON PREZEAU: Okay, Ms. King, what we
19 normally do is let both sides make their opening and then
20 ask questions, unless there's a Board member who really
21 would like to ask Ms. King a question at this time.

22 Okay, very good.

23 So Mr. Dahmen, if you -- whatever you would like to
24 share with the Board this morning. Again, nothing new,
25 but whatever arguments to support your position.

1 MR. DAHMEN: Okay. Good morning.

2 Linda covered it quite clearly what happened.

3 I initially called L & I and asked an inspector if I
4 could help my friend wire a house. I wasn't -- you know,
5 it says in that booklet they make. And I took that as
6 being I could help Richard. So I went ahead and did it.
7 And Richard had a permit, and it was posted. And he
8 called for an inspection. And Mr. Bernard (sic) came out,
9 wrote up a bunch of corrections. Richard was there
10 helping me the entire time. Because that's one of the
11 things that the inspector told me when I called is that
12 when I helped him, he had to be there at all times, which
13 he was. And that may be why there were so many
14 corrections, you know.

15 Also, there was actually three citations issued
16 initially. But L & I had a mistake. They had misspelt
17 (sic) my name on my license. And so they didn't even know
18 -- they thought I didn't even have a license to begin
19 with. So they thought they were going to add another \$500
20 or whatever dollars to my initial fee.

21 The first citation I got for wiring it was \$500. And
22 L & I won -- Linda won the case. And the second one that
23 the judge ruled in my favor was \$200. So, you know, it
24 doesn't make any sense why -- why would you guys appeal a
25 \$200 fine when I'm already getting stuck for a \$500 fine,

1 and it's still going on my record anyway. So I just don't
2 understand. Well, I understand, but it seems like there's
3 a lot of time and effort put into a \$200 fine that, you
4 know, it doesn't really make any difference other than
5 that \$200, and I still have this other fine on my record
6 anyway, which is the main thing why I appealed it in the
7 first place because I didn't want anything on my record
8 because I thought I was doing the right thing by calling
9 L & I, asking them if I could do it, then not getting the
10 right information and getting it -- going ahead and
11 getting in trouble for helping Richard.

12 Where -- in -- what I show on this -- in here is that
13 he did have a permit, and he even called and had it
14 extended because they were going out of town. And also
15 when the new electrical contractor came in, they didn't
16 pay for a permit; they just put their name on that same
17 permit and just erased Richard's name and put Acer
18 Electric in there.

19 So, you know, I'm glad I went through this whole
20 thing because I'm seeing the whole nine yards of how this
21 all works. But, you know, I'll continue to help my
22 friends do electrical work. If they call me and they need
23 me, I'll go and help them because, you know, I like
24 helping them, and I like doing electrical work. I even
25 stated that before.

1 So that's all I got to say.

2 CHAIRPERSON PREZEAU: Thank you, Mr. Dahmen.

3 Yeah, no, everything you said this morning is
4 reflected in the record; that's for sure.

5 So I have one question for Mr. Dahmen because I think
6 there is actually an error in -- at least one error in the
7 proposed order from the administrative law judge because
8 -- and I just want to confirm something with you. It's
9 not new evidence because it's in the record. I'm looking
10 at the Department's -- I'm looking at the Electrical Board
11 packet, page 192 -- 191 and 192, which is one of the
12 Department's, which is an exhibit list, and what it
13 reflects is the internal computer -- the computer system
14 the Department uses to keep track of electrical trainee
15 certificates and journeyman certificates and specialty
16 certificates.

17 And I just -- it looks to me, Mr. Dahmen, that you
18 have had a residential -- an EL02, a residential
19 journeyman's license that the initial effective date is
20 February 5, 1994. Is that correct?

21 MR. DAHMEN: Correct.

22 CHAIRPERSON PREZEAU: Because in the ALJ's Electrical
23 Board packet, page 45, under section 4, Findings Of Fact,
24 so section 4.5 indicates that you have only been a
25 certified electrician since 2008 which is incorrect,

1 right?

2 MR. DAHMEN: Correct.

3 CHAIRPERSON PREZEAU: It is February 5, 1994.

4 And it also indicates -- the ALJ indicates that
5 you've been an electrical trainee for several years before
6 that but doesn't define it.

7 I look at the record and it tells me that you've had
8 an electrical trainee's certificate since January 31,
9 1990. Does that sound right?

10 MR. DAHMEN: Yes.

11 CHAIRPERSON PREZEAU: Okay. I just wanted to make
12 that clarification.

13 So very good. Thank you.

14 Do the Board members have any questions for either
15 party?

16 Randy.

17 ASSISTANT ATTORNEY GENERAL KING: I would like to
18 speak again if I may.

19 CHAIRPERSON PREZEAU: So I'm going to -- I would --
20 I'm going to let Randy ask his question.

21 ASSISTANT ATTORNEY GENERAL KING: Okay.

22 CHAIRPERSON PREZEAU: And then we can -- if you want
23 to have redirect or whatever you call that.

24 BOARD MEMBER SCOTT: So this is a question for
25 Ms. King. The way I'm reading the transcript, you

1 misstated the ticket numbers.

2 BOARD MEMBER BELISLE: Yeah.

3 BOARD MEMBER BURKE: Yeah.

4 BOARD MEMBER SCOTT: They were backwards.

5 ASSISTANT ATTORNEY GENERAL KING: You mean just now I
6 misstated them?

7 BOARD MEMBER SCOTT: Yeah. 1283 is for the
8 contractor violation. And 1284 is for the permit
9 violation I believe.

10 BOARD MEMBER BURKE: 84 was the permit, not 83.

11 CHAIRPERSON PREZEAU: Correct.

12 So the reading on -- thank you, Randy -- Electrical
13 Board packet page 44 on the Order Summary, I'm reading
14 there. This is going to be Order Summary 2.1, citation
15 ending in 83 is affirmed, and citation ending in 84 is
16 dismissed. And I'm reading from the proposed order of the
17 ALJ.

18 BOARD MEMBER BELISLE: That's correct.

19 CHAIRPERSON PREZEAU: Is that correct?

20 BOARD MEMBER BELISLE: That is correct.

21 CHAIRPERSON PREZEAU: Thank you.

22 Ms. King, you indicated you have something more you
23 wanted to add?

24 ASSISTANT ATTORNEY GENERAL KING: I did want to add
25 something.

1 And just to be clear, so the order summary 2.1
2 referencing 83, is that -- did I say that was the citation
3 that was being appealed?

4 BOARD MEMBER SCOTT: Correct.

5 ASSISTANT ATTORNEY GENERAL KING: Okay. You are
6 correct that I was incorrect. Because ending in 83 was
7 the electrical contractor license, and the Department
8 prevailed in that one.

9 And the citation ending in 84 is the 19.28.101
10 electrical work permit issue.

11 So thank you.

12 CHAIRPERSON PREZEAU: And then was there something
13 else you wanted to add?

14 ASSISTANT ATTORNEY GENERAL KING: Yes.

15 My understanding of the record is that there was not
16 evidence presented that Mr. Peregrin, the property owner,
17 was present the whole time at all. I do not believe the
18 record reflects that at all.

19 And the penalty amount for the citation ending in 84,
20 the one with the electrical work permit issue, the penalty
21 assessed is \$250.

22 And in reference to a telephone conversation between
23 Mr. Dahmen and an electrical inspector, that electrical
24 inspector is Brett Hoskins. He testified at the hearing,
25 and he testified that he remembered that conversation, but

1 that conversation was not about a friend, relative, family
2 member helping a homeowner. It was not about a friend
3 helping a property owner at a place where there's new
4 construction. It was simply the question of can a friend
5 help a homeowner with electrical work. And under that set
6 of circumstances, yes, a friend can help a homeowner with
7 electrical work. That does not affect any electrical work
8 permit issue. But it also doesn't address the situation
9 that existed in this case which is the electrical work was
10 not done at a person's private residence; it was rather
11 done at a construction site where a single-family
12 residence was being -- was under construction for rent,
13 sale or lease.

14 CHAIRPERSON PREZEAU: Mr. Dahmen, I want to give you
15 equal -- is there anything else you want to add? It's not
16 a requirement, but ...

17 MR. DAHMEN: Well, another thing I don't understand
18 is why doesn't Richard -- why doesn't he receive any
19 fines? He's the homeowner.

20 CHAIRPERSON PREZEAU: Unfortunately, Mr. Dahmen,
21 that's one of those questions that we are not going to
22 answer in this, you know, in this tribunal. It is outside
23 the authority of this tribunal. Which is also the
24 question you asked about -- you know, it's in here when
25 Acer Electric took over the job. The same -- we can't

1 answer that question.

2 MR. DAHMEN: That's fine. I just wanted to throw it
3 out there.

4 CHAIRPERSON PREZEAU: Do the Board members have any
5 questions?

6 BOARD MEMBER BURKE: Not a question, but a comment.
7 On page 122, the question was asked, you know, obviously
8 if you helped, and you did.

9 CHAIRPERSON PREZEAU: What line are you -- where are
10 you at?

11 BOARD MEMBER BURKE: It starts on line 9, the
12 inspector stating that -- there was a quote that "Frank
13 Dahmen did the majority of all the wiring in the home" and
14 he could only help a little bit on the weekend, you know.
15 So that kind of implies that there was -- that he wasn't
16 there the whole time.

17 CHAIRPERSON PREZEAU: Did everybody find that?

18 So this is the inspector's statement answering the
19 question?

20 BOARD MEMBER BELISLE: Yep.

21 CHAIRPERSON PREZEAU: "... after I contacted his wife
22 and said I wanted" -- this is referring to the Peregrins,
23 right?

24 BOARD MEMBER BURKE: Yep.

25 CHAIRPERSON PREZEAU: Oh, it is -- this is Mr. Dahmen

1 testifying.

2 BOARD MEMBER BURKE: No. That's Mr. -- that's a
3 conversation the inspector had with Mr. Peregrin and
4 Peregrin's wife.

5 ASSISTANT ATTORNEY GENERAL KING: The testifying
6 person is Inspector Tony Bierward. And the questioner is
7 Mr. Dahmen. On page 71, that's where the hearing was when
8 that question and answer happened as reflected on page
9 122.

10 BOARD MEMBER BURKE: Okay. I was trying to clarify
11 that.

12 CHAIRPERSON PREZEAU: It also indicates that
13 Mr. Dahmen has helped the Peregrins on other homes as
14 well. And so the record --

15 Rod.

16 BOARD MEMBER BELISLE: Well, I think there's adequate
17 evidence in the record, everything from a sign on the
18 fence in one of the pictures saying "For Rent" to
19 testimony by the wife saying, "I didn't realize we hired
20 an unlicensed contractor to do the work" to the
21 inspector's statement stating that he was told in the
22 investigation where Mr. Dahmen was asking the questions
23 that he wasn't readily available to be there. He wasn't
24 -- Mr. Peregrin wasn't available to respond to the
25 Department on the corrections because he was unavailable

1 at that time which was clearly during the construction.

2 The corrections have to be completed within 15 days.

3 I think there's more than adequate evidence to show
4 that Mr. Peregrin did not do the work, and so therefore,
5 the Department was correct in issuing the citation that
6 Mr. Dahmen was held out as a contractor because he could
7 not qualify under the exemption.

8 Having said that, unfortunately I know Mr. Dahmen
9 feels like we're piling on. But to hold up the statutory
10 language, if you're a contractor doing electrical work,
11 it's by default, you're required to take out a permit.
12 It's a matter of circumstances I think in this case that
13 Mr. Dahmen didn't know that or is caught up in that, but I
14 think the law is so clear that there's nothing this Board
15 could do but than reverse the ALJ's decision and affirm
16 the Department's initial citation ending in 84.

17 CHAIRPERSON PREZEAU: All right. Other Board
18 members, what do you think about what Rod just said?

19 Randy.

20 BOARD MEMBER SCOTT: Well, I was just asking, is that
21 a motion?

22 CHAIRPERSON PREZEAU: Well, I don't know that we -- I
23 think we want to be -- well, a) I want to get some other
24 -- before we look at motions because I think there is
25 going to be several in order to make a good record.

1 Right? I think I want to make sure that -- I would very
2 much like to hear from other Board members about what Rod
3 just said.

4 It's awfully quiet.

5 BOARD MEMBER LEWIS: Well, I'll make a comment.

6 CHAIRPERSON PREZEAU: Thank you, Janet.

7 BOARD MEMBER LEWIS: I think it's very obvious that
8 the house -- that they weren't living in the house. It
9 wasn't their primary residence. It was for sale or lease.
10 And there are some comments that you may have done this
11 also in the past for these same individuals. But -- and
12 since that is the case, the exceptions do not apply to you
13 in that case, which is something hopefully you will learn
14 so that you don't step into the same situation in the
15 future.

16 But I do agree with Rod. The law is very clear on
17 it, and in this case everything in the record is clear to
18 show that there was a violation.

19 CHAIRPERSON PREZEAU: All right. So I upon reviewing
20 the record agree -- I also agree with Janet and Rod's
21 position.

22 So to that end, as Board members are aware, we have
23 the ability to actually make edits to or alter the
24 proposed order from the ALJ. And we need to -- and if
25 this Board decides to make edits or alter the proposed

1 order from the ALJ, then we need -- the actions that we
2 take need to be consistent with our intent.

3 I should ask Ms. King, are you here with a proposed
4 final order?

5 ASSISTANT ATTORNEY GENERAL KING: I have a proposed
6 final order that references each paragraph that's in the
7 proposed order. Most of it is affirming the paragraphs.
8 The ones that have to do with the electrical work permit,
9 those paragraphs are either -- those paragraphs are
10 changed. There are a couple that the proposed order calls
11 irrelevant, and those would be taken away from that order.
12 So if it's just straight up the electrical work permit
13 dismissal being reversed and affirmed, I can see where
14 that's fine. I brought several copies of the Department's
15 proposed order for the Board. And if you would like, I'd
16 be happy to give them to you, and then you can make the
17 decision whether to pass them around or not.

18 ASSISTANT ATTORNEY GENERAL ELLIOT: Would it be
19 possible for you to make hand edits to your proposed order
20 to conform with the Board's decision? Otherwise, we'd
21 need to note it for presentment at the next meeting.

22 ASSISTANT ATTORNEY GENERAL KING: When the Board
23 makes its decision, if it corresponds with what my
24 proposed order is, there would be no need for edits. If
25 it's different, then, of course, I could make edits.

1 ASSISTANT ATTORNEY GENERAL ELLIOT: If -- we could
2 try it that way.

3 CHAIRPERSON PREZEAU: So I just confirmed with Kevin
4 is we're going to go through -- so let's take a look at
5 the proposed order.

6 I would like to call your attention to Order Summary
7 2.2. I think if -- I think our work needs to begin there.
8 Janet.

9

10 Motion

11

12 BOARD MEMBER LEWIS: I make a motion to amend 2.2 to
13 read: "Mr. Dahmen failed to get an inspection or
14 electrical/telecommunications work permit or post a
15 provisional electrical work permit prior to beginning
16 electrical work." And strike the last sentence.

17 CHAIRPERSON PREZEAU: Okay. Is there a second?

18 BOARD MEMBER BELISLE: Second.

19 CHAIRPERSON PREZEAU: So it's been moved and seconded
20 to alter Order Summary 2.2 to read: "Mr. Dahmen failed to
21 get an inspection or electrical/telecommunications work
22 permit or post a provisional electrical work permit prior
23 to beginning electrical work."

24 Any discussion on the motion?

25 ASSISTANT ATTORNEY GENERAL KING: May I speak to

1 that?

2 CHAIRPERSON PREZEAU: No.

3 ASSISTANT ATTORNEY GENERAL KING: Okay.

4 BOARD MEMBER SCOTT: Should the second sentence be
5 changed? I think Janet said that it was to strike the
6 second sentence, but it --

7 CHAIRPERSON PREZEAU: You mean the third sentence?

8 BOARD MEMBER BELISLE: We amended it.

9 BOARD MEMBER SCOTT: The second sentence I believe.
10 It's the third line.

11 CHAIRPERSON PREZEAU: Oh. Got it.

12 BOARD MEMBER SCOTT: To look like 2.1, non-compliance
13 citation is affirmed and a penalty of \$250 is imposed.

14 CHAIRPERSON PREZEAU: I think -- to be honest with
15 you, I think there's going to be another opportunity to do
16 that. In the section 6, Initial Order, if you want it to
17 be consistent to match the Order Summary above, then ...

18 BOARD MEMBER LEWIS: I would accept that as a
19 friendly amendment. Can I make that statement, Madam
20 Chair?

21 CHAIRPERSON PREZEAU: Absolutely. But I want to
22 double-check one thing, and that is I want to confirm what
23 the initial penalty on the proposed is. I believe it is
24 \$200, and --

25 BOARD MEMBER BELISLE: The citation lists \$250.

1 CHAIRPERSON PREZEAU: Thank you.

2 So to clarify, it has been moved and seconded to --
3 so the motion before the body is altering Order Summary
4 2.2 to reflect "Mr. Dahmen failed to get an inspection or
5 electrical/telecommunications work permit or post a
6 provisional work permit prior to beginning electrical
7 work. Non-Compliance Citation EBIEA01284 is affirmed and
8 a penalty of \$250 is imposed."

9 Is that correct, Janet?

10 BOARD MEMBER LEWIS: That is correct.

11 CHAIRPERSON PREZEAU: Any discussion on the motion?

12 Seeing none, all those in favor please signify by
13 saying "aye."

14 THE BOARD: Aye.

15 CHAIRPERSON PREZEAU: Opposed? Motion carries.

16

17 Motion Carried

18

19 CHAIRPERSON PREZEAU: I am curious if we should --
20 this is for you, Kevin -- also make -- do we have to go
21 through and correct the record regarding Mr. Dahmen's
22 certificate history?

23 ASSISTANT ATTORNEY GENERAL ELLIOT: If there's a
24 factual mistake that you found in that proposed finding of
25 fact, then I would move to amend it.

1 CHAIRPERSON PREZEAU: Okay. So given that, the Chair
2 would love to entertain a motion that looks something like
3 this (showing), Findings of Fact 4.5, "Mr. Dahmen is a
4 certified electrician. He is not a licensed electrical
5 contractor. Exhibit 5; Dahmen Testimony; Exhibit 7. He
6 has been a certified electrician since February 5, 1994,
7 and was an electrical trainee since January 31, 1990.
8 Exhibit 5."

9

10 Motion

11

12 BOARD MEMBER BELISLE: I'll make that motion.

13 CHAIRPERSON PREZEAU: So it's been moved. Is there a
14 second?

15 BOARD MEMBER BURKE: Second.

16 CHAIRPERSON PREZEAU: Dominic second.

17 Any discussion on the motion? Seeing none, all those
18 in favor signify by saying "aye."

19 THE BOARD: Aye.

20 CHAIRPERSON PREZEAU: Opposed? Motion carries.

21

22 Motion Carried

23

24 CHAIRPERSON PREZEAU: So under advice of counsel, if
25 there are no amendments -- any further amendments to the

1 ALJ's Findings of Fact, it would probably make a good
2 record to move and second adoption of all other Findings
3 of Fact in the proposed order.

4

5 Motion

6

7 BOARD MEMBER BELISLE: I would make that motion.

8 CHAIRPERSON PREZEAU: So it has been moved to -- we
9 still need a second, but it's been moved to affirm all
10 other findings of fact in the record in front of us.

11 Is there a second?

12 BOARD MEMBER GRAY: (Raising hand.)

13 CHAIRPERSON PREZEAU: Thanks, Bobby.

14 Any discussion on the motion to affirm all other
15 findings of fact?

16 BOARD MEMBER SCOTT: I hate to throw a monkey wrench
17 on this, but ...

18 CHAIRPERSON PREZEAU: Okay, Randy, what do you got?

19 BOARD MEMBER SCOTT: 5.14 --

20 BOARD MEMBER BELISLE: That's in the --

21 CHAIRPERSON PREZEAU: That's in the Conclusions of
22 Law. That is not Findings of Fact.

23 Findings of Fact is section 4.

24 BOARD MEMBER SCOTT: A little ahead of myself.

25 BOARD MEMBER BELISLE: You're right, though.

1 CHAIRPERSON PREZEAU: Is everybody clear? Findings
2 of Fact. Any questions? Discussion? Seeing none, all
3 those in favor of affirming all other finds of fact
4 signify by saying "aye."

5 THE BOARD: Aye.

6 CHAIRPERSON PREZEAU: Opposed? Motion carries.

7

8 Motion Carried

9

10 CHAIRPERSON PREZEAU: Very good. We are now under
11 Conclusions of Law.

12 BOARD MEMBER BELISLE: Madam Chair?

13 CHAIRPERSON PREZEAU: Yes.

14 BOARD MEMBER BELISLE: I am wondering as a discussion
15 if -- I think Randy was heading there -- if Conclusions of
16 Law 5.4, if we should add a sentence or a statement in
17 there that says "A person may assist a householder in
18 performing electrical work as long as the work is the
19 householder's" -- I guess it says "residence." Do we need
20 anything in there regarding the two-year requirement?
21 Because that seemed to be a factor in this case.

22 CHAIRPERSON PREZEAU: So, you know, I don't know.

23 It's good for discussion. The ALJ does actually cite the
24 WAC. But that specific citation does not cover the
25 requirement that in addition that a homeowner presumably

1 -- right? However, this specific WAC cite, the
2 296-46B-925, subsection (14) references contractor
3 exemptions; it does not reference the actual homeowner
4 exception. Does that make sense?

5 BOARD MEMBER BELISLE: Yeah. It's accurate. This
6 statement is accurate.

7 CHAIRPERSON PREZEAU: Correct, the statement is
8 accurate.

9 BOARD MEMBER BELISLE: Just incomplete perhaps.
10 Okay.

11 BOARD MEMBER LEWIS: Madam Chair?

12 CHAIRPERSON PREZEAU: Yes, Janet.

13 BOARD MEMBER LEWIS: In section 5.7.2, it appears
14 again that the reference to Mr. Dahmen when he was
15 certified. He had been certified for more than six years.

16 CHAIRPERSON PREZEAU: So the reference is incorrect,
17 right?

18 BOARD MEMBER LEWIS: Correct.

19 CHAIRPERSON PREZEAU: Because the ALJ was for some
20 reason thought that Mr. Dahmen had only been certified as
21 a residential journeyman since 2008.

22 BOARD MEMBER LEWIS: So I don't know if you want to
23 correct that as well as the Findings of Fact which you did
24 correct.

25 CHAIRPERSON PREZEAU: Yeah, so the Chair would

1 certainly entertain a motion that modifies Conclusions of
2 Law 5.7.2 to read as follows: "Mr. Dahmen has been a
3 certified residential electrician since February 5, 1994."

4

5 Motion

6

7 BOARD MEMBER BELISLE: So moved.

8 CHAIRPERSON PREZEAU: So moved. Do we have a second?

9 BOARD MEMBER SCOTT: Second.

10 CHAIRPERSON PREZEAU: Moved and seconded to modify
11 Conclusions of Law 5.7.2 to read: "Mr. Dahmen has been a
12 certified residential electrician since February 5, 1994."

13 Any discussion on the motion?

14 BOARD MEMBER CUNNINGHAM: Madam Chair, wouldn't it be
15 easier to just change the 6 to 20? The math works out.

16 (Inaudible.)

17 BOARD MEMBER BAKER: It's good that you identify --
18 (inaudible.)

19 CHAIRPERSON PREZEAU: Yeah, that was part of my
20 intention. So -- yeah.

21 So a friendly amendment has been proposed to the
22 maker of the motion that the amendment would result in
23 modifying 5.7.2 to read as follows: "Mr. Dahmen has been
24 a certified residential electrician for more than 20
25 years."

1 BOARD MEMBER BELISLE: I'll accept that amendment.

2 CHAIRPERSON PREZEAU: You'll accept that amendment.

3 And the rest of the findings stays the same; is that
4 correct?

5 BOARD MEMBER BELISLE: (Nodding affirmatively.)

6 CHAIRPERSON PREZEAU: Discussion on the motion?

7 Seeing none, all those in favor please signify by saying
8 "aye."

9 THE BOARD: Aye.

10 CHAIRPERSON PREZEAU: Opposed? Motion carries.

11

12 Motion Carried

13

14 CHAIRPERSON PREZEAU: So let's have some
15 conversation, shall we? So I am looking -- we're starting
16 to -- we have some work to do in Conclusions of Law I
17 think 5.13 -- you guys want to walk through these one at a
18 time or ...

19 BOARD MEMBER BELISLE: I think so.

20 CHAIRPERSON PREZEAU: And I look at 5.13, and it
21 read, "The Peregrins obtained an electrical work permit
22 for the work on their house," which is a true statement.
23 "Mr. Dahmen assisted Mr. Peregrin with that electrical
24 work." And "Mr. Dahmen was not solely responsible for
25 performing that work."

1 Does anybody else find some of that language
2 problematic?

3 BOARD MEMBER BELISLE: Yeah.

4

5 Motion

6

7 BOARD MEMBER BELISLE: I would move that we would
8 strike the second and third sentence of 5.13 because I
9 think there's not enough proof in the record to prove
10 either one of those sentences is accurate.

11 CHAIRPERSON PREZEAU: So -- because -- since the
12 record does reflect that Mr. Dahmen did certainly perform
13 the work, right? What's not clear is how much -- I'm
14 assuming your statement is it's not clear how much
15 Mr. Peregrin actually performed; is that correct?

16 BOARD MEMBER BELISLE: Exactly. There's no evidence
17 to say that he did any of it. Although, he could have
18 because he took out the permit.

19 CHAIRPERSON PREZEAU: So form of a notion to modify
20 5.13 to read, "The Peregrins obtained an electrical work
21 permit for the work on their house," and strike the
22 balance; is that correct?

23 BOARD MEMBER BELISLE: That's correct.

24 CHAIRPERSON PREZEAU: Any -- is there a second?

25 BOARD MEMBER LEWIS: Second.

Motion

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BOARD MEMBER BELISLE: Madam Chair, I would move that we amend 5.13.2 to strike the word "instead" and start the statement with "The Department asserted"

BOARD MEMBER LEWIS: Second.

CHAIRPERSON PREZEAU: All right. So it's been moved and seconded to modify 5.13.2 and to modify that conclusion of law to merely strike "instead."

Discussion? Why are you -- what's your intent, Rod?

BOARD MEMBER BELISLE: Well, if we confirm 5.13.1, I'm not sure why they're saying instead the Department did something else. I think they're doing additionally something else.

CHAIRPERSON PREZEAU: So it's to be consistent with the amendment we just made to 5.13.1?

BOARD MEMBER BELISLE: To 5.13. We didn't amend "dot 1." But yes.

CHAIRPERSON PREZEAU: Correct. To be consistent with what we amended in 5.13. Thank you.

Questions on the motion? Seeing none -- and I very much would like it for -- I know this is laborious, but I need -- if I don't hear more voices, I'm going to make you guys raise your hands. We need to have a good record here.

1 So all those in favor of modifying -- of the motion
2 signify by saying "aye."

3 THE BOARD: Aye.

4 CHAIRPERSON PREZEAU: Opposed? Motion carries.

5

6 Motion Carried

7

8 CHAIRPERSON PREZEAU: So I look at 5.13.4, and I
9 don't see -- if the path we're going down which is that,
10 you know, the Peregrins' work permit was not valid because
11 they didn't meet the homeowners exemption, then -- which
12 appears to be what is happening, then we need to do
13 something with 5.13.4.

14 BOARD MEMBER LEWIS: Madam Chair?

15 CHAIRPERSON PREZEAU: Yes, Janet.

16

17 Motion

18

19 BOARD MEMBER LEWIS: I propose to strike that.

20 CHAIRPERSON PREZEAU: The entire conclusion of law
21 5.13.4?

22 BOARD MEMBER LEWIS: Correct.

23 CHAIRPERSON PREZEAU: Is there a second?

24 BOARD MEMBER BELISLE: I'll second that.

25 CHAIRPERSON PREZEAU: So it's been moved and seconded

1 to strike conclusion of law 5.13.4. Discussion on the
2 motion?

3 Don, are you ...

4 BOARD MEMBER BAKER: So this property was in L & I's
5 jurisdiction, right?

6 CHAIRPERSON PREZEAU: No. It was in the City of
7 Lacey's jurisdiction.

8 BOARD MEMBER BAKER: For electrical, whose
9 jurisdiction was it?

10 CHAIRPERSON PREZEAU: The City of Lacey.

11 The only reason a Department of Labor and Industries'
12 inspector was inspecting the property was because the City
13 of Lacey apparently when they have overflow, they --

14 BOARD MEMBER BAKER: Sub it out, yeah.

15 CHAIRPERSON PREZEAU: Yeah, they sub it out.

16 But it's still -- regardless of jurisdiction, it is
17 still -- L & I retains -- the electrical inspectors retain
18 compliance regardless of a different authority having
19 jurisdiction.

20 So any further discussion on the motion?

21 So it has been moved and seconded to strike
22 conclusion of law 5.13.4. All those in favor, signify by
23 saying "aye."

24 THE BOARD: Aye.

25 CHAIRPERSON PREZEAU: Opposed? Motion carries.

1 Motion Carried

2

3 Motion

4

5 BOARD MEMBER BELISLE: Madam Chair, I move that we
6 accept 5.13.5 without edit.

7 CHAIRPERSON PREZEAU: Okay, it's been moved --

8 BOARD MEMBER SCOTT: Second.

9 CHAIRPERSON PREZEAU: -- and seconded to adopt
10 conclusion of law 5.13.5. Any discussion on the motion?
11 Seeing none, all those in favor please signify by saying
12 "aye."

13 THE BOARD: Aye.

14 CHAIRPERSON PREZEAU: Opposed? Motion carries.

15

16 Motion Carried

17

18 Motion

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20 BOARD MEMBER BELISLE: Madam Chair, I move that we
21 amend 5.13.6 by placing a period after the word
22 "administrator" in the first sentence and strike the
23 remainder of that entire paragraph.

24 BOARD MEMBER LEWIS: Second.

25 CHAIRPERSON PREZEAU: Okay. It has been moved and

1 seconded to modify conclusion of law 5.13.6 to read as
2 follows: "Mr. Dahmen is not an electrical contractor or
3 electrical administrator," period, striking the balance of
4 the language.

5 BOARD MEMBER: Second.

6 CHAIRPERSON PREZEAU: It's been moved and seconded
7 already. Right? We've got another second. That's great.

8 Discussion on the motion? Rod.

9 BOARD MEMBER BELISLE: Well, I have a note here that
10 the Department disagreed and potentially had other
11 language to place there, and I'm having trouble finding
12 what that might have been. And I don't know if anybody
13 feels it was better than that. But I'm comfortable with
14 simply striking the remainder of the paragraph. But I did
15 have a note there.

16 CHAIRPERSON PREZEAU: So I have reviewed the
17 Department's supplemental memorandum for Department
18 petition for review as well as the Department's petition
19 for review to the Electrical Board referencing this
20 conclusion of law. I don't see it offering an
21 alternative.

22 BOARD MEMBER BELISLE: Okay, thank you.

23 BOARD MEMBER BAKER: Just a question. I mean, why
24 have the first sentence there at all?

25 CHAIRPERSON PREZEAU: I think from my --

1 BOARD MEMBER BAKER: Why do we need to say that he's
2 not an electrical contractor or administrator. We're not
3 saying he's not a building contractor. We're --

4 CHAIRPERSON PREZEAU: Because I think it goes to the
5 question of --

6 BOARD MEMBER BAKER: I mean, if we're going to say
7 it, it seems like there should be a reason for saying it
8 which is why the following sentence is there.

9 BOARD MEMBER LEWIS: Madam Chair?

10 CHAIRPERSON PREZEAU: Yes.

11 BOARD MEMBER LEWIS: One reason to state it, it is a
12 correct conclusion of law that -- it was in the record.
13 It shows that he was neither a contractor or
14 administrator, an electrician not -- and not working for a
15 contractor. I think it adds to the final order.

16 CHAIRPERSON PREZEAU: Any other discussion?

17 So again, the motion of front of us is modifying
18 conclusion of law 5.13.5 to read as follows -- 5.13.6 -- I
19 might need glasses or different glasses -- "Mr. Dahmen is
20 not an electrical contractor or electrical administrator."

21 All those in favor please signify by saying "aye."

22 THE BOARD: Aye.

23 CHAIRPERSON PREZEAU: Opposed? Motion carries.

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25 Motion Carried

Motion

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BOARD MEMBER BELISLE: Madam Chair, I move that we strike conclusion of law 5.14 in its entirety.

BOARD MEMBER BURKE: Second.

CHAIRPERSON PREZEAU: So it has been moved and seconded to strike conclusion of law 5.14 in its entirety. Discussion on the motion?

BOARD MEMBER SCOTT: Shouldn't it read, "Mr. Dahmen did violate RCW 19.28.101, and Non-Compliance Citation ... 1284 is affirmed"?

CHAIRPERSON PREZEAU: So that would be my preference, to be honest with you. Randy, I'm glad that you said that. My preference would be to -- because it is -- recognize that the electrical work permit that was issued by the City of Lacey is actually not valid because the homeowner exemption didn't apply because the house was for rent, sale or lease. So the permit -- the work permit is not valid -- the electrical work permit is not valid. I don't know about -- it's a building permit, so the mechanical was also on there.

BOARD MEMBER BELISLE: I can withdraw that motion.

CHAIRPERSON PREZEAU: So you're going to withdraw that motion.

///

1 Motion Withdrawn

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3 Motion

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5 BOARD MEMBER CUNNINGHAM: So I would move that -- I
6 would change that to say because there was an invalid
7 electrical permit at the site. Get rid of from the comma
8 all the way through "assisting the permit holder," picking
9 up with "he did violate the RCW ... and Non-Compliance
10 Citation ... is affirmed."

11 (Board Member Phillips now
12 joined the proceedings.)

13 CHAIRPERSON PREZEAU: So here's what I'm going with
14 for the record. So Rod has withdrawn his motion. And
15 what I'm hearing you say is you are moving to modify 5.14
16 to read as follows: "Because there was an invalid
17 electrical work permit at the site, Mr. Dahmen violated
18 RCW 19.28.101, and Non-Compliance EBIEA01284 is affirmed."
19 Is that correct?

20 BOARD MEMBER CUNNINGHAM: Yes.

21 CHAIRPERSON PREZEAU: Is there a second for that
22 motion?

23 BOARD MEMBER BELISLE: Second.

24 CHAIRPERSON PREZEAU: It's been moved and seconded to
25 modify conclusion of law 5.14. Do I need to read it

1 again? Are we clear? Clear?

2 Any discussion on the motion? Seeing none, all those
3 in favor please signify by saying "aye."

4 THE BOARD: Aye.

5 CHAIRPERSON PREZEAU: Opposed? Motion carries.

6

7 Motion Carried

8

9 CHAIRPERSON PREZEAU: So the Chair would like to
10 entertain a motion to affirm all other -- oh, you want me
11 to name them? Okay. The Chair would love to entertain a
12 motion that indicates we are affirming conclusion of law
13 5.1, 5.2, 5.3, 5.4, 5.5, 5.6, 5.7, 5.7.1, 5.8, 5.9, 5.10,
14 5.11, 5.12, 5.13.1, 5.13.3, 5.13.5.

15

16 Motion

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18 BOARD MEMBER BELISLE: I would make that motion.

19 CHAIRPERSON PREZEAU: So it has been moved and
20 seconded to -- I've laid them all out to affirm all
21 unmodified conclusions of law as stipulated.

22 Any discussion? All those in favor signify by saying
23 "aye."

24 THE BOARD: Aye.

25 CHAIRPERSON PREZEAU: Opposed? Motion carries.

1 Motion Carried

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CHAIRPERSON PREZEAU: So I think we have one last piece which is initial order 6.3.

BOARD MEMBER SCOTT: Before you move on to that --

CHAIRPERSON PREZEAU: Yes.

BOARD MEMBER SCOTT: -- should we -- I noticed on 5.9 which follows the affirmation of 1283, there is a line on here, "A civil penalty of \$500 is imposed" Should we do the same thing on 5.15 post the Conclusions of Law on 5.14 to state, "A civil penalty of \$250 is imposed for this first violation of" -- and I'm assuming that's RCW 19.28.101. And I don't know what the WAC citation is.

CHAIRPERSON PREZEAU: So the RCW citation I believe is sufficient. I think that now we've just gone through and affirmed all this, and I think there's going to end up being two places in this order that comes from this body that is not only going to affirm citation ending in 84, but it's also going to stipulate what the civil penalty is. I appreciate you trying to be consistent, but since we've just affirmed all those pieces, I think we can -- we've done it in the Order Summary, and I think we can do it in section 6 and without muddying the water too much of what we've just done with Conclusions of Law, if you're all right with that, Randy.

1 BOARD MEMBER SCOTT: I'm okay with it.

2 CHAIRPERSON PREZEAU: Okay, very good.

3 So we actually should step back. So Initial Order
4 6.1 reads" The Department of Labor and Industries action
5 is modified." The Chair would entertain a motion to
6 strike that.

7

8 Motion

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10 BOARD MEMBER BELISLE: I make a motion that we strike
11 "is modified" and change it to "is affirmed."

12 CHAIRPERSON PREZEAU: So there is a motion to modify
13 6.1 to read: "The Department of Labor and Industries
14 action is affirmed." Is there a second?

15 BOARD MEMBER SCOTT: Second.

16 CHAIRPERSON PREZEAU: Moved and seconded.

17 Any discussion on the motion? All those in favor
18 please signify by saying "aye."

19 THE BOARD: Aye.

20 CHAIRPERSON PREZEAU: Opposed? Motion carries.

21

22 Motion Carried

23

24 CHAIRPERSON PREZEAU: Lastly, the Chair would
25 entertain a motion modifying 6.3 to read: "Non-Compliance

1 Citation EBIEA01284 is affirmed, and a civil penalty of
2 \$250 is imposed."

3

4 Motion

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6 BOARD MEMBER BELISLE: So moved.

7 BOARD MEMBER SCOTT: Second.

8 CHAIRPERSON PREZEAU: Moved and seconded to modify

9 6.3. Any discussion? Seeing none, all those in favor
10 please signify by saying "aye."

11 THE BOARD: Aye.

12 CHAIRPERSON PREZEAU: Opposed? Motion carries.

13

14 Motion Carried

15

16 CHAIRPERSON PREZEAU: Okay. Did we miss anything,
17 Kevin?

18 ASSISTANT ATTORNEY GENERAL ELLIOT: I don't think so.

19 CHAIRPERSON PREZEAU: Good. All right.

20 So Ms. King and Mr. Dahmen, I appreciate your
21 participation today for being here and being part of the
22 appeal.

23 Mr. Dahmen, I echo what Rod said. I'm sure this
24 outcome is not what you were hoping for. And as a fellow
25 electrician who very much enjoys doing electrical work, I

1 appreciate your position. Unfortunately our job as the
2 Electrical Board under appeals is to uphold the statute.
3 And we -- so you heard we don't have leniency.

4 MR. DAHMEN: That's fine. I'm just glad I was able
5 to come in here and to see this happen, how this works.

6 CHAIRPERSON PREZEAU: And, you know, as Janet
7 indicated, you know, in the future if you are -- want to
8 share your gift of doing electrical work with others,
9 please make sure you do so consistent with the law.

10 MR. DAHMEN: Right.

11 CHAIRPERSON PREZEAU: Thank you, sir. Thank you,
12 Ms. King.

13 So we have three other appeals to get through. It
14 has been an hour and 25 minutes since this body has begun
15 work. Is there anybody that's interested in a break?

16 So what I very much would like to do is I would like
17 to give the Board members a 10-minute break, and come back
18 at 35 after the hour. Is that reasonable?

19 THE BOARD: (Nodding affirmatively.)

20 CHAIRPERSON PREZEAU: Very good.

21

22 (Recess taken.)

23

24 CHAIRPERSON PREZEAU: All right. So I have 9:35, so
25 I'd like to bring the July 30, 2015, Washington State

1 Electrical Board back to order.

2 And before we bring up the Segalini folks, I wanted
3 to -- I know that Kevin had a conversation with Ms. King,
4 and I asked Mr. Dahmen to come back into the room because
5 I neglected before we took a break to talk about the
6 proposed final order. We made -- we altered the ALJ's
7 proposed order in a number of different ways.

8 As you heard, Ms. King was here. She actually
9 brought a proposed final order, but it is not consistent
10 -- it's not 100 percent consistent with the work that the
11 Board did this morning.

12 So with that, you know, what is going to happen is
13 Ms. King is going to prepare a formal proposed order. And
14 I want to advise the parties that that final order will
15 automatically be set for presentment at the next regularly
16 scheduled Board meeting which will happen in October. So
17 in the event that -- and for everyone's review, what
18 happens is that proposed final order gets submitted to
19 normally Pam, and she reviews it for consistency, and then
20 if there is no contestment -- contest -- con -- if it's
21 not contested at the October Electrical Board meeting and
22 if it is consistent with the actions, then the Chair will
23 sign the final order.

24 So to that end, Mr. Dahmen, if you wanted to be here
25 for the presentment of the final order, that happens at

1 the October Board meeting.

2 Thank you very much, Mr. Dahmen, for coming back in
3 so I could make sure that all parties were informed of
4 that. My mistake.

5 MR. DAHMEN: So I could leave now?

6 CHAIRPERSON PREZEAU: If you would like. If you
7 would like, Mr. Dahmen, or you could hang out with us.

8 MR. DAHMEN: No. I have to start making money.
9 Thank you. Enjoy your day.

10 CHAIRPERSON PREZEAU: Thank you, you too,
11 Mr. Dahmen.

12

13 Item 4.B. Segalini Electric LLC & Michael Segaline

14

15 CHAIRPERSON PREZEAU: All right. So we under --
16 still under appeals, and the next appeal is Segalini
17 Electric and Michael Segaline, and the Department of Labor
18 and Industries.

19 Okay. So we'll do this again.

20 My name is Tracy Prezeau. I am the Chair of the
21 Electrical Board. The matter before us today is an appeal
22 of the matter of Segalini Electric LLC and Michael
23 Segaline and the Department of Labor and Industries, which
24 is OAH Docket Number 2013-LI-0261.

25 This hearing is being held pursuant to due and proper

1 notice to all interested parties in Tumwater, Washington
2 on July 30th at approximately 10:39 a.m.

3 This is an appeal from a proposed decision and order
4 issued by the Office of Administrative Hearings on
5 November 26, 2014.

6 It is my understanding that decision both affirmed
7 and reversed citations and notice. It affirmed citation
8 EJORP05741 but waived the civil penalty, and dismissed
9 citation EJORP05742 issued by the Department of Labor and
10 Industries on September 25, 2013. It is further my
11 understanding that the Department has timely appealed the
12 reverse decisions to the Electrical Board.

13 At this time, the original appellant, Segalini
14 Electric, I believe we have representatives of Segalini
15 Electric and Michael Segaline; is that true?

16 MS. SCHIEDLER-BROWN: That's correct. My name's Jean
17 Schiedler-Brown.

18 CHAIRPERSON PREZEAU: Would you please spell your
19 last name for the court reporter.

20 MS. SCHIEDLER-BROWN: It's S-C-H-I-E-D-L-E-R dash
21 Brown.

22 CHAIRPERSON PREZEAU: And we also I believe have the
23 assistant attorney general is representing the Department;
24 is that correct?

25 ASSISTANT ATTORNEY GENERAL LEONARD: That is correct.

1 My name is Eric Leonard, representing the Department of
2 Labor and Industries.

3 CHAIRPERSON PREZEAU: So as you guys heard, but I'm
4 going to do this another -- one more time.

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

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

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

1 Each party will be given approximately 15 minutes
2 today to argue the merits of your case. Any Board member
3 may ask questions, and the time may be extended at the
4 discretion of the Board.

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

9 Are there any questions of either counsel before we
10 begin -- about process before we begin?

11 MS. SCHIEDLER-BROWN: No, thank you.

12 ASSISTANT ATTORNEY GENERAL LEONARD: No, thank you.

13 CHAIRPERSON PREZEAU: Okay.

14 So -- and again, a reminder to the Board. We are
15 bound by the material that is in the packet in front of
16 you.

17 Some of you may have noticed that in -- we have two
18 more appeals. One of those appeals, actually Segalini
19 Electric is contained in that appeal. Completely
20 unrelated. And it would be inappropriate to draw any
21 inferences from that appeal into this one. Does that make
22 sense?

23 We're bound by this -- this is just a coincidence.

24 Okay. So Mr. Leonard, I believe you are --

25 Oh, go head, please.

1 ASSISTANT ATTORNEY GENERAL ELLIOT: Before we get
2 started, I just wanted to make a few comments to the Board
3 just to remind you all of your powers and your
4 obligations.

5 Having read the briefing of the parties, I just
6 wanted to remind you that the Board is obligated to follow
7 the WAC's as an administrative body. The Board does not
8 have the authority to invalidate or set aside WAC's.

9 Secondly, the issue of attorney's fees, the law does
10 provide for attorney's fees in judicial review. And just
11 to remind you all, this is an administrative review
12 process at this level.

13 And again, I'm just making these comments both for
14 the benefit of the Board and for the benefit of the
15 advocates so that you may perhaps tailor your comments to
16 other issues.

17 So that's all. Thank you.

18 CHAIRPERSON PREZEAU: Very good.

19 So Mr. Leonard, I believe you are the appealing party
20 at this tribunal.

21 ASSISTANT ATTORNEY GENERAL LEONARD: That is correct.

22 CHAIRPERSON PREZEAU: You have the burden of proof.
23 And therefore, I'm also going to ask you to open -- lead
24 with your arguments.

25 And again, the parties will be given approximately 15

1 minutes to argue the merits of your position.

2 ASSISTANT ATTORNEY GENERAL LEONARD: Thank you very
3 much.

4 This case concerns the assignment of Michael Segaline
5 as the administrator for Segalini Electric, LLC, and
6 Department citations for violations of RCW 19.28.061.

7 The appeal here today stems from the decision of the
8 administrative law judge in which she determined that RCW
9 34.05.110 under the Administrative Procedures Act applies
10 to violations of the electrical laws. The ALJ also
11 affirmed the citation and the penalty issued to Segalini
12 Electric but made the determination that it was a
13 paperwork violation such that she waived the penalty. And
14 the administrative law judge also dismissed the citation
15 issued to Michael Segaline as the administrator.

16 Obviously the Department has no problem with
17 affirming the citation and the penalty. So the issues
18 before the Board here today are: Did the administrative
19 law judge correctly determine that RCW 34.05.110 applies
20 to violations of the electrical laws. And if so, was the
21 affirmed violation a paperwork violation as constituted by
22 that statute. And lastly, did the judge correctly dismiss
23 the violation issued to Michael Segaline -- or the
24 citation issued to Michael Segaline.

25 I'd like to take these separately if I may. So I

1 will start with EJORP05741, and for the sake of everyone's
2 sanity, I will just refer to that as 5741 as I move
3 through this.

4 This was a citation issued to Segalini Electric for
5 violation of RCW 19.28.061 for the firm's failure to
6 ensure that the assigned administrator was either a full-
7 time supervisory employee of the firm or a member of the
8 firm as defined in the WAC's.

9 There are essentially two alternative theories here
10 as to why the Board should reverse the administrative law
11 judge's decision. The first is that RCW 34.05.110 does
12 not apply to violations of the electrical laws and rules.
13 And if it does apply, in the alternative, this was not a
14 paperwork violation on the part of the firm.

15 There's no dispute from the record that at the time
16 of the inspection in August of 2013 for the two years
17 prior to that, Michael Segaline was neither a full-time
18 supervisory employee or a member of the firm as defined in
19 the WAC. The administrative law judge, therefore,
20 correctly affirmed the citation and the penalty.

21 For the first argument that 34.05.110 does not apply,
22 it's important to note that the electrical laws and the
23 rules are about public health and safety.

24 The legislature in RCW 19.28.031 directs the
25 Department to consult with the Electrical Board, receive

1 the Board's recommendations and adopt reasonable rules in
2 furtherance of safety to life and property. Based on this
3 direction from the legislature, the Department adopted the
4 rules found in WAC 296-46B and in particular 296-46B-100,
5 which is where the definition of "member" is defined -- or
6 provided.

7 RCW 34.05.110, subsection (4)(a) provides an
8 exception to the requirements of subsections (1) and (2).
9 And it is the Department's position that the exception
10 applies because as stated the laws and the rules are in
11 place to protect the public health and safety, and that
12 the public interest in proper electrical installations in
13 strict conformity with the electrical laws excludes
14 compliance from applicability -- excuse me -- excludes
15 compliance violations from the applicability of RCW
16 34.05.110.

17 Assuming for the sake of argument that that statute
18 does apply, which again the Department does not concede,
19 the administrative law judge correctly determined that the
20 Department complied with subsection (1) which requires the
21 agency to provide a copy of the laws or rules being
22 violated to the small business. However, the
23 administrative law judge incorrectly determined that it
24 was a paperwork violation, and that's where I will focus
25 my attention.

1 34.05.110 (9)(b) defines paperwork violation as "the
2 violation of any statutory or regulatory requirement that
3 mandates the collection of information by an agency, or
4 the collection, posting, or retention of information by a
5 small business."

6 The Department submits that being a member of an LLC
7 goes beyond the collection of -- just merely the
8 collection of information because there's independent
9 legal significance to being a member of an LLC.

10 In addition, there is sort of a heightened sense of
11 duty or heightened sense of an added incentive to ensure
12 that the laws are followed and that installations are done
13 in accordance with those laws. And it's that heightened
14 sense of duty and heightened responsibility that leads to
15 the requirement to be a member of a firm with the LLC and
16 not simply just for the collection of information.

17 It's important to note that in the record in this
18 matter, there's nothing to support that Mr. Segaline --
19 Michael Segaline was a member of the firm at any time
20 prior to August 2013, as defined in the WAC being a member
21 of the firm on file with the Secretary of State.

22 No documents were provided either during the
23 inspection or during the hearing at the Office of
24 Administrative Hearings to support the contention that he
25 was a member and just wasn't on file with the Secretary of

1 State. In fact, the documents that are in the record
2 support the contrary position that he was not.

3 The inspector on this matter was Phillip Jordan, and
4 he inquired with the Secretary of State and in his
5 testimony indicated that he printed documents from the
6 Secretary of State's Web site, a corporate search, and it
7 did not list Michael Segaline anywhere as being a member
8 of the firm. The only documents showing that he was were
9 prepared and submitted to the Secretary of State
10 subsequent to this inspection.

11 In addition, the letters that Michael Segaline and
12 Segalini Electric provided to Inspector Jordan in response
13 to his September 10, 2013, inquiry asking for
14 documentation to show that the assignment was in
15 conformity with the law.

16 Michael Segaline responded that he was a member of
17 the firm as the electrical administrator. And likewise,
18 Segalini Electric in their letter indicated -- they
19 referred to him -- to Michael being assigned as the
20 administrator when they were trying to show he was a
21 member of the firm.

22 And as Mr. Jordan testified at the hearing, the
23 assignment form itself is not sufficient to satisfy the
24 requirements of the WAC and the statute to be a properly
25 assigned administrator.

1 The statute RCW 19.28.061, subsection (5)(a) just
2 says that the administrator must be a member of the firm.
3 And I'm focusing on member of the firm because that's kind
4 of where everything focused at the hearing. And so -- but
5 the legislature did not define "member." So the
6 Department in the WAC's define that in 296-46B-100, and
7 they made it clear that for a corporation, which LLC falls
8 under that, you must be a member of the firm on file with
9 the Secretary of State.

10 I think the important thing to keep in mind is the
11 independent legal significance of being a member of the
12 firm or a member of the LLC. It's not simply the name
13 being on file with the Secretary of State; it's that
14 independent duty, that independent responsibilities and
15 potential liabilities that come along with being a member
16 that is important.

17 And also the first -- in 19.28.061, subsection (5)
18 which addresses the administrator duties, the first item
19 there says the administrator shall be a member of the
20 firm. And so it's an independent responsibility and
21 requirement to be an administrator for the contractor.

22 Moving on to EJORP05742, this was issued to Michael
23 Segaline as the administrator for violation of 19.28.061
24 (5)(a) for the administrator's failure to be a member of a
25 the firm or a full-time supervisor employee.

1 Again, there's no dispute that during this time --
2 the relevant time period, he was -- Michael Segaline was
3 neither of those. The ALJ in this instance kind of went a
4 different route and relied on the fact that he submitted
5 his change of assignment forms to assign himself to
6 Segalini Electric as the LLC, but again, as Mr. Jordan
7 testified, this simply attaches that administrator to that
8 firm; it does not satisfy the requirements of the statute
9 and the WAC to be a member of the firm and be a proper
10 assigned administrator.

11 Further, the administrative law judge said in her
12 decision that the Department essentially chose to penalize
13 the administrator and the firm for the same violation.
14 While these arose out of the same set of facts obviously,
15 there are independent and separate responsibilities on the
16 part of the administrator and of the firm such that it is
17 appropriate to cite them separately.

18 Under 19.28.061, subsection (1), the firm has a
19 responsibility to designate a member of the firm or a
20 supervisor employee to take the required administrator's
21 examination and designate such person as the administrator
22 on the license. That's the responsibility of the firm
23 under, as I said before, 19.28.061 (5)(a), the
24 administrator had an explicit duty to be a member of the
25 firm.

1 So there are two separate stated responsibilities and
2 duties involved there.

3 The administrative law judge also focused on the
4 finding that there was insufficient information to show
5 that Michael Segaline had the ability to amend the
6 Secretary of State's site to add himself as a member such
7 that, you know, it was not his responsibility. But again,
8 the law requires that the administrator ensure that
9 installations are done in accordance with the law. When
10 they sign the assignment form, they agree to perform the
11 duties of RCW 19.28. It's an affirmative agreement to do
12 so. And so it's incumbent upon that administrator to
13 before they sign that form, make sure that they are a
14 full-time supervisor employee or a member of the firm as
15 defined in the WAC. And if they are not, then they should
16 not assign themselves as the administrator until that
17 happens. So it's a separate responsibility, again, on the
18 part of the administrator, in this case, Michael Segaline.

19 And in this case, again, there's no dispute -- well,
20 strike that. Michael Segaline was neither a supervisor
21 employee or a member of the firm when assigned that form
22 and operated outside the applicable laws when he was
23 operating as the administrator.

24 And one last note on that is WAC 296-46B-915,
25 subsection (12) which is the civil penalty schedule

1 provides a civil penalty schedule for an administrator
2 violating his or her RCW 19.28 duties. So it's a separate
3 -- that's additional information or evidence that a
4 separate violation is contemplated under the WAC rules.

5 And on the subject of penalties, there was a lot of
6 discussion at the hearing about the issuance of the
7 penalties in this matter and how they cover eight
8 quarters. And as an initial matter, the administrative
9 law judge in affirming the citation issued to Segalini
10 Electric, she did not -- she agreed and did not overturn
11 the penalty calculation and did not find that Inspector
12 Jordan did not follow the policy and procedures to issue
13 the penalties to -- (inaudible).

14 In WAC, again, 296-46B-915, it describes violations.
15 And it's each day a violation occurs, it's a separate
16 offense that can lead to a penalty. And so in this
17 instance, the Department rather than issuing since they're
18 covering a two-year period as opposed to issuing a
19 separate violation for every day within their policies,
20 they decided to issue them on a quarterly basis and go
21 back those two years, and that's why there are eight --

22 CHAIRPERSON PREZEAU: Mr. Leonard, just -- you have
23 one minute left of your 15.

24 ASSISTANT ATTORNEY GENERAL LEONARD: Thank you very
25 much.

1 So the Department contends that the penalties in this
2 instance were appropriate. And so what the Department
3 seeks here today is that both the citations and penalties
4 in each instance be affirmed.

5 Thank you.

6 CHAIRPERSON PREZEAU: Thank you, Mr. Leonard.

7 I know it's Brown, but I can't remember the first
8 part of the hyphen. Please -- my apologies.

9 MS. SCHIEDLER-BROWN. That is not a bad start.

10 My name is Jean Schiedler-Brown, and I represent
11 Segalini Electric as well as Michael Segaline, the
12 administrator for Segalini Electric, LLC, this morning.

13 And just because I know not all issues are before
14 this Board, and we don't know what the Board is going to
15 decide, at this point to not waste any time, I just want
16 to make it clear that my clients do preserve all of their
17 arguments, whether their arguments can be considered by
18 this forum or at a later point, and I'm not going to
19 necessarily be able to refer to each and every argument or
20 position that's been taken in the briefing.

21 I'd like to address, you know, the meat and potatoes
22 of what is happening this morning.

23 And first of all, I disagree with the attorney
24 general's characterization of what is at issue in this
25 case. It is not at issue whether or not Michael Segaline

1 is a member of Segalini Electric. That is not contested
2 anywhere in this record.

3 What is contested is whether or not he was listed as
4 a member and reported to the Secretary of State with the
5 annual report that the LLC's attorney files.

6 So the issue here when we're talking about
7 responsibilities and whether a person is stepping up to
8 their responsibilities is not that Mr. Segaline wasn't
9 actually a member. Mr. Jordan testified that this
10 citation was not in relation to any safety violations.
11 The firm didn't do things any differently before they
12 listed their name than they did after they listed their
13 name. Mr. Segaline's duties didn't change before they
14 listed his name or after they listed his name.

15 So it isn't a question of whether he was, in fact, a
16 member. It is a question of whether there should have
17 been a citation issued because he wasn't listed with the
18 Secretary of State. And the reason the citation was
19 issued is because there is a WAC that says the definition
20 of member of a corporate body is whether or not their name
21 appears with the Secretary of State.

22 So in this case, we start out with RCW 34.05,110.
23 And that is the law that says that if any agency cites a
24 small business for a violation, it shall provide a copy of
25 the law or the rule to that small business. And it then

1 shall allow at least seven days for that business to
2 comply. If that violation is a paperwork violation, the
3 first violation penalty is waived.

4 Now, we didn't hear much about that from the attorney
5 general. But that's what the law says. We're here to
6 follow the law. We're not here to say, "Well, gee, we
7 never knew about that law before, so we never really cared
8 about the law, so gee, we've never done it before, we're
9 not going to do it now." That's not what this tribunal's
10 job is.

11 And Mr. Jordan, the inspector, in fact, stated on the
12 record at page 70, if this law applies, which I was never
13 told about, I was never trained on, but if it applies,
14 then issuing these citations was a mistake.

15 And issuing these citations was a mistake.

16 The first reason is because he had to give the
17 Segalines a copy of the law they were violating.

18 Now, if you'll note in the record, he called them up,
19 he said, "Is Mr. Segaline administrator?"

20 And Mr. Segaline said, "Hey, send that to me in
21 writing. I want to know exactly what I'm supposed to
22 respond to."

23 He sent a letter and said, "Send me documentation
24 that you are a member of the firm." He did not attach a
25 copy of the law or the regulation as is required by law.

1 He referenced a WAC, which is WAC 296-46B-930 which
2 simply says one must be a member of the firm. It does not
3 explain how to prove that. It just says you have to be a
4 member of the firm. And it refers inside that WAC -- you
5 have to go look it up -- it refers to another WAC which
6 isn't in the letter at all. That is WAC 296-46B-700.

7 That WAC is a four-page, single-spaced, very detailed
8 administrative definitional regulation, and somewhere in
9 the middle of the third page on one line it says member of
10 the firm means being listed with the Secretary of State.

11 Now, my clients submit that that does not comply with
12 RCW 34.05.110, that they had a right to a copy of what the
13 Department said they were violating before they were
14 cited.

15 They testified, "Hey, I got to the first WAC, but I
16 got lost. I never did find that definition. I thought,
17 hey, he's a member of the firm. It's uncontested he's a
18 member of the firm. We should be fine."

19 Go back to Mr. Jordan's letter. Send me
20 documentation. He didn't say, "Send me proof you listed
21 Mr. Segaline with the Secretary of State."

22 If he had given that notice, which is required by
23 law, it's nice to do, but it's also required by law, then
24 the firm would have known, oh, we need to make sure he's
25 listed immediately with the Secretary of State.

1 He didn't do that. So Mr. Jordan had a got'cha. He
2 got to issue eight citations against each individual,
3 \$2,000 for Segalini Electric, \$8,000 for Michael Segaline
4 for two years prior when they had no actual notice that
5 the L & I thought they would be violating this provision.

6 So number one, the citations should not have been
7 issued and should be stricken because the law was violated
8 and they never received a message. The firm gave
9 documentation. They wrote a letter. To them that's a
10 documentation. My letterhead. He is our administrator.
11 He's our member. That is documentation. And then the
12 State rejected it because it wasn't what was in the WAC.
13 And it could have been what was in the WAC if notice had
14 been given.

15 Obviously these are due-process issues and other
16 issues that this tribunal cannot handle that may have to
17 be argued later; I don't know. But as far as this
18 tribunal goes, that is the law. And that is what has to
19 be enforced.

20 The second issue is that when we get to the actual
21 WAC that defines what a member is, we learn based upon the
22 correct findings of the administrative law judge that
23 there are many ways to prove who is a member of an LLC.
24 The actual WAC itself is too narrow. Now, I understand
25 based upon counsel's statement that this tribunal can't

1 affect whether or not the WAC is appropriately drafted
2 based upon the authority granted under the RCW. That is
3 another legal problem if this citation is upheld.

4 So thirdly, the Segalines then asked their attorney
5 what to do. It was a different lawyer, not me, their
6 corporate lawyer, who then retroactively amended their
7 report to the Secretary of State. And legally, that paper
8 says it is effective back to two years ago. That is an
9 exhibit in this hearing.

10 When the Segalines received appropriate specific
11 advice and notice of what their violation was, they went
12 through the appropriate business steps to fix it. It's
13 fixed.

14 And if this tribunal were to change or reject the
15 ALJ's ruling, this tribunal would then have to decide
16 whether or not a licensee can correct its issue by
17 retroactively making a paperwork change.

18 The fourth issue that we come to then is the one that
19 the State is asking the tribunal to reverse as to the
20 Segalini Electric citation, and that is whether or not RCW
21 34.05.110, sub (2) applies. And that is whether or not
22 this is merely a paperwork violation.

23 Well, it is a paperwork violation. It has nothing to
24 do with the safety of electrical installation. Mr. Jordan
25 testified on the record at both page 45 and 87, number

1 one, there was nothing that intimated the concern for any
2 safety or health violation by this violation, and number
3 two, that his job is a paperwork violation inspector.
4 Somebody else does the safety inspections, not Mr. Jordan.
5 So Mr. Jordan's testimony for the Department tells us this
6 is a paperwork violation in fact, the way the term is used
7 in the electrical industry. But the law also defines
8 "paperwork violation": a collection, a posting or a
9 retention of information by a small business.

10 A small business posts or collects who its members
11 are or who has to be listed in its reports to the
12 Secretary of State. It doesn't change how the business
13 runs; it's just a report. The Secretary of State collects
14 who is reported as either being officers or members or
15 people who businesses decide to list who have some
16 responsibility. All they do is collect. It doesn't
17 change how the business runs again.

18 So that's a paperwork violation, and it is defined by
19 34.05.110 sub (6). And only by really tortured
20 explanations does the attorney general try to convince you
21 that it doesn't say what it says. It's a paperwork
22 violation.

23 The attorney general says, well, the problem is
24 there's responsibility attached. But -- and we're going
25 around in circles because the responsibility is there.

1 He's already a member. It's not that he wasn't a member;
2 it's that he just wasn't listed. Because he didn't have
3 to be listed under corporate law. His lawyers didn't list
4 it. They didn't think it was necessary. When they were
5 told, "Hey, he has to be listed," they listed it. So it's
6 a paperwork violation.

7 Therefore, if the Board does not uphold the ruling of
8 the ALJ, then it will have to decide whether or not the
9 citation needs to be dismissed because a copy of the law
10 was not given that is fair notice to the licensee, the
11 small business owner was not given before issuing the
12 citation. That would be a change also in the ALJ's ruling
13 because it is our contention that the ALJ was wrong on
14 that one. She should have just stricken the citations
15 right then and there because notice wasn't given.

16 But she did uphold the one citation and said, "Well,
17 nevertheless it's been waived."

18 The result in either case is the same but different
19 pegs of a law that support what should have been done with
20 these.

21 Just one moment about the -- another thing the Board
22 will have to look at if it strikes the ALJ's decision, and
23 that is that the four citations or actually the eight
24 citations listed to each one of these licensees is a
25 problem.

1 Under the law and according to Mr. Jordan's
2 testimony, the chief electrical inspector had to approve
3 more than four citations. But he was unable to explain
4 when this was done, how this was done, present an e-mail
5 which he says he thinks exists showing that approval was
6 given or even tell us what the criteria is relating to
7 whether or not four or eight should have been issued.

8 Now, that is simply a lack of complying with the
9 rules that Mr. Jordan testified had to be done before
10 these could be issued, this many citations. And so that
11 is another issue that the Board has to get to if it does
12 not accept my clients' arguments.

13 The Board also has to determine whether or not the
14 ALJ rightly determined that Michael Segaline wasn't
15 responsible for amending the Secretary of State's filing.
16 And I think it is clear that in the testimony the
17 administrators of the firm are the brothers. They're the
18 ones who deal with the attorney. They're the ones who
19 told the attorney to go ahead and change the filing, and
20 that in this case and the facts of the case are specific
21 to this case because to determine whether or not a person
22 is required to do a particular act when that -- in a
23 corporation or a body at least where there isn't an
24 individual owner, one has to understand who would have the
25 power and authority to do so.

1 So here, Mr. Segaline did everything that he knew of
2 that he thought he had to do. In fact, he was a member of
3 the firm. He filed all of his notices showing he was
4 connected to the firm. And there were no violations that
5 he wasn't a member of the firm in the sense of that he
6 wasn't available and supervising and providing appropriate
7 and competent work.

8 CHAIRPERSON PREZEAU: Ms. Schiedler-Brown, you have
9 one minute left of your 15.

10 MS. SCHIEDLER-BROWN: Okay. Thank you very much.

11 And so that decision of the hearing examiner or the
12 ALJ should be upheld along with all of the other arguments
13 that I have as to the other citation as well.

14 And I think I would like to thank you very much here
15 and just reserve all of our issues for just in case.
16 Thank you.

17 CHAIRPERSON PREZEAU: Thank you, Ms. Schiedler-Brown.

18 So Mr. Leonard, any rebuttal? You want to make any
19 more comments?

20 And Ms. Schiedler-Brown, I'll give you that
21 opportunity as well.

22 But any --

23 ASSISTANT ATTORNEY GENERAL LEONARD: No, I have no
24 further comments at this point.

25 CHAIRPERSON PREZEAU: I'm assuming that you don't

1 have any rebuttal since he doesn't have any rebuttal?

2 MS. SCHIEDLER-BROWN: Well, I do have one more
3 comment.

4 And that is that the life and safety or the safety
5 exceptions are also defined in RCW 34.05.110, and they
6 clearly don't refer to this type of situation. Both the
7 paperwork definition and the life and safety definition
8 are included in that same law. And this case falls under
9 paperwork.

10 But thank you again for asking for more comment.

11 CHAIRPERSON PREZEAU: Okay. Questions of either
12 advocate from the Board members?

13 BOARD MEMBER BELISLE: Madam Chair, I'll start.

14 Well, I don't think there's any question that he's
15 not a full-time employee. So then it remains the only
16 thing he could be is a member of the firm. And the member
17 of firm is defined in the WAC/RCW which an administrator
18 is required to comply with. So because he's required to
19 comply with that WAC/RCW, and the WAC/RCW defines his duty
20 as being on file with the Secretary of State, I believe
21 that, in fact, makes him guilty of not fulfilling his
22 duty.

23 The attorney mentioned that there was no question of
24 him fulfilling his duties, yet I kind of have concern with
25 that. On page 283 of the transcript or of the document

1 here --

2 CHAIRPERSON PREZEAU: Hang on a second. Let people
3 get there.

4 BOARD MEMBER BELISLE: Page 283, it's the Inspector
5 Jordan's notes of his meeting. He states in here that he
6 asked the Segalines on site, Joe and John, who are the
7 members of your firm. And they stated basically just us,
8 just the two of us.

9 CHAIRPERSON PREZEAU: Okay. So you're reading from
10 the top of page --

11 BOARD MEMBER BELISLE: It's the first sentence on
12 page 283.

13 So in his record of that encounter, they said just
14 the two of us.

15 And my experience as an electrician is if I have an
16 electrical administrator for the company I work for, I'm
17 certainly going to know who that is. Because that's the
18 guy who's responsible to make sure that we have a permit,
19 call for an inspection if there's an issues regarding
20 supervision or anything like that, that's the guy.

21 CHAIRPERSON PREZEAU: Or gal.

22 BOARD MEMBER BELISLE: Or gal. Or hamster for that
23 matter.

24 But in any case, they didn't state anyone else. They
25 said, just us, which to me seems odd.

1 The fact that they filed for a retroactive amendment
2 to the Secretary of State to me shows that they, in fact,
3 knew they weren't in compliance, so they made a change so
4 that they could be in compliance. I think that proves
5 guilt.

6 I don't believe it's a paperwork violation because
7 the statute says it's a collection or retention or posting
8 of some documentation. From any experience, that would be
9 something like posting on a bulletin board minimum wage
10 law, posting on a bulletin board the number of injuries or
11 accidents that had occurred during a calendar year or some
12 documentation period. And, in fact, they weren't accused
13 of not retaining or posting the statement that they're on
14 Secretary of State. They had never actually done it. So
15 it wasn't even a question of did you retain that document.
16 That document didn't exist because it had never happened.

17 So that's my opinion.

18 BOARD MEMBER BURKE: Can I comment on that?

19 CHAIRPERSON PREZEAU: Sure, Dominic.

20 BOARD MEMBER BURKE: So 296-46B-930, I understand
21 we're hung up on the member thing and the language of the
22 member in the WAC, but it also does allow for a full-time
23 supervisory employee, not only a member. So the
24 definition of a member filing with the Secretary of State
25 I understand if they're a member that's what would have to

1 happen, but there's nothing defining what would have to
2 happen as a full-time supervisory employee. And there
3 hasn't been anything stating he wasn't fulfilling his
4 duties as a full-time supervisory employee for the
5 company.

6 CHAIRPERSON PREZEAU: Yeah, so Dominic, I mean, I
7 think both counsel are focusing on the member, the first
8 paragraph in 296-46B-930 because I believe -- I don't
9 think there's anything in the record to come close to
10 substantiating whether -- or proving that Michael Segaline
11 was, in fact, a full-time employee. I believe it actually
12 states in the record that this is -- that -- so I'm on
13 Board packet page 286, and I am reading from the first
14 paragraph. This is the inspector's notes, right?

15 (As read) "On August 27, 2013, I performed a search
16 in the Employment Security database using the same UBI as
17 the search criteria for the first search." The first
18 search that's being referenced is on the previous page,
19 right? We'll get to that, but I just want to -- we'll
20 talk about that in a minute. But (as read) "The search
21 revealed that the electrical contractor did not have an
22 Employment Security Department account indicating that the
23 contractor had no employees or was not paying Social
24 Security taxes. The ESD search also showed no employment
25 history for Michael indicating Michael has not been

1 reported by a Washington state employer."

2 So, you know, I would think that although those are
3 not the only method by which an employer can prove that
4 somebody is a full-time supervisory employee, as the
5 record indicates and as the WAC actually stipulates,
6 right? "In determining whether an individual is a
7 full-time supervisory employee, the department will
8 consider whether the individual is on the electrical/
9 telecommunications contractor's full-time payroll;
10 receives a regular salary or wage similar to other
11 employees; has supervisory responsibility for work
12 performed by the electrical/telecommunications contractor,
13 and carries out duties shown in chapter 19.28" So it
14 doesn't -- the record from my perspective does not
15 indicate that Michael Segaline fulfills any of those
16 requirement, right? In fact, it goes on to indicate that
17 not only has no employer ever reported Michael to the
18 Employment Security Department, Segalini Electric -- it's
19 on page 286 -- since March 31, 2009, has not paid
20 industrial insurance --

21 BOARD MEMBER BELISLE: Tracy?

22 CHAIRPERSON PREZEAU: Yes.

23 BOARD MEMBER BELISLE: If I could just add to that,
24 on page 243, a letter from Michael Segaline to Inspector
25 Phil Jordan, he states in there at least twice (as read),

1 "I am not an employee. I am not an employee. Therefore,
2 Labor and Industries should not be concerned." I mean, he
3 tells us flat out. That's why I never questioned that
4 just because his own statement was he is not an employee.

5 CHAIRPERSON PREZEAU: So they were just focusing on
6 being a member of the firm, which, you know, I appreciate
7 Ms. Schiedler-Brown's position and contention that there
8 is in the WAC, right? a requirement in the WAC 296-46B-930
9 that, you know, anybody that's consulting, what it means
10 to be -- to satisfy the member of the firm option or an
11 administrator, understand that they have to -- refers to
12 an additional WAC which where a member of the firm is
13 defined, I take a slightly different view. I don't
14 personally think that that additional reference is --
15 presents an onerous responsibility for an administrator to
16 understand where a member of the firm is defined.

17 That's my position.

18 And there's additionally, you know, 19.28.061,
19 subsection (5) stipulates what the designated master
20 electrician or administrator shall be responsible for,
21 including, you know, this is where we get the -- you know,
22 be a member of the firm or a supervisory employee. And
23 shall be available during working hours to carry out the
24 duties of an administrator under this section; b) ensure
25 that all electrical work complies with the electrical

1 installation laws and rules of the state; c) ensure that
2 the proper electrical safety procedures are used; d)
3 ensure that all electrical labels and permits and licenses
4 required to perform electrical work are used; e) see that
5 corrective notices issued by the inspecting authority are
6 complied with; and f) notify the Department in writing
7 within ten days if the master electrician or administrator
8 terminates the relationship with the electrical
9 contractor.

10 So I mean, there are additional references in, you
11 know, in the WAC regarding responsibility of -- or breach
12 of responsibility of the administrator, and those
13 certainly additional responsibilities stipulated in the
14 RCW regarding administrator responsibility.

15 I agree with Ms. Schiedler-Brown that probably
16 nothing changed at Segalini Electric following compliance
17 with the notifying the Secretary of State that Michael
18 Segaline is, in fact, the administrator. The doesn't
19 necessarily mean that -- I think the letter of the law --
20 modifying the record with the Secretary of State, I think
21 the letter of law has been complied with. I don't know
22 that -- in my opinion I don't think -- I don't know if
23 it's relevant, but I don't think the spirit of the law has
24 been complied with in terms of what is actually happening
25 at Segalini Electric either before the citations or after.

1 Dominic, was there anything else you wanted to add to
2 that? Or did I --

3 BOARD MEMBER BURKE: No. I mean, I understand.
4 There's just -- there are other ways to compensate people
5 who are full-time supervisory employees that might not
6 fall under unemployment and the tracking that you're
7 referring to. So, you know, there's --

8 CHAIRPERSON PREZEAU: Yeah, you know, and the fact --
9 and I think that's what, you know, Phillip Jordan was
10 seeking, right? is giving an opportunity of, you know,
11 there's other ways to determine -- to meet that threshold.

12 BOARD MEMBER BURKE: Agreed, agreed.

13 CHAIRPERSON PREZEAU: Right? But -- and I believe
14 the record actually indicates that one form of
15 compensation for Mr. Michael Segaline is some medical
16 insurance or some costs for -- surround that.

17 And so -- but again, you know, in the letter that
18 Michael Segaline's like "I'm not a full-time supervisory
19 employee." So then the next piece is all right, so if
20 it's not this, then it has to be -- it's got to be this
21 one. And if you're saying that you're a member of the
22 firm, but the records at the Secretary of State's office
23 don't reflect that, then it's problematic from my vantage
24 point.

25 Don.

1 BOARD MEMBER BAKER: So on the -- page 35 of the
2 finding of facts, Joseph Segaline informed Mr. Jordan that
3 Michael Segaline was not an employee of --

4 CHAIRPERSON PREZEAU: Hang on a second. Hang on a
5 second.

6 BOARD MEMBER BAKER: -- Segalini Electric and that he
7 did not receive any wages. So we've pretty much kicked
8 that horse, you know, to determine that he was an
9 employee. He was not an employee.

10 So what's left for me, you know, was he a member of
11 the firm, an LLC?

12 Being an administrator, you know, I know the
13 responsibilities and, you know, my duties to understand
14 those and fulfill those. And below on that same page on
15 number 13, Michael Segaline says that he's a member of the
16 firm as the electrical administrator of the firm.

17 Well, I'm an assigned electrical administrator for
18 the company I'm currently working for, and I am not a
19 member of that firm. If I had to at some point prove that
20 I was a member of a firm, an LLC, which I am a member of
21 an LLC currently, I would just pull up my K-1 statement
22 that I issue to the IRS every year and show that I
23 received a K-1 from that LLC. I know there's other ways
24 of doing your tax structures, but there should be a way
25 for Michael Segaline to show that he was a member of this

1 firm other than brothers or whoever their relatives are
2 saying that, Oh, yeah, it was always our intention.

3 I'm curious to know what happened for that
4 three-month period where he was unassigned and what the
5 firm did during that interim.

6 CHAIRPERSON PREZEAU: We can't know that.

7 BOARD MEMBER BAKER: Just voicing my curiosity.

8 CHAIRPERSON PREZEAU: But I just wanted to make sure
9 that nobody was going to answer that.

10 BOARD MEMBER BAKER: So, you know, for me, I need
11 some prove that he was a member of the firm, and I don't
12 see it here anywhere.

13 I have prove that he wasn't an employee. We have
14 statements from everybody saying he was not an employee.
15 And from what I can see, he wasn't a member of the firm as
16 outlined in the WAC.

17 CHAIRPERSON PREZEAU: All right. Any other comments
18 from Board members? Questions, Bobby?

19 BOARD MEMBER GRAY: Thank you, Madam Chair. I have
20 multiple questions I think directed to Ms. Schiedler-
21 Brown, if I could.

22 And I'd like to start with Exhibit 1 on Board packet
23 page 354. This appears to be a letter that's authored by
24 counsel, dated February 4, 2014.

25 CHAIRPERSON PREZEAU: Hang on. Okay.

1 BOARD MEMBER GRAY: And I'd refer you to the third
2 full paragraph that says, "First, it appears uncontested
3 that the L & I inspector did not provide copies of the
4 WAC's or RCW's pertinent to this matter to my clients at
5 any time."

6 So my first question is: The term "my clients," are
7 you referring to both the company and to the administrator
8 as "my clients"?

9 MS. SCHIEDLER-BROWN: That's correct, yes.

10 BOARD MEMBER GRAY: Okay.

11 And then continuing on, it says (as read), "Second,
12 the violation here is a paperwork violation. There is no
13 danger to the public safety and welfare since Michael
14 Segaline has continuously been qualified and certified as
15 the administrator for this company."

16 So my question is in regards to the phrase
17 "continuously been qualified." Now, we heard the Chair
18 cite the duties and responsibilities of the administrator,
19 and it's in several references here. But primarily it's
20 to ensure that these rules regarding the operation of the
21 electrical contracting business are followed. So my
22 question is: Do you think that "continuously been
23 qualified" includes knowing the laws that you're
24 responsible to advise the contractor with, understanding
25 any changes to those laws, and knowing where to obtain

1 those laws? And if not, what is meant by the term
2 "continuously been qualified"?

3 MS. SCHIEDLER-BROWN: Well, first of all, thank you
4 for the question.

5 "Continuously qualified," of course, first of all, is
6 that he's been certified as being a qualified
7 administrator by the Department of Labor and Industries
8 during this entire time. So that was my intent in writing
9 this letter.

10 Certainly I think there's a lot of testimony in the
11 record here where Mr. Jordan as well verified that
12 administrators do need to know about the requirements and
13 the standards, understand when there are changes, and how
14 to obtain information. However, Mr. Jordan also admitted
15 that nobody memorizes all 100 or 135 definitions
16 necessarily, that it's possible to not know every single
17 law or regulation.

18 And the point here is that the Small Business Act,
19 which is that section 110 we're talking about was enacted
20 just for that purpose because sometimes small businesses
21 miss a detail, and they have a right to be told before
22 they're cited. You just need to do it this way. This is
23 what the law says and you need to comply with this
24 specific paperwork that's done.

25 BOARD MEMBER GRAY: Okay. Then my next question then

1 would be over -- referring to the law that you just cited
2 -- and this is on Board packet page 359, which is the RCW
3 34.05.110, which as you stated, refers to a small
4 business. But it appears you're using interchangeably the
5 business and the administrator and implying, if not flat
6 stating out that the Department is obligated under this
7 law to provide a copy of the law to the administrator. Is
8 that what you're inferring? And if that's true, is that
9 specifically what this law's saying, that you have to --
10 that the Department is obligated to provide a law to the
11 administrator as well?

12 MS. SCHIEDLER-BROWN: Correct, I am, yes.

13 And obviously, an administrator could be a sole owner
14 of a company. I don't think the law would differentiate
15 between individuals in a small business having the right
16 to have this type of notice. You couldn't have a
17 difference in treating similarly situated individuals just
18 based upon the fact of whether they're the whole business
19 or just a member of the business.

20 BOARD MEMBER GRAY: But would you not agree that
21 those are two separate entities? One is the small
22 business that has its own set of obligations, and the
23 second as an individual, an administrator has their
24 obligations, and they under that specific requirement
25 would not be considered a small business. So this law

1 would not necessarily apply to an individual serving in
2 the role as an administrator.

3 MS. SCHIEDLER-BROWN: Well, it's an interesting
4 distinction that hasn't been interpreted by the courts.
5 But usually when a term like a small business is inserted
6 into a law or a statute, it's usually interpreted to
7 include the set of individuals likely to be subject to
8 that law. And the set of individuals would include
9 administrators who are either members of a business or
10 owners of a business. Because it's specifically talking
11 about people who couldn't be cited for operations there.

12 BOARD MEMBER GRAY: Well, that's refreshing to me as
13 an administrator.

14 CHAIRPERSON PREZEAU: Okay. Please, Don.

15 BOARD MEMBER BAKER: I'm not familiar with that law.
16 But just in listening to the conversation, you know, we
17 operate and function in a highly regulated industry. Our
18 administrators are tested and certified by the state. Our
19 electricians are tested and certified by the state. An
20 electrical contractor can be a small business, but they're
21 still operating in a very highly regulated industry. And
22 they're expected to know the laws and the rules that
23 they're working under.

24 There's a lot of -- anybody can go start a small
25 business up and be outside this regulated industry and in

1 some other industry. But our industry is very regulated.
2 And just because they're a small business, I personally
3 don't believe they would be exempt from knowing the laws
4 and rules that they are certified and working under.

5 CHAIRPERSON PREZEAU: So I think that -- you know, I
6 have never been an administrator. Just a journeyman
7 electrician, but not an administrator. And I've served on
8 this Board since 2005. And while I think it's a -- I
9 think it is -- this is the first time this argument has
10 been presented. I think there's a reason for that, which
11 is if you follow the application of the small business
12 exemption or notification through its full conclusion, it
13 means that from my perspective potentially if a -- you can
14 have somebody performing electrical work who is not a
15 contractor, doesn't have an administrator, doesn't employ
16 certified electricians, is completely operating in the
17 underground economy that we have talked about multiple
18 times in this body, and then claim that they didn't know
19 that 19.28 existed, and they didn't know that 296-46B
20 existed, and therefore, the Department would be incumbent
21 to provide them with a full copy of the laws and rules
22 within seven days and then nothing happens. Which has not
23 been the -- it's not what I believe is the intent of 19.28
24 or 296-46B. And I just -- I think has the potential to
25 just -- this -- 19.28 we've had the certification of

1 workers since the early '70s. And we've had regulation of
2 the electrical industry. We've had technical specialist
3 Larry Vance talk to us about that before. And this goes
4 back to the early 1900s.

5 So any other questions or may we turn our focus to
6 the Initial Order? Does that -- Janet, you have something
7 you wanted to ...

8 BOARD MEMBER LEWIS: I just had a comment on page
9 338. Paragraph 2 talks about the fact that this was
10 previously a business owned by Michael Segaline, and that
11 the brothers decided to change the formation of the
12 business. And it would seem at the time that if Michael
13 previously owned it and if he was to continue to be part
14 of, you know, either as a managing partner or a limited
15 partner, he would have been listed on those documents.
16 And I couldn't find anything in the record.

17 I tend to agree that there should have been a K-1
18 statement issued or some sort of partnership agreement
19 that could have been shown to the ALJ that he was indeed a
20 partner from the beginning.

21 Going back and doing retroactive amendments is very
22 dangerous because anyone -- you know, for this Board to
23 consider that that now proves he was a partner can be a
24 dangerous precedent going forward because anyone can then
25 amend their LLC's -- or their, you know, partnership,

1 their corporate agreement to avoid violating a law. So I
2 would just caution that --

3 I mean, if there was any actual proof that he was a
4 partner, I could not find it in the record except only the
5 statements being made.

6 CHAIRPERSON PREZEAU: Dylan.

7 BOARD MEMBER CUNNINGHAM: It seems like a lot of the
8 deals that come before us, the issue that's being talked
9 about specific to the administrator is failure to get a
10 permit, or pull a permit, get to call for the inspections,
11 things that really do have an impact on safety.

12 And then this topic here, on this subject, we're
13 really talking about whether or not the Segalines knew
14 that they needed to have this paperwork filed with the
15 Secretary of State or to do it correctly. It doesn't
16 really seem to have an effect on whether or not there was
17 a hazard to the public.

18 If you read down on page 359 where we just were
19 talking about RCW 34.05.110, there's probably eight bullet
20 items where it talks about after -- when an agency waives
21 fines and penalties under this RCW. It gives you a whole
22 bunch of reasons why you might not -- the exception
23 doesn't apply. Willfully knowing that you're violating
24 the law or if you had previous company where you did the
25 exact same thing. This gives us a whole bunch of insight

1 into what are we trying to prevent. A pattern of
2 circumventing the law? Or is this a situation where the
3 appellant didn't know what they were supposed to do and
4 now the small business rules here are saying, hey, you
5 violated the law, not knowing that you're doing it, we're
6 going to give you this amount of time to remedy it. It
7 looks like they did when they are told what they were
8 doing was in violation of certain electrical laws.

9 CHAIRPERSON PREZEAU: So --

10 BOARD MEMBER CUNNINGHAM: Do we know that any of
11 these other reasons to not give them that exception why?
12 There's nothing in the packet that I found that said that
13 they had been cited for anything similar to this before --
14 (inaudible).

15 CHAIRPERSON PREZEAU: Yeah, no, I agree with you that
16 I don't believe -- unless there's another Board member
17 that can find it -- that there's any point that Segalini
18 Electric or Michael Segaline committed a similar, right?
19 or same.

20 But just so I understand -- I think I understand the
21 path that you're going down. But I think that the WAC is
22 very clear from my perspective. Right? 296-46B-930 says,
23 "An administrator or master electrician designated on the
24 electrical/telecommunications contractor's license must be
25 a member of the firm who fulfills the duties of an

1 assigned master electrician/administrator as required in
2 RCW 19.28.061(5), or be a full-time supervisory employee.
3 A member of the firm is defined in WAC 296-46B-100."

4 I certainly appreciate, as I said, Ms. Schiedler-
5 Brown's objection. I don't find it to be too onerous to
6 go to that 296-46B-100 and find a -- I recognize that this
7 is four pages of definitions, and find a member of the
8 firm means the member is on file with the Department of
9 Licensing for sole proprietorship, partnerships or with
10 the Secretary of State for corporations. I think it's
11 very clear what the expectations are.

12 I also think that as a practical matter,
13 administrators are -- it is incumbent upon them to know
14 what -- be fluent, not memorize, but be fluent in what
15 their expectations are for their company and for
16 themselves as an administrator, for their electricians
17 that work for them in terms of certification and what that
18 requires.

19 And I also believe that it's very easy -- so I mean,
20 I think the expectations are clear. And I also believe
21 that even though I have a hard copy of the RCW's and the
22 WAC's, I also know that any time that I don't have these
23 with me, I can go on the Department of Labor and
24 Industries' Web site and actually download them. They are
25 available for free, right? to anybody that decides that

1 they need access to them. They are I believe furnished
2 and available. I used that in preparation for today's
3 meeting because I left these in my office.

4 BOARD MEMBER BURKE: Can you read that definition one
5 more time?

6 CHAIRPERSON PREZEAU: Pardon me?

7 BOARD MEMBER BURKE: Can you read the definition one
8 more time please.

9 CHAIRPERSON PREZEAU: All right. So --

10 BOARD MEMBER BURKE: And I'll tell you why. Because
11 it says on --

12 CHAIRPERSON PREZEAU: So I'm reading from
13 296-46B-100, general definitions. Quote, "'Member of the
14 firm' means the member(s) on file with the department of
15 licensing for sole proprietorships/partnerships or with
16 the secretary of state for corporations."

17 BOARD MEMBER BURKE: Okay.

18 CHAIRPERSON PREZEAU: So that's how the entity is
19 structured.

20 BOARD MEMBER BURKE: No, I understand.

21 CHAIRPERSON PREZEAU: So it was Department of
22 Licensing.

23 Alice.

24 BOARD MEMBER PHILLIPS: So I kind of dovetail on what
25 you're talking about.

1 If -- I'm trying to make the leap from if the company
2 knew they needed an administrator's license, how do I make
3 that jump that they weren't aware of the laws associated
4 with that, to your point. That's where I'm having trouble
5 making the jump. If I know I need this license, the first
6 thing I would do is go and look to see what the
7 requirements of the license were.

8 BOARD MEMBER CUNNINGHAM: That seems reasonable.

9 BOARD MEMBER PHILLIPS: Thank you.

10 CHAIRPERSON PREZEAU: Thank you, Alice.

11 All right. So any other questions/comments? I mean,
12 we're not done obviously. But -- Bobby?

13 BOARD MEMBER GRAY: Yeah, I realize there's not a
14 motion on the floor, but I'd like to express my opinion.
15 And I'm not an expert in other industries. But I suspect
16 that we're a bit unique in that we require an
17 administrator or a contractor because of the extreme risk
18 there is to the public safety. And so we would expect to
19 have someone that's very knowledgeable in the laws that
20 govern our work to ensure that safety. And so I think
21 it's unreasonable to say that an administrator would not
22 be obligated to understand the laws that they're
23 responsible for advising a contractor for. And if that's
24 the case, then we have no need for an administrator. If I
25 cannot be held accountable for not following the laws that

1 I'm obligated to advise the contractor for, then having an
2 administrator doesn't really provide no value. So I think
3 the administrative law judge erred when he dismissed the
4 citations specifically against the administrator.

5 Thank you, Madam Chair.

6 CHAIRPERSON PREZEAU: Thank you, Bobby.

7 So do you -- you guys want to turn our focus to the
8 order from the ALJ?

9 BOARD MEMBER BAKER: If I can --

10 CHAIRPERSON PREZEAU: Sure.

11 BOARD MEMBER BAKER: Just in reference to this RCW
12 110, if this ends up getting run up the flagpole to a
13 higher authority and this gets implemented, this would be
14 a game hanger for the Department. Right? They would be
15 done.

16 You know, it says, "Agencies must provide to a small
17 business a copy of the state law. The departmental --
18 (inaudible) -- provides an electrical administrator. And
19 it's equivalent to passing the bar exam. I mean, they
20 have to know state laws, safety and code and the WAC. And
21 the small businesses provide that. I mean, it's mandated
22 they have to have that administrator.

23 So in my opinion, this shouldn't ever get
24 implemented. That would be really dangerous.

25 CHAIRPERSON PREZEAU: Thanks, Don:

1 And thanks, Janet. That was basically what you were
2 saying earlier.

3 Okay. So I am looking at the proposed order.

4 BOARD MEMBER BELISLE: Madam Chair?

5 CHAIRPERSON PREZEAU: Yes, Rod.

6

7

Motion

8

9 BOARD MEMBER BELISLE: I'd be willing to make a
10 motion to amend the proposed order item number 2. It
11 currently says, "Michael Segaline, as an electrical
12 administrator/master electrician, has" -- and then I would
13 insert "not" -- "has not shown that he was a member of the
14 firm Segalini Electric, LLC as required by RCW ... WAC
15 The Department" -- I would strike out the
16 "incorrectly" and replace it with "correctly assessed
17 Michael Segaline" And at the end of the sentence, I
18 would amend that the citation "is affirmed."

19 CHAIRPERSON PREZEAU: Okay. So if I understand your
20 motion, you are reading from the Proposed Order under
21 Order Summary, Board packet page 31, number 2, to read:
22 "Michael Segaline, as an electrical administrator/master
23 electrician, has not shown that he was a member of the
24 firm Segalini Electric, LLC, as required by RCW 19.28.061
25 and WAC 296-46B-930. The Department correctly assessed

1 Michael Segaline penalties in the amount of \$8,000 for the
2 period of October 1, 2011, through September 25, 2013, and
3 the Department's Non-Compliance Citation EJORP05742 issued
4 September 25, 2013, is affirmed."

5 BOARD MEMBER PHILLIPS: Second.

6 CHAIRPERSON PREZEAU: It's been moved -- that is the
7 motion. It's just been seconded.

8 Any discussion on the motion? Seeing none, all those
9 in favor please signify by saying "aye."

10 THE BOARD (majority): Aye.

11 CHAIRPERSON PREZEAU: Opposed?

12 BOARD MEMBER BURKE: Nay.

13 CHAIRPERSON PREZEAU: Motion carries.

14

15 Motion Carried

16

17 Motion

18

19 BOARD MEMBER BELISLE: I would also like to make
20 another amendment there. Item number 3, "Segalini
21 Electric, LLC is" -- and I would insert the word "not
22 entitled to a waiver of the \$2,000 penalty assessed by the
23 Department in Non-Compliance ... because Segalini ... has
24 shown ... it committed a first time paper ... violation as
25 per RCW 34.05.110."

1 CHAIRPERSON PREZEAU: Okay. So the motion is to
2 modify Order Summary number 3 and insert -- so it would
3 read: "Segalini Electric, LLC, is not entitled to a
4 waiver" and then leaving the balance of ...

5 BOARD MEMBER LEWIS: Could I offer a friendly
6 amendment? I think he left out -- possibly left out -- if
7 I'm reading this correctly, that there should be another
8 -- continuing on because Segalini Electric, LLC, has not
9 shown that it committed a first time

10 CHAIRPERSON PREZEAU: Rod?

11 BOARD MEMBER BELISLE: I'll accept that.

12 CHAIRPERSON PREZEAU: Okay. So it has been moved but
13 not seconded to modify Order Summary 3, "Segalini
14 Electric, LLC, is not entitled to a waiver ... because
15 Segalini Electric has not shown that it committed a
16 first-time paperwork violation"

17 BOARD MEMBER PHILLIPS: Second.

18 CHAIRPERSON PREZEAU: It's been moved and seconded.
19 Any questions or comments on the motion?

20 BOARD MEMBER CUNNINGHAM: That seems like you're
21 putting the burden on the appellant here to prove that
22 they didn't break the law. They're asserting that this is
23 the first time they've been cited for this violation, and
24 there's no previous record that even states keeping record
25 of these violations. Has this company been cited for this

1 before? They shouldn't have to prove that they haven't
2 violated this law.

3 BOARD MEMBER WARD: Do we need this item? Can we
4 just affirm the two citations?

5 ASSISTANT ATTORNEY GENERAL ELLIOT: You need to
6 address whether or not it's a paperwork violation somehow.

7 CHAIRPERSON PREZEAU: So counsel to the Board has
8 suggested that we -- that it would be prudent to address
9 whether or not RCW 34 -- whether this body believes that
10 RCW 34.05.110 has application. So --

11 Yeah, go ahead, Rod.

12 BOARD MEMBER BELISLE: Well, I almost think if we
13 leave out the second "not" -- because that was their
14 defense. We're not trying to prove that they did or
15 didn't. That was their defense. And so I think if we
16 leave out the second "not" basically says you're not
17 entitled to a waiver because you showed us it was a
18 first-time paperwork violation.

19 CHAIRPERSON PREZEAU: Janet.

20 BOARD MEMBER LEWIS: Can this Board even make
21 decisions? Do we have jurisdiction to decide whether
22 there's been a violation of 34.05?

23 ASSISTANT ATTORNEY GENERAL ELLIOT: Well, yeah. I
24 mean, that's an issue on appeal here. I think it has to
25 be addressed, yeah.

1 BOARD MEMBER LEWIS: That we do have jurisdiction to
2 decide that issue?

3 ASSISTANT ATTORNEY GENERAL ELLIOT: Right.

4 BOARD MEMBER LEWIS: Okay. Thank you.

5 CHAIRPERSON PREZEAU: So it's been -- you know, we're
6 still on discussion on the motion. I appreciate the
7 advice of counsel. I also appreciate what Dylan's saying.
8 And so perhaps, you know, "Segalini Electric ... is not
9 entitled to a waiver of the \$2,000 penalty assessed by the
10 Department in Non-Compliance Citation" And then what
11 if we actually strike "because Segalini Electric, LLC" --
12 we strike all of that, and it read: "Segalini Electric"
13 -- and I know we have a motion; I understand. "Segalini
14 Electric, LLC, is not entitled to a waiver of the \$2,000
15 penalty assessed by the Department in Non-Compliance
16 Citation (ending in) 741 ... per RCW 34.05.110."

17 BOARD MEMBER BAKER: So basically we're saying that
18 that 110 article doesn't apply.

19 CHAIRPERSON PREZEAU: Correct.

20 BOARD MEMBER BAKER: This isn't -- going back to what
21 Rod stated earlier, it's not applicable.

22 CHAIRPERSON PREZEAU: Correct.

23 So here's the deal, right? Our counsel has said you
24 need to take a position this. And I'm not saying that you
25 have to agree with that statement. I'm saying that that's

1 -- it's potentially a way to handle it without having to
2 deal with who has the threshold of the burden of proof
3 which is basically, you know, to Dylan's objection.

4 BOARD MEMBER BELISLE: I would like to amend my
5 motion as you stated it, Tracy. So drop out the portion
6 that says "because Segalini has shown that it committed a
7 first-time paperwork violation." So it would just go on
8 to say "as per RCW."

9 CHAIRPERSON PREZEAU: So the motion before the body
10 now is as follows -- this has been modified. So Order
11 Summary number 3 to read as follows: "Segalini Electric,
12 LLC, is not entitled to a waiver of the \$2,000 penalty
13 assessed by the Department in Non-Compliance Citation No.
14 EJORP05741 as per RCW 34.05.110."

15 BOARD MEMBER BELISLE: That's correct.

16 BOARD MEMBER PHILLIPS: Second.

17 CHAIRPERSON PREZEAU: The motion now has a second.
18 Discussion on the motion? Bobby.

19 BOARD MEMBER GRAY: Thank you, Madam Chair.

20 I speak in opposition to the motion, not necessarily
21 because I disagree with it. But I don't think that the
22 Department has proven that this doesn't apply. So I'm
23 going to vote nay on it.

24 CHAIRPERSON PREZEAU: Okay.

25 Other discussion on the motion? Rod.

1 BOARD MEMBER BELISLE: Well, I stand by my previous
2 statement which was this doesn't apply because they're not
3 being accused of not collecting, retaining or posting
4 information. They're -- they are cited because they
5 didn't file the process, they didn't complete the process.
6 Nobody is saying that you have to have the Secretary of
7 State's document posted in your lunch room. They're
8 saying you have to simply do the action. They're not
9 being accused of not having the piece of paperwork.
10 They're being accused of not going through the legal
11 process.

12 And to Tracy's easy point, if this were to become the
13 standard, everybody in the world would do electrical work,
14 and they would all have seven days the first time they get
15 caught to come into compliance, and we would have mayhem.

16 CHAIRPERSON PREZEAU: Any other discussion on the
17 motion?

18 Seeing none, what I would like -- the Chair is going
19 to ask for more than a voice; I want hands. So those in
20 favor of the motion, signify by raising your hand.

21 BOARD MEMBER TOWNSEND: Madam Chair, could you
22 restate the motion please.

23 CHAIRPERSON PREZEAU: Certainly. The motion is to
24 modify Order Summary number 3 to read as follows:

25 "Segalini Electric, LLC, is not entitled to a waiver of

1 the \$2,000 penalty assessed by the Department in
2 Non-Compliance Citation No. EJORP05741 per RCW 34.05.110."

3 BOARD MEMBER TOWNSEND: Thank you.

4 CHAIRPERSON PREZEAU: Okay. All those in favor of
5 the motion please signify by raising your hand.

6 (Board Members Belisle, Lewis, Phillips, Baker, Ward,
7 Townsend, Prezeau raised hands). Seven yays.

8 All those opposed, signify by raising your hand.

9 (Board Members Cunningham, Gray, Schmidt, Burke
10 raised hands) Four nays. Let the record reflect the
11 motion carries.

12

13 Motion Carried

14

15 CHAIRPERSON PREZEAU: So as I move through this, and
16 given the actions that this body has just taken, I don't
17 see -- I'm looking for Board members to confirm or refute
18 -- but I don't believe that there needs to be any changes
19 in the findings of fact. Am I missing something here?

20 So I'm consulting with our counsel regarding some of
21 the pieces of the Conclusions of Law.

22 I find it interesting that the ALJ in the Conclusions
23 of Law actually states in Conclusion of Law number 2 that
24 they're charged with -- the Department of Labor and
25 Industries is charged with the responsibility to ensure

1 that individuals and entities comply with chapter 19.28
2 RCW and WAC 296-46B. So recognize there they have that
3 responsibility. I think we all agree with. And then goes
4 on to say that the provisions of RCW 19.28 -- and this is
5 Conclusion of Law 6. Conclusion of Law 6, "The provisions
6 of RCW 19.28.061(5) and WAC 296-46B-930 and 100 are
7 clear," and the Conclusion of Law 6 goes on to say that
8 because Michael Segaline's name does not appear on the
9 filings with the Department -- or with the Secretary of
10 State for the period at issue, September 2011 through
11 September 2013. "The Department, then, could not
12 independently verify that Michael Segaline was in fact a
13 member of Segalini Electric, LLC. As a result, Segalini
14 Electric ... did not comply with WAC 926-46B-930 and 100,
15 and is subject to the penalties issued by the Department."

16 But then goes to talk about whether or not the ALJ --
17 it goes on to indicate that they may not have the final
18 authority basically on how to be a member of the firm
19 under, you know, different titles and different RCW's,
20 different sections.

21 BOARD MEMBER BELISLE: I have a question with number
22 7. I'm not sure this is -- there's information in the
23 packet for me to affirm that statement. An LLC is not
24 required to list all members on the filing with the
25 Secretary of State, and conversely, listing a member as a

1 member does not make that person a member. I'm not sure
2 what that means.

3 CHAIRPERSON PREZEAU: No, that's my -- that's why I
4 was seeking advice of counsel is because I'm not familiar
5 with -- we don't even have RCW -- nobody's argued anything
6 about RCW 25.15.115.

7 BOARD MEMBER BELISLE: Yeah.

8 ASSISTANT ATTORNEY GENERAL ELLIOT: If I can address
9 that, as I understand this decision, I believe what the
10 ALJ is doing here is actually setting out the definition
11 of a member as it's set forth in the WAC, and then
12 addressing this separate RCW that also addresses the
13 definition of a member and basically points out that they
14 may not line up exactly with one another, and then after
15 kind of pointing out those differences in 8, 9 and 10,
16 goes on in number 11 to say but this tribunal doesn't have
17 the authority to basically set aside this WAC in favor of
18 something else.

19 And it kind of goes to my statement earlier about the
20 fact that the WAC's are the first source of law for an
21 administrative body or an administrative law judge.

22 So it's essentially addressing an order that I
23 believe the appellant would have been making at hearing
24 which was that this WAC should have been set aside, and
25 basically the ALJ is concurring, saying, "Well, I

1 understand what you're saying, and this is -- these are
2 the -- this is the differences I've seen, but I need to
3 follow the WAC." So --

4 CHAIRPERSON PREZEAU: The 296-46B WAC.

5 ASSISTANT ATTORNEY GENERAL ELLIOT: Right.

6 BOARD MEMBER BELISLE: So we're good up until 11 then
7 is what you're saying.

8 CHAIRPERSON PREZEAU: That's what I understand it.

9 BOARD MEMBER BELISLE: So we could affirm Conclusions
10 of Law 1 through 10.

11 CHAIRPERSON PREZEAU: (Pause) The reason for my
12 hesitation, Rod, is I'm looking at 11.

13 BOARD MEMBER BELISLE: 11 I don't agree with. I
14 would choose to amend that.

15 CHAIRPERSON PREZEAU: All right. So is that in the
16 form of a motion to affirm Conclusions of Law 1, 2, 3, 4,
17 5, 6, 7, 8, 9 and 10?

18

19 Motion

20

21 BOARD MEMBER BELISLE: Sure.

22 CHAIRPERSON PREZEAU: So motion. Is there a second?

23 BOARD MEMBER PHILLIPS: Second.

24 CHAIRPERSON PREZEAU: It's been moved and seconded to
25 affirm Conclusions of Law 1 through 10. Discussion on the

1 motion?

2 BOARD MEMBER SCHMIDT: Doesn't 10 contradict
3 everything we're saying? Because it says right there,
4 "Arguably, Segalini Electric ... September 21 ... states
5 that Michael Segaline is a member of the firm Segalini ...
6 along with the 'Change of ... Administrator ...'... may
7 have been sufficient to show that Michael Segaline was in
8 face a member of ... Segalini ... LLC"

9 So by -- didn't we just affirm that he is, in fact, a
10 member?

11 BOARD MEMBER BELISLE: No. Just because they
12 provided a letter, Segaline's letter states that he's a
13 member of the firm. And his change of administrator
14 appears to make him a member of the firm. But that's not
15 sufficient.

16 CHAIRPERSON PREZEAU: Well, so what I -- you know --
17 yeah. So what the language says is "may have been
18 sufficient to show that Michael Segaline was in fact a
19 member of the firm Segalini Electric, LLC"

20 Well, under RCW 25.15 --

21 BOARD MEMBER BELISLE: Right, right. Not under --

22 CHAIRPERSON PREZEAU: Not -- this is not referencing
23 RCW -- or 296-46B. So to Kevin's point, recognizing
24 Ms. Schiedler-Brown's position or the appellant's
25 position, you know, to entertain RCW 25.15.115, but in

1 doing so potentially sets aside --

2 BOARD MEMBER BURKE: So it can be affirmed.

3 BOARD MEMBER BELISLE: I think so.

4 CHAIRPERSON PREZEAU: That is my position.

5 ASSISTANT ATTORNEY GENERAL ELLIOT: Well, I don't
6 want to tell you what to do. I mean, I --

7 CHAIRPERSON PREZEAU: Sometimes I wish you would.

8 ASSISTANT ATTORNEY GENERAL ELLIOT: I don't want to
9 invade the province of this body by telling you that you
10 should or can affirm a conclude of law. I don't know that
11 that's appropriate. I think I'd prefer to limit my
12 comments just to kind of explaining what I think the ALJ
13 is doing here, and then leave it to your sound discretion
14 to determine whether you agree to keep that in there or
15 not.

16 CHAIRPERSON PREZEAU: So the spirit -- the intent is
17 to recognize that hey, there might be this other thing,
18 this other RCW, that hey, maybe applicable, but then if
19 you look at 11 and where I think we're going to go with
20 this is however, you know, statutes don't get to trump one
21 another. Right? And that's I think where -- which is an
22 interesting -- from my perspective, it's interesting that
23 the ALJ -- the decision -- the ultimate decision I find
24 fascinating because on one side says the law was violated,
25 and then on the other says that it wasn't. So it seems to

1 me I think the ALJ recognizes that the law was violated,
2 but then inconsistently applies it.

3 That's my position anyway.

4 So -- but thank you, Kevin, for bringing that up.
5 Multiple sets of eyes makes better work.

6 So again, to be clear, the motion that is before this
7 body and has been seconded is affirming Conclusions of Law
8 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10.

9 Any further discussion? Questions on the motion?
10 Seeing none, all those in favor please signify by saying
11 "aye."

12 THE BOARD: Aye.

13 CHAIRPERSON PREZEAU: Opposed? Motion carries.

14

15 Motion Carried

16

17 CHAIRPERSON PREZEAU: So counsel is -- I knew you
18 were going to -- says hey, do you want to affirm some of
19 these findings of fact before you go forward. I think
20 that's probably a good -- it's all about making a good
21 record.

22 The Chair and this body also just want -- I
23 understand what time it is, right? Lunch. Everybody
24 likes lunch, myself included. Hopefully we can finish
25 this work, and then it is the Chair's intention to seek

1 for a lunch break. And we'll be better served if we don't
2 go to lunch now, not only because we have unfinished work,
3 but the cafeteria is very busy from noon to 1:00 and will
4 not be so busy at 12:30. Just so that everybody, we're on
5 the same page. Because if you're like me, when you're
6 hungry, you can't focus on anything else.

7 So to counsel's point, Findings of Fact.

8 BOARD MEMBER BELISLE: I think we did it informally,
9 but --

10 CHAIRPERSON PREZEAU: Pardon me?

11 BOARD MEMBER BELISLE: I think we may have affirmed
12 the Findings of Fact informally, but maybe not in the form
13 of a motion.

14 CHAIRPERSON PREZEAU: Yeah -- I mean, I -- I think
15 the record will indicate that we don't have any issues
16 with the Findings of Fact. So -- but I think because we
17 are always told to make a good record, the Chair would
18 entertain a motion to affirm Findings of Facts 1, 2, 3, 4,
19 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 -- so 1
20 through 18.

21

22 Motion

23

24 BOARD MEMBER PHILLIPS: So moved.

25 CHAIRPERSON PREZEAU: It's been moved.

1 BOARD MEMBER BELISLE: Second.

2 CHAIRPERSON PREZEAU: Moved and seconded to affirm
3 Findings of Fact 1 through 18.

4 Discussion on the motion? Questions on the motion?
5 Seeing none, all those in favor please signify by saying
6 "aye.

7 THE BOARD: Aye.

8 CHAIRPERSON PREZEAU: Opposed? Motion carries.

9

10 Motion Carried

11

12 CHAIRPERSON PREZEAU: Okay. So we're back to
13 conclusions of law.

14 BOARD MEMBER BELISLE: Could we just completely
15 strike Conclusion of Law number 11 since it's not in
16 question in our mind?

17 ASSISTANT ATTORNEY GENERAL ELLIOT: Well, I think it
18 might be a question for the Board in that you need to
19 address -- you need to address whether you have the
20 authority to basically set aside a WAC. And so it may be
21 advisable to make a record and a determination on whether
22 you have that authority.

23 CHAIRPERSON PREZEAU: So let me see if I can make an
24 attempt at this. So to be consistent -- in order to be
25 consistent with what you believe this body is doing, 11

1 could be amended to read something like this: "This
2 tribunal does have the authority in an initial order to
3 revolve the issue of whether the Department's strict
4 requirement as set forth in WAC 296-46B-100 is
5 inconsistent with RCW provisions that apply directly to
6 limited liability companies. This tribunal declares that
7 the Secretary of State filing requirements set forth in
8 WAC 296-46B-100 is valid and enforceable."

9 ASSISTANT ATTORNEY GENERAL ELLIOT: I think this
10 finding as written currently basically says -- and this is
11 my interpretation of it -- it basically says that this
12 tribunal doesn't have the ability to weigh in on the
13 validity of a WAC one way or the other. And I think
14 that's consistent with the limitations of an
15 administrative body.

16 So again, I don't want to invade the province of this
17 body by telling you how to or what to do, but I do think
18 the finding as written is consistent with the authority
19 vested in an administrative body.

20 CHAIRPERSON PREZEAU: Which we are.

21 ASSISTANT ATTORNEY GENERAL ELLIOT: Which are you.

22 CHAIRPERSON PREZEAU: Okay, all right.

23 Then we're going to -- let's -- moving on.

24 BOARD MEMBER LEWIS: Could you repeat -- are we
25 leaving 11 as is?

1 CHAIRPERSON PREZEAU: Correct.

2 BOARD MEMBER LEWIS: Okay.

3 BOARD MEMBER BAKER: Does anybody have an issue with
4 the word "strict" in 11?

5 BOARD MEMBER BELISLE: That's actually in the RCW I
6 think. "Strict conformance." I think that's ...

7 CHAIRPERSON PREZEAU: So in the event that somebody
8 didn't hear what Rod's response to your question, Don, was
9 that actually that word "strict" is contained within the
10 WAC. So it's actually consistent with

11 So let's focus on Conclusions of Law 13. So I find
12 this Conclusion of Law fairly interesting. Maybe you
13 can't -- the ALJ indicates that the administrator
14 potentially would not be able to amend the LLC filings,
15 but certainly an administrator can unassign themselves
16 would be the response if there was something that was
17 problematic, right? Would cease a business relationship
18 with a company that was not following the law.

19 So number 13 --

20 BOARD MEMBER BELISLE: I could take a stab at it.

21 CHAIRPERSON PREZEAU: Please, Rod.

22

23 Motion

24

25 BOARD MEMBER BELISLE: Number 13 I would amend as

1 follows: "In regards Non-Compliance Citation No. (ending
2 in) 42, the Department has" -- strike out "not -- so "has
3 met its burden and shown that Michael Segaline violated
4 applicable law. The Department has penalized" -- so
5 "essentially chosen to" would be struck -- "penalized both
6 the company, Segalini Electric, LLC and the individual,
7 Michael Segaline, for the same violation. As set forth
8 ..., it is the obligation of the company to ensure that
9 its Secretary of State filing lists the administrator as a
10 member of the firm on the Secretary of State filing. It
11 is also necessary for the administrator" -- "it is also
12 the administrator member's responsibility to ensure that
13 the Secretary of State filing complies with WAC
14 296-46B-100," and then strike the remainder.

15 CHAIRPERSON PREZEAU: So Conclusion of Law number 13
16 would read: "In regards Non-Compliance Citation ...
17 (ending in) 42, the Department has met its burden and
18 shown that Michael Segaline violated applicable law. The
19 Department has penalized both the company, Segalini
20 Electric, LLC and the individual, Michael Segaline, for
21 the same violation. As set forth above, it is the
22 obligation of the company to ensure that its Secretary of
23 State filing lists the administrator as a member of the
24 firm on the Secretary of State filing. It is the
25 administrator member's responsibility to ensure that the

1 Secretary of State filing complies with WAC 296-46B-100,"
2 period.

3 Is there a second?

4 BOARD MEMBER PHILLIPS: Second.

5 CHAIRPERSON PREZEAU: Okay, it's been moved and
6 seconded. Questions on the motion? Don.

7 BOARD MEMBER BAKER: I struggle with the wording "it
8 is the obligation of the company to ensure that the
9 Secretary of State filing lists the administrator as
10 member. Because they don't have to list the administrator
11 as a member. They can be a full-time employee or -- you
12 know, there's other options there. So just that wording
13 in this case where they're going to state that the
14 administrator is a member of the firm, it's their
15 obligation to list it, but do we want to put that down on
16 the record that it's the company's obligation to list the
17 administrator? Because that's really not the law.

18 CHAIRPERSON PREZEAU: Well, and to your point, I
19 think that's the reason why the ALJ has in this conclusion
20 of law "as set forth above." So he walks you through all
21 of this, that we are not looking -- we're not approaching
22 whether or not 296-46B-100 -- because Michael Segaline is
23 not a full-time supervisory employee. But also,
24 296-46B-100 is the definition section that member of the
25 firm; it's specifically talking about the Secretary of

1 State's filing.

2 BOARD MEMBER BELISLE: So it only applies in this
3 case.

4 BOARD MEMBER BAKER: Right. So long as it's clear
5 that it's only in this case, and that it isn't a broad
6 brushed statement that it applies to all companies.

7 CHAIRPERSON PREZEAU: Yeah, the --

8 BOARD MEMBER BELISLE: That's a good --

9 CHAIRPERSON PREZEAU: Actually the administrator
10 being a full-time supervisory employee. I believe that --
11 I don't believe -- I believe the intent of the motion the
12 way that it is worded is not in conflict with your
13 concern. It is consistent.

14 BOARD MEMBER SCHMIDT: Doesn't the WAC say if it was
15 a corporation they had to be listed?

16 CHAIRPERSON PREZEAU: Yes.

17 BOARD MEMBER SCHMIDT: So a full-time employee
18 wouldn't matter.

19 CHAIRPERSON PREZEAU: So it's an either/or, right?
20 It's an either/or, which is you're either a full-time --
21 if you're a full-time member of the firm -- or excuse me
22 -- a full-time supervisory employee, then you don't have
23 to be a member of the firm. But if you're not a full-time
24 supervisory employee, then you have to be a member of the
25 firm. It's two separate.

1 now we did not make alterations to 11. We didn't make
2 alterations to 12. I would suspect we'll not make
3 alterations to 14.

4 BOARD MEMBER BELISLE: Oh, sorry. I thought we
5 covered them already.

6 CHAIRPERSON PREZEAU: No. I like the way you're
7 thinking.

8 But once we get through with making any edits or
9 amendments, then the ones that we did not alter, we will
10 capture them in one motion of affirming. Reasonable?

11 Okay. So Conclusion of Law 15.

12

13

Motion

14

15 BOARD MEMBER BELISLE: I could take a stab at 15. I
16 would move to amend Conclusion of Law 15 to say, "Under
17 the facts of this specific case, there is sufficient
18 evidence that Michael Segaline had the authority or the
19 responsibility as a member of Segalini Electric, LLC, to
20 amend the Secretary of State filing to list himself as a
21 member." I would strike the next sentence. And it would
22 complete the paragraph by saying, "As a result the
23 Department's Non-Compliance Citation No. ... (ending in)
24 42 issued on September 25 ... to Michael Segaline and its
25 associated penalty of \$8,000 must be affirmed."

1 BOARD MEMBER PHILLIPS: Second.

2 CHAIRPERSON PREZEAU: So it's been moved and
3 seconded to modify Conclusion the Law 15 to read as
4 follows: "Under the facts of this specific case, there is
5 sufficient evidence that Michael Segaline had the
6 authority or the responsibility as a member of Segalini
7 Electric, LLC, to amend the Secretary of State filing to
8 list himself as a member. As a result, the Department's
9 Non-Compliance Citation No. EJORP05742 issued on September
10 25, 2013 to Michael Segaline and its associated penalty of
11 \$8,000 must be affirmed."

12 Discussion or questions on the motion? Janet.

13 BOARD MEMBER LEWIS: Well -- and I'm not sure if
14 this is further on, but I'm thinking wouldn't it be
15 clearer to say that there is insufficient evidence to show
16 that he was a member of the firm during the time period in
17 question.

18 BOARD MEMBER BAKER: I struggle with that statement,
19 affirming that he's a member of the firm. I'm agreeing
20 with you.

21 BOARD MEMBER LEWIS: Yeah, that there was
22 insufficient evidence to show he was a member of the firm.
23 And I didn't think we were here to make a decision whether
24 he had the ability to change the Secretary of State
25 filing.

1 CHAIRPERSON PREZEAU: Okay. Anybody -- go ahead,
2 Bobby.

3 BOARD MEMBER GRAY: Yeah, I agree with what Janet
4 just said. I think it's a reach to say that an
5 administrator has the authority to go petition the
6 Secretary of State and change a corporate document that's
7 been submitted by a company. But I do think there's some
8 obligation there. So I think it ought to be rephrased.
9 I'm not sure I agree with what's been suggested.

10 BOARD MEMBER BAKER: Well, if you strike the word
11 "authority" and just leave the "responsibility."

12 BOARD MEMBER GRAY: Yes, I can agree with that.

13 CHAIRPERSON PREZEAU: So for the folks who are
14 concerned about the motion, if the motion was potentially
15 amended to read as follows: "Under the facts of this
16 specific case, there is insufficient evidence that Michael
17 Segaline had the" --

18 BOARD MEMBER LEWIS: No.

19 CHAIRPERSON PREZEAU: Am I wrong?

20 BOARD MEMBER BELISLE: Sufficient.

21 BOARD MEMBER LEWIS: Sufficient.

22 BOARD MEMBER BELISLE: Delete "in."

23 CHAIRPERSON PREZEAU: Oh, okay. Sorry. I had it --
24 okay. "Under the facts of this specific case, there is
25 sufficient evidence that Michael Segaline had the

1 responsibility as a member of Segalini Electric ... to
2 amend the Secretary of State filing to list himself as a
3 member."

4 BOARD MEMBER BELISLE: I'll accept that amendment.

5 CHAIRPERSON PREZEAU: So the maker of the motion's
6 willing to accept it. Does that satisfy some concerns?
7 Bobby.

8 BOARD MEMBER GRAY: I guess I would suggest we add
9 the phrase "ensure that the Secretary of State filing was
10 amended." Just because you're a member doesn't mean you
11 can change the listing.

12 CHAIRPERSON PREZEAU: Right.

13 BOARD MEMBER PHILLIPS: Instead of responsibility? I
14 don't think --

15 CHAIRPERSON PREZEAU: No, no, no. I think I got it.

16 BOARD MEMBER GRAY: All I'm --

17 CHAIRPERSON PREZEAU: I think I got it. So here's --
18 let me think. So "Under the facts of this specific case,
19 there is sufficient evidence that Michael Segaline had the
20 responsibility as a member of Segalini Electric ... to
21 ensure to amend the Secretary of State filing to list
22 himself as a member."

23 BOARD MEMBER GRAY: Correct.

24 BOARD MEMBER BELISLE: That works.

25 BOARD MEMBER BURKE: To ensure that he was listed as

1 a member.

2 BOARD MEMBER BELISLE: Yeah.

3 CHAIRPERSON PREZEAU: So what that is doing -- if I'm
4 understanding and making people happy is because Michael
5 Segaline may or may not have been able to physically make
6 that alteration himself, but he still as the administrator
7 was responsible to ensure that 296-46B-100 and 930 were
8 met.

9 Janet.

10 BOARD MEMBER LEWIS: You read "ensure to amend." I'm
11 not sure if that's what you meant. Did you mean to
12 replace the word "amend" with just to ensure the Secretary
13 of State filing to list himself as a member?

14 BOARD MEMBER GRAY: Yes.

15 CHAIRPERSON PREZEAU: It's cleaner. Right?

16 So the last -- here we go. The motion before us,
17 right? has been -- because Rod, we're accepting these
18 friendly amendments -- "Under the facts of this specific
19 case, there is sufficient evidence that Michael Segaline
20 had the responsibility as a member of Segalini Electric,
21 LLC, to ensure the Secretary of State filing to list
22 himself as a member." And then it strikes the next
23 sentence, and then affirms the citation.

24 Kevin.

25 BOARD MEMBER SCHMIDT: Again, my only question comes

1 back is on that second line, we say Michael Segaline had
2 the authority as a member. Aren't we signifying now -- I
3 thought that was the question, is he or is he not a
4 member. I say if we say that, he is a member.

5 CHAIRPERSON PREZEAU: There you go. There's the
6 word.

7 All right. So again, Rod, hopefully you'll accept
8 the friendly --

9 BOARD MEMBER BELISLE: I'm all over it. That's
10 exactly ...

11 CHAIRPERSON PREZEAU: So "Under the facts of this
12 specific case, there is sufficient evidence that Michael
13 Segaline had the responsibility as the administrator of
14 Segalini Electric, LLC" --

15 BOARD MEMBER BELISLE: That's good.

16 CHAIRPERSON PREZEAU: -- "to ensure the Secretary of
17 State filing listed himself as a member."

18 BOARD MEMBER BELISLE: Beautiful.

19 CHAIRPERSON PREZEAU: "As a result, the Department's
20 Non-Compliance Citation ... (ending in) 42 issued on
21 September 25 ... to Michael Segaline and its associated
22 penalty of \$8,000 must be affirmed."

23 BOARD MEMBER SCHMIDT: Yes.

24 CHAIRPERSON PREZEAU: Any other discussion on the
25 motion? Seeing none, all those in favor please signify by

1 saying "aye."

2 THE BOARD: Aye.

3 CHAIRPERSON PREZEAU: Opposed? Motion carries.

4

5 Motion Carried

6

7 CHAIRPERSON PREZEAU: I don't want to make light of
8 this, but we want to make sure that we get this correct.

9 So obviously, you know, Conclusion of Law 16 is a
10 statement of what RCW 34.05.110, subsection (1) states,
11 and, you know, I don't know that -- I can't -- I'm not
12 here to amend that RCW, right? It's just a restatement of
13 the law.

14 I also, you know, Conclusion of Law 17 says, hey,
15 even if you apply it, the Department has met the
16 satisfaction. So I don't --

17 BOARD MEMBER CUNNINGHAM: Madam Chair, nowhere in
18 that 34.05.110 does it say that the party that's been
19 cited has to request the documents. It says the
20 government must provide it. Is that -- so really what 17
21 is getting into is saying that -- the appellants are
22 saying we were never given the documents. The
23 government's required to give us the document and to tell
24 us what law we're breaking. And so previously in here it
25 stated that Segalini never asked for it. So I think 17 is

1 saying that the Department is required to provide them
2 with the document. I think that is consistent with what
3 the language in the WAC rule says. It doesn't say that
4 the cited party has to request it and the government has
5 to turn it over. It doesn't --

6 CHAIRPERSON PREZEAU: Yeah, no. I -- you know, I
7 understand your point. And I think the ALJ's decision
8 actually says, hey, even though they didn't provide it --
9 even though they didn't request it, and the Department
10 through its inspector didn't provide it, but they actually
11 cited it in the letter. And I think the way I interpret
12 this ALJ saying that's sufficient.

13 BOARD MEMBER CUNNINGHAM: Giving them the reference.

14 CHAIRPERSON PREZEAU: Correct. Am I --

15 BOARD MEMBER BELISLE: I don't think they asked for
16 it. So that's a true statement. Not that they're
17 required to, but they never did either kind of thing.
18 That's the way I read it.

19 CHAIRPERSON PREZEAU: And then, you know, I'm looking
20 at 18 which actually apply. You know, I mean, 17 and 18
21 apply to RCW 34.05.110, subsection (1), but even more
22 broadly the entire 34.05.110, which through action of this
23 body has rejected that application is appropriate.
24 Although I am not sure what, if any, problem it creates
25 moving forward by allowing -- like retaining these

1 statements that talk about the interpretation of that RCW.

2 Did that make sense?

3 ASSISTANT ATTORNEY GENERAL ELLIOT: Yeah. I think
4 that -- you know, in this case it's essentially an
5 affirmative defense that the appellants are kind of
6 raising here is that they didn't have this notice and
7 these 16, 17 and 18 kind of address that argument. So I
8 think just for the sake of a complete record, you know,
9 for the benefit of any party wanting to take this any
10 further, I think it would be good for this body to
11 continue to address that argument by way of those
12 findings.

13 CHAIRPERSON PREZEAU: Okay. So -- and I'm looking at
14 -- so I also look at 19 as a statement of, you know, that
15 same piece, sort of seeking relief but not providing it in
16 Conclusion of Law 19.

17 BOARD MEMBER BAKER: So Tracy, my -- I'm kind of
18 backing up to 18. So if we leave that untouched, are we
19 saying that had they listed Michael Segaline as a member
20 of the firm within seven days, then --

21 CHAIRPERSON PREZEAU: Then relief would have been --

22 BOARD MEMBER BAKER: Yeah, would contradict our
23 position about our 110 applying in this case.

24 It seems to me we need to clean that up. Otherwise,
25 I think we're being inconsistent.

1 CHAIRPERSON PREZEAU: About whether or not you can
2 apply.

3 BOARD MEMBER BAKER: Yeah.

4 CHAIRPERSON PREZEAU: Other thoughts?

5 BOARD MEMBER BELISLE: I guess my only thought is it
6 seems like Inspector Jordan contacted them with some
7 information and some requests as if to say, if you can
8 provide me something, maybe we can clean this up. I think
9 that was even in some of the examination during the
10 transcript.

11 I don't think we have enough information to know what
12 would have happened because it didn't happen. But we do
13 know it didn't happen within seven days regardless of why
14 they would have done it or what could have happened.

15 BOARD MEMBER BAKER: But it goes on to say, "As a
16 result, the Appellants are not entitled to any relief
17 under this subsection." So had they done it, they would
18 have gotten relief. Earlier we -- that's contradictory
19 with what we decided earlier.

20 CHAIRPERSON PREZEAU: Janet.

21 BOARD MEMBER LEWIS: Can you refresh my memory? I'm
22 trying to find the letter. I don't think the letter tells
23 him to correct the Secretary of State filing. I think the
24 way 18 is worded is a bit confusing. I thought the letter
25 just said show me. But -- I'm trying to find that letter.

1 BOARD MEMBER BAKER: That's right. He's was looking
2 for evidence. Correct.

3 BOARD MEMBER LEWIS: Yeah. He didn't say, "Go and
4 correct your filing, and if you do in seven days, you're
5 off the hook." I don't believe that's what the letter
6 said.

7 BOARD MEMBER BELISLE: Maybe we should strike 18 in
8 its entirety.

9 ASSISTANT ATTORNEY GENERAL ELLIOT: If I understand
10 your conversation, it sounds like what you're saying is
11 you agree that he didn't -- that it wasn't amended within
12 seven days, but even if it had been, it wouldn't -- it
13 still would have provided relief. I mean, maybe if that's
14 what you're saying, maybe that would be a good way to try
15 to rephrase it.

16 CHAIRPERSON PREZEAU: Say that again.

17 ASSISTANT ATTORNEY GENERAL ELLIOT: If I am
18 understanding your discussions correctly, what I'm hearing
19 is that if the appellants didn't correct the filing within
20 seven days, but even if they had, it's this body's
21 position that that wouldn't have provided any belief or
22 made any difference. So maybe that would be --

23 BOARD MEMBER BAKER: I'm kind of in support of Rod's
24 comment that we just strike it completely, the whole --
25 all of 18.

1 CHAIRPERSON PREZEAU: Janet, if you want to review
2 the letter from Phillip Jordan to Michael Segaline, dated
3 September 10, 2013, you will find it on Board packet page
4 421.

5 BOARD MEMBER LEWIS: Thank you.

6 BOARD MEMBER BELISLE: I think we could strike number
7 18. I don't think it provides any new information that
8 hasn't already been stated in other parts of the statute.
9 And that paperwork violation, that statement is in there
10 already.

11 BOARD MEMBER PHILLIPS: (Inaudible) -- strike it in
12 its entirety since it is part of the record?

13 CHAIRPERSON PREZEAU: So Alice's question in the
14 event that you didn't hear it. This is all discussion.
15 There's no formal motion; this is conversation/discussion.
16 You know, Rod's saying, hey, strike it. And Alice is
17 saying, hey, do we -- is it cleaner to amend it because
18 it's in the record.

19

20 Motion

21

22 BOARD MEMBER LEWIS: I agree. And I'm ready to
23 propose an amendment.

24 BOARD MEMBER BELISLE: Good.

25 CHAIRPERSON PREZEAU: Okay, Janet.

1 BOARD MEMBER LEWIS: I propose a motion to have 18
2 read: "The Appellants did not provide documentation" --
3 and I would strike "correct the Secretary of State
4 filings" -- "to reflect Michael Segaline as a member of
5 Segalini Electric, LLC" -- and the rest of the section
6 stays. So strike "correct the Secretary of State
7 filings," replace it with "provide documentation."

8 CHAIRPERSON PREZEAU: So the motion is "The
9 Appellants did not provide documentation to reflect
10 Michael Segaline as a member of Segalini Electric, LLC,
11 within seven days of the September 10, 2013, letter. As a
12 result, the Appellants are not entitled to any relief
13 under this subsection."

14 BOARD MEMBER BURKE: I don't think that's good. They
15 did provide documentation, just not Secretary of State
16 filing. They provided a letter five days after. So it's
17 not true.

18 BOARD MEMBER BELISLE: How about "adequate
19 documentation"?

20 BOARD MEMBER BURKE: Proper -- yeah. I mean --

21 CHAIRPERSON PREZEAU: Okay. So appellants -- so
22 again, spitballing here -- "Applicants did not provide
23 adequate documentation to reflect Michael Segaline as a
24 member of Segalini Electric, LLC, as required by WAC
25 296-46B-100."

1 BOARD MEMBER BELISLE: Yeah. Second.

2 CHAIRPERSON PREZEAU: So I'm not making -- the Chair
3 doesn't make motions. I just like entertain motions.

4 BOARD MEMBER BELISLE: That was -- I thought that was
5 Janet's motion.

6 BOARD MEMBER LEWIS: I accept that as a friendly
7 amendment to my motion.

8 CHAIRPERSON PREZEAU: Okay. So -- and Rod, did you
9 just second that?

10 BOARD MEMBER BELISLE: I did.

11 CHAIRPERSON PREZEAU: Okay. So as I understand it,
12 the motion before the body is as follows: Amend
13 Conclusion of Law 18 to read: "The Appellants did not
14 provide adequate documentation to reflect Michael Segaline
15 as a member of Segalini Electric, LLC, as required by WAC
16 296-46B-100."

17 Questions, concerns, discussion on the motion?

18 Seeing none, all those in favor please signify by saying
19 "aye."

20 THE BOARD: Aye.

21 CHAIRPERSON PREZEAU: Opposed? Motion carries.

22

23 Motion Carried

24

25 BOARD MEMBER BELISLE: I think 19 and 20 are good.

1 BOARD MEMBER BELISLE: Yes, because that is the
2 regulatory requirements.

3 CHAIRPERSON PREZEAU: Okay, very good. So then
4 there's a period after that. And the rest is stricken.
5 Is that your motion?

6 BOARD MEMBER BELISLE: Yes.

7 CHAIRPERSON PREZEAU: Is there a second?

8 BOARD MEMBER PHILLIPS: Second.

9 CHAIRPERSON PREZEAU: It's been moved and seconded to
10 alter Conclusion of Law 21 to read: "The violation
11 alleged in Non-Compliance Citation ... (ending in) 41 does
12 not qualify as a paperwork violation because it is a
13 violation of a regulatory requirement (WAC 296-46B-930 and
14 100)."

15 Discussion on the motion? Seeing none, all those in
16 favor please signify by saying "aye."

17 THE BOARD: Aye.

18 CHAIRPERSON PREZEAU: Opposed? Motion carries.

19

20 Motion Carried

21

22 Motion

23

24 BOARD MEMBER BELISLE: I would propose amendment to
25 23 that says, "The Tribunal concludes, then, that Segalini

1 LLC is not entitled to waiver of the \$2,000 penalty
2 assessed in Non-Compliance Citation ... (ending in) 41."
3 Strike the rest.

4 BOARD MEMBER PHILLIPS: Second.

5 CHAIRPERSON PREZEAU: So the vice chair has made --
6 has seconded that motion, and the motion for the body is
7 to amend Conclusion of Law 23 to read as follows: "The
8 Tribunal concludes, then, that Segalini Electric, LLC, is
9 not entitled to a waiver of the \$2,000 penalty assessed in
10 Non-Compliance Citation ... (ending in) 41."

11 Discussion, concerns, questions regarding the motion?
12 Seeing none, all those in favor please signify by saying
13 "aye."

14 THE BOARD: Aye.

15 CHAIRPERSON PREZEAU: Opposed? Motion carries.

16

17 Motion Carried

18

19 Motion

20

21 BOARD MEMBER BELISLE: I'll throw out a suggestion
22 for 25.

23 CHAIRPERSON PREZEAU: So we're going to keep -- I'm
24 looking for consensus. 24 Conclusion of Laws stays.

25 Okay, 25.

1 BOARD MEMBER BELISLE: 25 I think you leave the whole
2 first sentence up to the point where it says "causes
3 serious harm to the public interest." And then strike the
4 remainder of the paragraph that starts with "The Tribunal
5 disagrees."

6 CHAIRPERSON PREZEAU: (Pause) Okay. So I just wanted
7 to take a moment to read the rest of the paragraph. I'm
8 sure the body's doing the same thing.

9 So the motion in front of the body is to modify
10 Conclusion of Law 25 to read as follows: "The Department
11 argues that the effect of not listing all the members of a
12 limited liability company on a Secretary of State filing
13 so the Department can independently verify an
14 administrator assignment is a 'direct danger to the public
15 health, ... poses a potentially significant threat to
16 human health or the environment, or causes serious harm to
17 the public interest.'"

18 BOARD MEMBER PHILLIPS: Second.

19 BOARD MEMBER BAKER: Tracy?

20 CHAIRPERSON PREZEAU: So it's been moved and
21 seconded. There's some folks that want to have some
22 conversation. We'll go to Don and then Janet.

23 BOARD MEMBER BAKER: I don't think the Department's
24 argument is that they needed all the members of an LLC
25 listed with the Secretary of State. Their argument is

1 they need to be able to identify who the electrical
2 administrator is. And if listing them on the Secretary of
3 State filing is the method they're going to identify them
4 by, that's jacked up. That needs to be reworded.

5 CHAIRPERSON PREZEAU: Is that a formal legal term
6 "jacked up"?

7 BOARD MEMBER BAKER: Yeah, I was going to clean it
8 up, but --

9 BOARD MEMBER BURKE: We don't file with the Secretary
10 of State as administrators. You and I are listed on the
11 Secretary of State as --

12 BOARD MEMBER BAKER: Right. That's why this has to
13 be changed. It should say that the --

14 BOARD MEMBER LEWIS: Yes.

15 CHAIRPERSON PREZEAU: Is that your same concern,
16 Janet?

17 BOARD MEMBER BAKER: -- not being able to identify
18 the administrator creates a public health ...

19 BOARD MEMBER BURKE: Your administrator might be a
20 full-time supervisory --

21 CHAIRPERSON PREZEAU: Got it. Yeah, different model,
22 different model.

23 So Kevin, you want --

24 ASSISTANT ATTORNEY GENERAL ELLIOT: I just kind of
25 want to pose a question for you all to think about.

1 Essentially based on the amendments that have been done
2 thus far, the Board has found that this is essentially not
3 a paperwork violation. Findings 24, 25, 26 basically
4 address the fact that if you find this to be a paperwork
5 violation, then you have to waive the penalty unless you
6 find that one of these exceptions apply, and the
7 exceptions discussed are danger to public health or
8 willful and knowing.

9 So I guess my question is: If you've decided that
10 it's not a paperwork violation, do you need findings that
11 address -- that don't -- when the waiver should not be
12 granted I guess. Because the statute says that if it's a
13 paperwork violation, it gets waived unless -- and it lists
14 all these reasons. So I'm just wondering if those
15 findings are necessary.

16 BOARD MEMBER BELISLE: That would be great.

17 CHAIRPERSON PREZEAU: So I'm hearing counsel's --

18 ASSISTANT ATTORNEY GENERAL ELLIOT: And that's just a
19 question I'm posing on a -- I'm not indicating one way or
20 the other.

21 CHAIRPERSON PREZEAU: No, it's a valid question. If
22 I'm understanding counsel's question correctly, then it
23 appears that perhaps conclusions of law -- because of the
24 previous actions taken by this body in determining that
25 this -- these citations, these inactions for both Segalini

1 Electric and Michael Segaline do not constitute a
2 paperwork violation under RCW 34.05.110. Then if that --
3 we've taken those positions multiple times. And then
4 therefore there would be no need in our proposed final
5 order to retain Conclusions of Law 24, 25 and 26.

6 ASSISTANT ATTORNEY GENERAL ELLIOT: That's my
7 position.

8 BOARD MEMBER BELISLE: That would be great.

9 BOARD MEMBER LEWIS: I make a motion --

10 CHAIRPERSON PREZEAU: Well, hang on. We have a
11 motion in front of us.

12 BOARD MEMBER BELISLE: I'll withdraw my previous
13 motion.

14 CHAIRPERSON PREZEAU: You're withdrawing -- it was
15 never seconded, so you're withdrawing that motion -- if I
16 remember correctly.

17 And Janet?

18

19 Motion

20

21 BOARD MEMBER LEWIS: I move to strike paragraphs 24,
22 25 and 26 from the record.

23 BOARD MEMBER BELISLE: Second.

24 CHAIRPERSON PREZEAU: It's been moved and seconded to
25 strike Conclusions of Law 24, 25, 26 from the proposed

1 final order. And it's been seconded.

2 Any questions or discussion on the motion?

3 BOARD MEMBER SCOTT: And throw 27 in there too?

4 BOARD MEMBER LEWIS: No.

5 CHAIRPERSON PREZEAU: So the question is: What about
6 27?

7 BOARD MEMBER LEWIS: Well, I'd like my motion just to
8 show we're striking those three paragraphs.

9 CHAIRPERSON PREZEAU: Okay. And then -- so to
10 Randy's point, though -- Janet, I understand your position
11 -- I think understand where your position might be. But I
12 think we may want to read 27 again. Right? Because the
13 way 27 reads is "... must be waived, as per RCW 34.05.110
14 (2)."

15 BOARD MEMBER LEWIS: Oh. We've already -- yes,
16 correct.

17 BOARD MEMBER BELISLE: Conclusion of Law number 12
18 already has affirmed --

19 BOARD MEMBER LEWIS: Already does that.

20 BOARD MEMBER BELISLE: -- that citation. So we could
21 strike 27.

22 CHAIRPERSON PREZEAU: Well, that -- and we still have
23 the, you know, following the conclusions of law, there is
24 still going to be an initial order where we are going to
25 wrap up what I believe this Board thinks should happen

1 with the citations.

2 And I am inclined to side with Randy here that it is
3 perhaps appropriate if upon reviewing Conclusion of Law
4 27, I believe it is linked to 26, 25, 24 as a conclusion.
5 And if we are determining that -- we've already determined
6 it is not a paperwork violation, I think we need to look
7 at that as well.

8 Bobby.

9 BOARD MEMBER GRAY: Well, I'm -- maybe I'm confused.
10 But I think 12 addresses the original fine.

11 BOARD MEMBER BELISLE: It already does.

12 BOARD MEMBER GRAY: And 27 addresses the request for
13 a waiver. And somewhere I think we have to say the
14 waiver's not approved.

15 BOARD MEMBER LEWIS: And that's in paragraph 23.

16 BOARD MEMBER GRAY: Is it?

17 BOARD MEMBER LEWIS: I think we -- is not entitled to
18 the waiver.

19 BOARD MEMBER GRAY: Is not entitled, okay.

20 CHAIRPERSON PREZEAU: Yeah. The way we amended
21 Conclusion of Law 23, it read in the proposed final order
22 that this body has put on the record, "The Tribunal
23 concludes, then, that Segalini Electric, LLC, is not
24 entitled to a waiver of the \$2,000 penalty (associated
25 with that) Non-Compliance"

1 BOARD MEMBER BELISLE: So moved.

2 BOARD MEMBER PHILLIPS: Second.

3 CHAIRPERSON PREZEAU: It's been moved and seconded to
4 affirm Conclusions of Law 11, 12, 14, 16, 17, 19, 20 and
5 22.

6 Discussion, questions on the motion? Seeing none,
7 all those in favor please signify by saying "aye."

8 THE BOARD: Aye.

9 CHAIRPERSON PREZEAU: Opposed? Motion carries.

10

11 Motion Carried

12

13 CHAIRPERSON PREZEAU: So how about -- so we're going
14 to have to do these all separately I think. The Chair
15 would entertain a motion to affirm Initial Order Number 1.

16

17 Motion

18

19 BOARD MEMBER BELISLE: So moved.

20 BOARD MEMBER PHILLIPS: Second.

21 CHAIRPERSON PREZEAU: Moved and seconded to affirm
22 Initial Orders Number 1.

23 Discussion or questions on the motion? Seeing none,
24 all those in favor please signify by saying "aye."

25 THE BOARD: Aye.

1 CHAIRPERSON PREZEAU: Opposed? Motion carries.

2

3 Motion Carried

4

5 Motion

6

7 BOARD MEMBER BELISLE: I make a motion to amend
8 Initial Order Number 2 to strike the last word "dismissed"
9 and replace it with "affirmed."

10 BOARD MEMBER PHILLIPS: Second.

11 CHAIRPERSON PREZEAU: So it has been moved and
12 seconded to alter Initial Order Number 2 to read as
13 follows: "The Department's Non-Compliance Citation No.
14 EJORP05742, issued on September 25, 2013, to Michael
15 Segaline, and its associated penalty of \$8,000 are hereby
16 affirmed."

17 That's the motion. It has been seconded.

18 Discussion, questions on the motion?

19 Seeing none, all those in favor please signify by
20 saying "aye."

21 THE BOARD: Aye.

22 CHAIRPERSON PREZEAU: Opposed? Motion carries.

23

24 Motion Carried

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Motion

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BOARD MEMBER SCOTT: I move to strike number 3.

CHAIRPERSON PREZEAU: So Randy has moved that we strike in its entirety Initial Order Number 3.

BOARD MEMBER PHILLIPS: Second.

CHAIRPERSON PREZEAU: It has been moved and seconded to strike in its entirety Initial Order Number 3.

Discussion, questions on the motion?

BOARD MEMBER BELISLE: So they would be found guilty of the violation but not cited the fine? Is that what I understand?

BOARD MEMBER SCOTT: This is the waiver.

CHAIRPERSON PREZEAU: So that's right. So discussion on the motion?

And so what we've done previous to this is we have affirmed citation ending in 41 and its associated civil penalty. We have affirmed citation ending in 42 and its associated civil penalty. And now our -- I think Randy's, you know, motion to strike, we're having discussion about whether or not that creates the best record possible.

Right?

BOARD MEMBER BELISLE: Or could we just affirm it?

CHAIRPERSON PREZEAU: Well, because this is --

BOARD MEMBER PHILLIPS: It's waiving it.

1 BOARD MEMBER BELISLE: This is the waiver.

2 CHAIRPERSON PREZEAU: This is the waiver under RCW
3 34.05.110.

4 BOARD MEMBER BELISLE: Right, right. I'm suggested
5 that we -- is hereby affirmed and strike the last part
6 about 34.05.

7 CHAIRPERSON PREZEAU: So I'm going to look for
8 counsel for some --

9 ASSISTANT ATTORNEY GENERAL ELLIOT: We've already
10 affirmed that one.

11 CHAIRPERSON PREZEAU: We've already affirmed that
12 one.

13 In order to make -- and if you understand the actions
14 already taken by this body and the intent -- it's been
15 clear, especially with --

16 BOARD MEMBER BELISLE: Oh, okay. Sorry.

17 CHAIRPERSON PREZEAU: -- the actions taken with
18 Initial Orders 1 and 2, what is the best way to create the
19 cleanest record in dealing with Initial Order 3?

20 ASSISTANT ATTORNEY GENERAL ELLIOT: Well, I think you
21 have two options. One, you can delete it. The other
22 option would be to decline to waive it. Because it's --
23 you know, waiver has been requested.

24 BOARD MEMBER TOWNSEND: Have some affirmative
25 response. If you leave it off, we've affirmed it, but we

1 really haven't addressed it just to take it off the
2 record. If you want to make it an affirmative statement
3 that you wanted to waive it, then I would suggest that we
4 say "not waived" in the body of the --

5 CHAIRPERSON PREZEAU: Okay. So if I'm -- so what I'm
6 hearing is potentially to be consistent with the actions,
7 if this body decided that they wanted to leave initial
8 order, some portion of it retained to affirm -- be
9 consistent with our previous actions, it would be possible
10 instead of striking it to say "The \$2,000 civil penalty
11 associated with Non-Compliance Citation No. ... (ending
12 in) 41 assessed against Segalini Electric, LLC, is hereby
13 not waived."

14 BOARD MEMBER LEWIS: Yes.

15 BOARD MEMBER TOWNSEND: And to that end, we have been
16 addressing the other provisions in the RCW about --

17 BOARD MEMBER SCOTT: I'll withdraw my motion.

18 CHAIRPERSON PREZEAU: So Randy has withdrawn his
19 motion of striking it in its entirety.

20 Don.

21 BOARD MEMBER BAKER: I would suggest using the word
22 "upheld" -- "hereby upheld."

23 CHAIRPERSON PREZEAU: Okay. Well, there is no motion
24 at this point. We're just discussion. There is no motion
25 because Randy like has removed his.

1 So potentially -- let me see if I'm -- the Chair is
2 hearing from members is you like something like "The
3 \$2,000 civil penalty associated with Non-Compliance No.
4 ... (ending in) 41 assessed against Segalini Electric,
5 LLC, is hereby affirmed"? Is that what you said?

6 BOARD MEMBER BAKER: Upheld.

7 CHAIRPERSON PREZEAU: Upheld?

8 ASSISTANT ATTORNEY GENERAL ELLIOT: I think the
9 language --

10 BOARD MEMBER LEWIS: Not waived.

11 ASSISTANT ATTORNEY GENERAL ELLIOT: -- "not waived"
12 probably works better just because that statute that
13 you're talking about addresses waiver. And so the body is
14 saying that we're not waiving it.

15 CHAIRPERSON PREZEAU: So hearing counsel's
16 recommendation or suggestion, the Chair would entertain a
17 motion to alter Initial Order Number 3 to read as follows:
18 "The \$2,000 civil penalty associated with Non-Compliance
19 Citation No. EJORP05741 assessed against Segalini
20 Electric, LLC, is not waived, as per RCW 34.05.110,
21 subsection (2)."

22

23

Motion

24

25 BOARD MEMBER PHILLIPS: So moved.

1 BOARD MEMBER LEWIS: Second.

2 CHAIRPERSON PREZEAU: So moved and seconded to amend
3 Initial Order Number 3. Do I need to read it again?

4 BOARD MEMBER BELISLE: No.

5 CHAIRPERSON PREZEAU: Thank you.

6 Any discussion, questions on the motion? Hearing
7 none, those in favor please signify by saying "aye."

8 THE BOARD: Aye.

9 CHAIRPERSON PREZEAU: Opposed? Motion carries.

10

11 Motion Carried

12

13 CHAIRPERSON PREZEAU: Very good.

14 So before the parties leave, thank you very much,
15 Board members, for your diligence. Thank you very much
16 for both advocates, Ms. Schiedler-Brown and Mr. Leonard.

17 Before we leave, the Board has made it's decision,
18 right?

19 And Mr. Leonard, do you have a proposed final order
20 that is consistent with the action this Board has taken,
21 or maybe I would say we've taken a lot of action, and in
22 the event to make sure that we are doing things correctly.

23 You know, certainly you can -- the parties are
24 encouraged to try to gain consensus on a proposed final
25 order that this body -- this Chair is able to sign. The

1 sooner that happens, the sooner that we, you know,
2 obviously gain closure at this tribunal stage.

3 If you are unable to reach an agreement, then I need
4 to advise you both that this matter will automatically be
5 set for presentment at the next regularly scheduled Board
6 meeting. If an agreed order has not been received by that
7 date, the parties will be expected to file their proposed
8 orders and appear and advise why their proposed order best
9 reflects the Board's decision. Hopefully this will not be
10 necessary. But if you are able to reach agreement as to
11 the form of the order before the next meeting, please
12 forward it to the secretary of the Board which is the
13 Chief, and they will ensure it gets signed and copies
14 provided to the parties.

15 Are there any questions about the proposed order --
16 final order?

17 MS. SCHIEDLER-BROWN: Does the Board have a date in
18 October for its next meeting at this point?

19 CHAIRPERSON PREZEAU: The Board meetings occur
20 quarterly, and they are always the last Thursday. So it
21 will be the last Thursday of the month of October, in
22 which case -- is it the 29th? So it would be the 29th of
23 October.

24 MS. SCHIEDLER-BROWN: Thank you.

25 CHAIRPERSON PREZEAU: Thank you.

1 Mr. Leonard, any questions?

2 ASSISTANT ATTORNEY GENERAL LEONARD: No questions.

3 Thank you.

4 CHAIRPERSON PREZEAU: Thank you very much. Again, I
5 appreciate -- and I appreciate the Board's diligence. I
6 know we worked through lunch.

7 So we have still a substantial amount of agenda to
8 complete. We also need to eat lunch. And I have ten
9 minutes --

10 BOARD MEMBER SCOTT: Some of us are.

11 CHAIRPERSON PREZEAU: What?

12 BOARD MEMBER SCOTT: I said some of us are. I can
13 smell it.

14 CHAIRPERSON PREZEAU: Yeah, I got salmon in my
15 lunchbox.

16 Okay, so it's 10 minutes after 1:00. Can we
17 reconvene at 2:00? Is that sufficient?

18 BOARD MEMBER BELISLE: Yes, please.

19 CHAIRPERSON PREZEAU: So we are adjourning for a
20 lunch break and will reconvene at 2:00. Thank you.

21

22 (Lunch recess.)

23

24 CHAIRPERSON PREZEAU: Okay. So it is 2:01, and I
25 would like to reconvene the July 30, 2015, Washington

1 State Electrical Board meeting.

2

3 Item 4.c. Potelco, Inc. & Jeff Lampman

4

5 CHAIRPERSON PREZEAU: And back to the agenda. We are
6 still under agenda item 4, which is appeals. And before
7 us now would be agenda item 4.c. And I think parties were
8 present when I read my script before, but just for
9 consistency's sake, I'm going to do it again.

10 So good afternoon. My name is Tracy Prezeau. I am
11 the Chair of the Electrical Board. The matter before us
12 today is an appeal of the matter of Potelco, Inc., and
13 Jeff Lampman, docket OAH Docket Numbers 2014-LI-0056 and
14 2014-LI-0058.

15 This hearing is being held pursuant to due and proper
16 notice to all interested parties in Tumwater, Washington
17 on July 30th at approximately 2:02 p.m. And this is an
18 appeal from a proposed decision and order issued by the
19 Office of Administrative Hearings on November 14, 2014.
20 It is my understanding that decision affirms citations and
21 notice EBOES00792 and EBOES00793 issued by the Department
22 of Labor and Industries on October 25, 2013. It is
23 further my understanding that the appellant has timely
24 appealed the affirmed decisions to the Electrical Board at
25 this time.

1 I think we have representatives of Potelco, Inc.

2 MR. FLYNN: Yes. Good afternoon. Josias Flynn here
3 for both Potelco, Inc., and Jeff Lampman.

4 CHAIRPERSON PREZEAU: Very good. And then we also
5 have representatives of the Department or one
6 representative of the Department.

7 ASSISTANT ATTORNEY GENERAL MILLS: Yes, Your Honor.
8 Assistant Attorney General James Mills.

9 CHAIRPERSON PREZEAU: Very good.

10 So the Electrical Board is the legal body authorized
11 by the legislature to not only advise the Department
12 regarding the electrical program, but to hear appeals when
13 the Department issues citations or takes some other action
14 regarding an electrical license, certification or
15 electrical installation.

16 The Electrical Board is a completely separate entity
17 from the Department and as such will independently review
18 the action taken by the Department.

19 When the Department issues penalties, the hearing is
20 assigned to the Office of Administrative Hearings to
21 conduct the hearing pursuant to the Administrative
22 Procedures Act. The ALJ who conducts that hearing then
23 issues a proposed decision and order. If either party
24 appeals, that decision is subject to review by the
25 Electrical Board. Please keep in mind that while our

1 review is de novo, we sit in the same position as the
2 administrative law judge and will review the entire record
3 regardless of whether a certain piece of evidence is
4 referenced by the ALJ.

5 We are bound by the evidence in the record and no new
6 evidence can be submitted at this meeting -- at this
7 hearing. Each party will be given approximately 15
8 minutes today to argue the merits of your case. Any Board
9 member may ask questions, and the time may be extended at
10 the discretion of the Board.

11 At the conclusion of the hearing, the Board will
12 determine if the findings and conclusions reached by the
13 ALJ are supported by the facts and the laws and rules
14 pertaining to electrical installations.

15 Do either counsel have questions regarding this
16 tribunal's process?

17 ASSISTANT ATTORNEY GENERAL MILLS: No.

18 MR. FLYNN: No.

19 CHAIRPERSON PREZEAU: Good.

20 So a reminder, again, to the Board members: we're
21 bound by the transcripts. And as are you probably aware,
22 there are two appeals with the same advocate, but we're
23 going to take them one at a time and consider only the
24 information as contained in each respective appeal packet.
25 Is that understood?

1 Okay. Beautiful. And so Mr. Flynn, I believe you're
2 the appealing party. And so as such, you have the burden
3 of proof to establish that the proposed decision or
4 portions of the proposed decision is or are incorrect.
5 Therefore, I would ask that you present your case first.

6 MR. FLYNN: Thank you.

7 ASSISTANT ATTORNEY GENERAL MILLS: We do have one
8 stipulation, Your Honor.

9 CHAIRPERSON PREZEAU: Yes, sir.

10 ASSISTANT ATTORNEY GENERAL MILLS: As to -- there was
11 a video that was presented as part of the evidence, and
12 the parties have agreed to submit to this tribunal that
13 the video contains a presentation to Potelco employees
14 provided by a Department of Labor and Industry employee on
15 August 31, 2010, addressing state electrical laws,
16 including obtaining electrical permits and requesting
17 inspections for the type of work at issue in this appeal.

18 CHAIRPERSON PREZEAU: So let me just double-check.
19 So is it my understanding that the two parties are
20 stipulating that appellant's Exhibit A which was under
21 some question about whether or not the ALJ was going to
22 admit that piece of evidence? Is that what you're --
23 you're stipulating that --

24 ASSISTANT ATTORNEY GENERAL MILLS: That's what the
25 document contains. It's a video that is a couple hours

1 long.

2 MR. FLYNN: Correct.

3 CHAIRPERSON PREZEAU: So what I'm understanding in
4 layperson's terms is that there are no -- even though I
5 believe that the ALJ never actually officially admitted
6 Exhibit A, that the parties in front of us are stipulating
7 that there's no contention for Exhibit A to be allowed to
8 be reviewed by this tribunal; is that true?

9 MR. FLYNN: The stipulation about what was contained
10 in Exhibit A, not the entire CD basically --

11 CHAIRPERSON PREZEAU: Correct.

12 Is that correct?

13 ASSISTANT ATTORNEY GENERAL MILLS: Correct.

14 CHAIRPERSON PREZEAU: Does everybody understand?

15 So Mr. Flynn, please.

16 MR. FLYNN: All right. In this appeal, we are going
17 to be talking about two issues.

18 The first is the requirement to request an inspection
19 for electrical work. The second issue is whether an
20 electrical administrator is strictly liable for anything
21 that employees of a company do that may violate the
22 electrical laws.

23 So let's start with the requirement to get -- to
24 request an inspection for work. That is found in WAC
25 296-46B-901 (9)(a). I'll read that verbatim.

1 It says, "Requests for inspection must be made no
2 later than three business days after completion of the
3 electrical/telecommunications installation or one business
4 day after any part of the installation has been energized,
5 whichever comes first."

6 So let's talk about what the WAC requires. Two
7 things. It requires you to -- it says you need to request
8 an inspection, and it tells you when the latest you can
9 make that request is. What it does not do is tell you
10 when the earliest you can make that request. It doesn't
11 tell you how to make that request. And, in fact, the
12 WAC's contain no specific requirement for calling,
13 e-mailing, texting, or talking to the Department in
14 person. So there is no specific on how that request can
15 be made.

16 Now, let's talk about the facts of the case that are
17 on appeal.

18 Potelco was working to replace some power lines at a
19 grade school in the White River School District. They
20 pulled a permit for that work as required. And in the
21 process of -- while they were in the process of doing that
22 work, a inspector from the Department came by. His name
23 is Inspector Boespflug.

24 He testified that he was doing some electrical
25 inspections in the area and he noticed Potelco's work, so

1 he stopped by to do an inspection of that work site. And
2 he used the word "inspection" to describe what he was
3 doing.

4 On page 51 of the Electrical Board packet, Inspector
5 Boespflug said --

6 CHAIRPERSON PREZEAU: Hang on just a second,
7 Mr. Flynn, if you would.

8 MR. FLYNN: Sure.

9 CHAIRPERSON PREZEAU: Okay.

10 MR. FLYNN: Starting on line 8, the inspector
11 testified, "And so everything was off and it was ... safe
12 - the best time to do a safe inspection is with the system
13 off to confirm that the wire itself was a listed wire."

14 So the wire had not been energized, and Inspector
15 Boespflug was saying, hey, that was the best time to do a
16 safe, what he called, inspection.

17 He asked a lot of detailed questions about Potelco's
18 work. He asked on page 98 of that packet, Potelco's
19 employee Mark Langberg testified, referring to Inspector
20 Boespflug, "He came up and he started asking - well, he
21 asked ... for an EL01 license, which isn't needed, but I
22 gave him one, which was expired. I did do that for a
23 little while.

24 "But then I showed him all the - we looked at the
25 wire, we looked at the terminations and I think we looked

1 -- I think we looked at the ground wire to make sure ...
2 it had a yellow sticker on it or a marking on it also. We
3 looked at the kits. And I was working on" -- and he goes
4 on to describe what Potelco was doing and just the level
5 of detail that Inspector Boespflug was looking for.

6 Inspector Boespflug learned that Potelco was going to
7 be finishing that work that day. All they had left to do
8 was complete some termination ends and then energize that
9 wire.

10 Before he left, one of the Potelco employees
11 testified that he -- all the employees testified that
12 Inspector Boespflug said he had no problems with what he
13 found. And Inspector Boespflug said the same thing. That
14 the work was done safely and everything was okay.

15 One of the employees testified that he said it would
16 be okay to go ahead and energize that line.

17 Based on those interactions and the detailed
18 questions Inspector Boespflug was asking, those employees
19 were under the impression that he was there to do the
20 inspection that is required under this rule.

21 After the inspection, the inspector goes on vacation
22 for a couple months and comes back. He testified that he
23 looked at the Department's Web site, a program in there
24 suggested that Potelco had not requested an inspection.
25 So he follows up, and he calls the electrical

1 administrator, Jeff Lampman.

2 And Jeff said essentially, "Okay. Well, then, you
3 know, I guess we're done. Yeah, we finished that day like
4 we said we would and we're requesting an inspection."

5 And then he closed out the file.

6 Importantly, however, he testified that he did not
7 reinspect that work site. He had already seen what was
8 happening and what was done. He really just wanted to
9 know that it was finished.

10 When asked on page 135, starting at line 4, "All
11 right. And did you perform the final inspection on the
12 job at issue"

13 A couple lines down it says, "I gave it final
14 approval. It is pretty much for safety standards. We do
15 not like to open energized transformers."

16 In other words, he didn't want to go back to that
17 work site and open that transformer where Potelco had
18 hooked up those terminations and to actually look at how
19 they were hooked up. He just wanted to know that they
20 finished the work.

21 Nevertheless, the Department issued Potelco a
22 citation for failing to request an inspection, an
23 inspection that was actually never going to happen.

24 Back to the actual requirement for requesting that
25 inspection. Again, as I started out with, there is no

1 time frame for how early you can request an inspection.
2 There's nothing that says if it's noon and you're sitting
3 with the Department inspector that you can't say, "Hey,
4 we're going to be finished at 3:00. You've seen
5 everything. You know, we're finishing -- whatever else
6 needs to be done, we're telling you this now."

7 There's nothing that says that cannot be a request
8 for inspection under the rule. And especially here where
9 there were no issues with the safety requirements, no
10 problems with how Potelco did the work, and the Department
11 knew in detail what happened and when Potelco was going to
12 finish. We contend that Potelco requested the inspection
13 as required.

14 The second citation here went to Mr. Lampman as
15 electrical administrator for failing to ensure allegedly
16 that Potelco complied with the electrical laws.

17 Because as just described, we contend Potelco did
18 comply with those laws. Mr. Lampman should not have been
19 cited individually.

20 Even if there were an argument to be made that
21 Potelco violated an electrical law, the Department didn't
22 ask anything about what Mr. Lampman does to ensure
23 compliance. It's position was essentially if there's ever
24 an issue at the company, Potelco, with electrical laws,
25 then we're going to issue a citation for that

1 administrator as well. The rule does say that an
2 electrical administrator will ensure the company is in
3 compliance; I'm paraphrasing. But nowhere in there does
4 it say specifically what an electrical administrator must
5 do to ensure compliance or that if it takes certain steps
6 to ensure compliance, anytime something goes wrong, that
7 electrical administrator's individually liable.

8 Strict liability statutes are generally disfavored,
9 and so courts will not interpret a statute as applying
10 strict liability which means something happened, we're not
11 going to look at anything other than it happened, so
12 you're liable.

13 And there's nothing in the language of RCW 19.28.061
14 (5)(b) which is the requirement for electrical
15 administrators which indicates strict liability. There's
16 nothing in the legislative history or any case
17 interpretation that would suggest that.

18 So you could see a situation where an electrical
19 administrator has explained all requirements in detail to
20 his employees and works at a place like Potelco who has a
21 lot of employees. Maybe there are two work sites
22 happening on the same day. And for whatever reason,
23 employees ignored instruction to use providers that aren't
24 certified or something. It's literally impossible for him
25 to be at both places at once. But he's done everything he

1 could to ensure by telling them what they're supposed to
2 do. And in a case like that, we don't think it's
3 appropriate to issue a citation to the electrical
4 administrator.

5 In this case, Mr. Lampman does a few things to ensure
6 compliance. We talked about the stipulation. He
7 contacted the Department and had an inspector come out and
8 give a presentation the Potelco's employees who were in
9 the field so they'd go over the requirements.

10 One of the requirements they went over is pulling
11 permits and getting inspections done for work. So the
12 employees were aware of that.

13 He also has a new role. He's in charge of contracts
14 management. He reviews many of the contracts Potelco gets
15 for work, so he's aware of the type of work being done and
16 can determine generally if a certain work site is one
17 where they're going to need to pull a permit.

18 In this case, he reviewed the contract and knew about
19 the work being done. He talked to an engineer who was
20 overseeing the work, and he told them to pull the permit
21 and he had worked with that particular engineer before.
22 And that employee had always ensured that Potelco pulled
23 permits and requested inspections when required. So he
24 had no concern that it wouldn't happen in this case.

25 And again, we contend it didn't happen. And it's not

1 like the employee all of a sudden decided not to request
2 an inspection this time. The only difference is a
3 Department inspector came to the work site two hours
4 before the finishing-up work. All that had -- all that
5 was left to be done was to complete the termination ends
6 that he told Potelco they could go ahead and energize it.
7 And everything the employees took from that conversation,
8 they said they thought that was the inspection that was
9 required. And so there would just be no reason to make
10 some separate request.

11 And for that reason, Potelco and the electrical
12 administrator, Jeff Lampman, contend that the Office of
13 Administrative Hearings erred when it upheld the citations
14 issued by the Department.

15 Does anyone have any questions?

16 BOARD MEMBER BAKER: I got a question. Who requested
17 the inspection?

18 MR. FLYNN: I would say the foreman on site that was
19 talking with --

20 BOARD MEMBER BAKER: Is that in the documents here as
21 to when they requested the inspection? When was the
22 inspec -- I understand the inspector showed up on site
23 when Potelco -- who requested the inspection?

24 MR. FLYNN: I would say Mark Langberg. Mark Langberg
25 was the employee who the Department inspector -- who was

1 the foreman. That's who took the lead in those
2 communications. And basically what he was testifying is
3 that in those communications he assumed that was the
4 request -- I mean, that was the inspection that happened.

5 BOARD MEMBER BAKER: So he wasn't --

6 MR. FLYNN: If you're out to dinner and you normally
7 have to request catsup from your waiter and catsup's
8 sitting on your table, are you going to request catsup?
9 So that's what -- but that is Mark Langberg who --

10 BOARD MEMBER BAKER: I'm not surprised when I sit at
11 the table and there's catsup on the table. Was that
12 individual surprised when that inspector showed up on
13 site? Or was he expecting him?

14 MR. FLYNN: He didn't testify that he was surprised
15 to see him on site.

16 BOARD MEMBER BAKER: Because it sounds like the
17 inspector stopped in there as you said because he saw the
18 truck there. So my expectation would be that they would
19 have been surprised to see him there. Unless they called
20 for an inspection.

21 MR. FLYNN: That's what I would assume as well.
22 Although, as I mentioned, I don't recall anything in the
23 appeal Board packet about being surprised that he was
24 there.

25 But again, if you're expected to request catsup when

1 you show up to a restaurant and it's not there, the waiter
2 comes with it. Requesting it again doesn't seem to make
3 much sense.

4 BOARD MEMBER WARD: I did have a quick question.

5 CHAIRPERSON PREZEAU: Sure.

6 BOARD MEMBER WARD: On page 74 and 75, there's a
7 reference that Mr. Langberg was told directly by the
8 inspector, reminded that he needed to call in for an
9 inspection once the work was completed. Now, it sounds
10 like it was done quite a ways after the call was made.
11 This wasn't done right after the work was completed. Is
12 that -- do I understand that correctly?

13 CHAIRPERSON PREZEAU: What page are you referring to?

14 BOARD MEMBER WARD: I'm on 74 and 75.

15 BOARD MEMBER BAKER: What line item?

16 BOARD MEMBER WARD: 17 on page 74, and then the top
17 of page 75.

18 CHAIRPERSON PREZEAU: So Mr. Kevin Hudson is being
19 questioned if I'm following this correctly, and it's
20 supposed to be Mr. Kevin Hudson's --

21 BOARD MEMBER BELISLE: No, no, no, no.

22 CHAIRPERSON PREZEAU: -- response.

23 BOARD MEMBER BELISLE: No.

24 CHAIRPERSON PREZEAU: Am I not correct?

25 BOARD MEMBER BELISLE: Packet page 74.

1 BOARD MEMBER: Board packet page.

2 CHAIRPERSON PREZEAU: Oh. Sorry, sorry, sorry.

3 MR. FLYNN: And so are you -- what's your question
4 about that?

5 BOARD MEMBER WARD: Well, my question is:

6 Mr. Langberg was reminded at the job site that he needed
7 to call -- once the work was completed, he needed to call
8 for an inspection.

9 MR. FLYNN: That is what the Department inspector
10 testified to. Mr. Langberg on the other hand said he
11 never recalled anything like that.

12 Three other Potelco employees said they never heard
13 him say "make sure to call an inspection" and testified
14 that, you know, he said call an inspection. Why wouldn't
15 he have if we're getting ready to finish essentially?

16 So that is a disputed fact. But there -- and there
17 are -- is conflicting testimony in the record on did he
18 say, "Yeah, I'm here. Would you still call."

19 BOARD MEMBER WARD: Thank you.

20 CHAIRPERSON PREZEAU: Alice has a question.

21 BOARD MEMBER PHILLIPS: So on Board packet page 99,
22 line item 8, it say, quote, "I ... (assumed) he was doing
23 an inspection." So did he know or did he assume or was he
24 guessing?

25 MR. FLYNN: Are you talking about -- this is Mark

1 Langberg?

2 BOARD MEMBER PHILLIPS: Yes, this is Langberg.

3 MR. FLYNN: Yes. That -- and as I mentioned, that's
4 what -- all the employees did assume. That's what they
5 thought was happening. They thought it was the
6 inspection. Until much later when this appeal comes
7 about.

8 BOARD MEMBER PHILLIPS: So reading through this, I
9 don't see anywhere in here where Mr. Langberg says that he
10 verified that it was an inspection.

11 MR. FLYNN: At the time there would have been no way
12 for Mr. Langberg to know. I mean, if someone's out
13 inspecting, he's not the Department. He doesn't know if
14 that is -- from everything he could tell, that was the
15 inspection.

16 BOARD MEMBER PHILLIPS: Could he have asked the
17 inspector, "Are you doing an inspection?"

18 MR. FLYNN: That -- no, they did not ask that.

19 BOARD MEMBER PHILLIPS: But he could have.

20 MR. FLYNN: Sure, he could have.

21 BOARD MEMBER PHILLIPS: Okay. Thank you.

22 CHAIRPERSON PREZEAU: So I have some other comments
23 too. But I'm going to -- unless there's other questions,
24 I think we can hear from the Department's attorney.

25 ASSISTANT ATTORNEY GENERAL MILLS: Thank you. I'll

1 be brief.

2 This is a pretty straight-forward case. First,
3 Potelco pulled an electrical permit to perform the work at
4 the project. They performed the work. The inspector
5 showed up. He looked over some of the work, but the work
6 was not complete yet. The unrefuted testimony is that
7 there was at least several hours of work left to do before
8 the completion occurred. The inspector did not sign off
9 on the permit itself. A number of the witnesses were
10 asked to -- asked the question about whether or not they
11 understood what that meant. And Mr. Langberg testified
12 that in other contexts he had experience with a permit
13 being signed off.

14 Potelco here asserts that holding Lampman responsible
15 for Potelco's failure is an assertion of a strict
16 liability. But at the hearing itself, Mr. Lampman
17 testified -- he was asked numerous questions about what he
18 did to ensure that electrical laws were complied with.

19 Potelco's attorney here argues that showing a video
20 four years prior to this incident is essentially
21 sufficient to train employees on how to abide by the
22 electrical contracting laws. But if you go to the other
23 testimony of Mr. Lampman, Mr. Lampman acknowledged that he
24 had no system in place for retaining permits of specific
25 job sites which is a critical fact here. In support of

1 his position that he, you know, had control over the
2 situation, he was asked about whose job duty it was to
3 make sure the permits were pulled and inspections called.
4 And he said ambiguously either me or him, referring to the
5 foreman on the job site.

6 So in other words, the evidence shows that he did not
7 have control of the situation. And this is not strict
8 liability to point to the actual evidence that shows that
9 Mr. Lampman did not abide by his responsibilities.

10 I want to address a couple of questions that came up
11 during -- a couple of questions of counsel.

12 One thing that was said was that there was no limit
13 to how early a call can be made. If you look at the
14 language of the WAC, it clearly references after
15 completion. The whole goal of the electrical code is to
16 make sure that the work is done and that it is done well.
17 If you have an inspection before the completion actually
18 occurs, it doesn't serve the purposes of the rules and the
19 regulations that are applicable here.

20 There was a question -- I think it was from Mr. Baker
21 or Mr. Ward. But one of the questions was when an actual
22 call in for the inspection was. And the actual call in
23 for the inspection was when Mr. Lampman realized that
24 there hadn't been an inspection called, and then he called
25 it in at that point.

1 And the inspector did do some follow up inquiries to
2 find out whether or not the appropriate equipment had been
3 used during installation itself.

4 On the point of which -- when the inspector has
5 conversations about -- with the workers, there's two
6 points in the transcript that address the question of him
7 telling the workers that they needed to call in a final
8 inspection. If you go to Electrical Board packet 54 and
9 55, it specifically addresses it. And it looks based on
10 the testimony here it appears that that conversation
11 occurred on the day that he showed up on the job site.

12 Based on the entirety of the evidence here, the
13 Department asks for this Board to affirm the decision,
14 except to amend the decision to strike out the language
15 addressing liability.

16 And you'll also notice I'm sure that there have been
17 a number of transpositions in the citation number
18 throughout the initial order. The Department would also
19 request that those be directed to reflect the actual
20 correct citation number that we've referenced as the
21 appeal started.

22 Thank you.

23 MR. FLYNN: Can I respond?

24 BOARD MEMBER SCOTT: Can I ask for another
25 clarification?

1 CHAIRPERSON PREZEAU: Sure.

2 I'm going to go with Randy, and then we'll come back
3 to the advocates.

4 BOARD MEMBER SCOTT: And you're talking about the
5 transposition between the two cases?

6 ASSISTANT ATTORNEY GENERAL MILLS: No. There is
7 actually -- if you look at the Initial Order, instead of
8 "B" in the citation number, the ALJ used "M" throughout.

9 BOARD MEMBER SCOTT: So I guess my question would go
10 to Mr. Flynn.

11 It looks like -- and I know these are two separate
12 cases, and I understand that. But it looks like the last
13 two paragraphs were interchanged between these two letters
14 to indicate you were wanting to appeal the decision.

15 So if you take a look at the last paragraph here, it
16 says --

17 CHAIRPERSON PREZEAU: Can you --

18 BOARD MEMBER SCOTT: So I'm looking at page number 3
19 on the letter.

20 BOARD MEMBER BELISLE: Board packet page 3?

21 BOARD MEMBER SCOTT: Right up front on what you're
22 appealing.

23 So on the bottom of the actual page, which is
24 actually on page 4, it says, "Potelco and Mr. Lampman
25 respectfully request that the electrical board review the

1 PDO and vacate (Citations) ... 394 (through) 396." That's
2 from the other case.

3 And then prior to that, it says the proposed --
4 you're appealing the proposed conclusions of law numbers
5 5.4, 5.6, 5.9, and 5.10, which are the same numbers on the
6 other case.

7 And so the question is: Which conclusions are -- I
8 mean, there's some transposition here going on.

9 MR. FLYNN: I do understand your question now. And
10 so I guess we can handle the second case when we get
11 there, and I'll tell you which ones we're at with this
12 case. Would that be helpful?

13 BOARD MEMBER SCOTT: What I wanted to clarify was:
14 Are these the correct numbers on your appeal?

15 MR. FLYNN: That's what I was going to verify right
16 now. Let me take just a second.

17 CHAIRPERSON PREZEAU: So I was just talking with our
18 counsel to ask some of the questions. Since it appears
19 that, you know, what you just quoted from is Potelco's
20 notice of appeal to the Electrical Board of citations
21 ending in 792 and 793, but the actual appeal letter is
22 potentially inconsistent in that, right? So I asked him
23 the question about whether or not this is a properly
24 appealed -- this is a proper appeal before the Board.

25 And his response was that because this is a de novo

1 review and this appears to be a typo, that -- I think we
2 -- the intent is to appeal both of the citations, whether
3 they are listed correctly in the proposed order or not.

4 We'll make sure that we create a good record when we
5 get there. But it's not a question of -- I think we
6 understand the intent.

7 Does that make sense?

8 So Mr. Flynn, you indicated that you wanted to add
9 something?

10 MR. FLYNN: Not on this topic. But do you still want
11 me to address that, though, first before we move on?

12 BOARD MEMBER SCOTT: Well, I just -- I guess what I
13 wanted to know is: Are you appealing the Conclusions of
14 Law 5.4, 5.6, 5.9 and 5.10 on this case?

15 MR. FLYNN: On this case, 5.4 yes, 5.6 yes, 5.9 yes,
16 5.10 yes. Yes.

17 BOARD MEMBER SCOTT: Okay.

18 MR. FLYNN: I briefly want to respond to a few things
19 counsel said.

20 The training that Mr. Lampman gave about getting
21 permits and inspections worked for the employee who was
22 responsible for this particular project, and I found his
23 name. That was Glen Thomas. Mr. Lampman testified that
24 he had been through the process before and never had an
25 issue. So whatever he did to train Mr. Thomas or teach

1 him work, say, for this incidence of where, as I
2 mentioned, everyone assumed that was an inspection.

3 Secondly, the Department talked about the reference
4 to after the completion of work in this WAC. But again,
5 that is -- the reference to after work is only to put a
6 time limit on how that you can request inspection. He
7 said, you know, well, you can't request it before because
8 the reason is to see everything and to make sure it was
9 done right, et cetera, et cetera. Well, if that's really
10 the case, why did the Department go back out to inspect
11 it?

12 Remember, this is a citation for failing to request
13 an inspection that never took place -- a subsequent
14 inspection that never took place.

15 The thing that Mr. Boespflug was waiting for was some
16 internal information from the Department about the wires
17 used. They weren't listed because they were 3M wires.
18 And so he wanted to make sure that was okay. But he
19 testified that was something that needed to happen
20 internal to the Department, and he chased that up the
21 chain of command or whatever he did, and he found that
22 that was okay. But that was the only issue he had with --
23 or the only issue he needed to follow up with on. But
24 that had nothing to do with Potelco. And again, he did
25 not go reinspect the work site. So there was nothing to

1 request.

2 CHAIRPERSON PREZEAU: Mr. Mills, any rebuttal?

3 ASSISTANT ATTORNEY GENERAL MILLS: No. I think the
4 record speaks for itself.

5 CHAIRPERSON PREZEAU: So I have some thoughts, and
6 I'm looking at the transcript, and I'm going to read from
7 page 135, 136. So I'll give you a moment to get there.

8 So this is re-examination of Inspector Boespflug by
9 the ALJ and indicates that -- and Mr. Flynn read from this
10 because, you know, the ALJ asks him, "And do you perform
11 the final inspection on the job at issue; is that
12 correct?"

13 He responds, "I didn't quite understand the
14 question."

15 "You performed an inspection on - well, did you
16 perform a final inspection on this job site for this work
17 that was done?"

18 His answer is, "I gave it final approval," which
19 Mr. Flynn already read from.

20 "And so how did you document your approval?"

21 "That goes on - in the - it says here that inspection
22 request was made, inspection complete on 10-11-2013. That
23 documentation was put on the system that day, uploaded
24 that evening, so it is documented on our electronic system
25 and typically stays there for up to seven to 10 years."

1 If you go to the next page, under re-examination by
2 Mr. Madison, "Mr. Boespflug," -- it says, "assuming for a
3 moment that you were actually out there in July to conduct
4 an inspection for this work and assuming that it was
5 completed and assuming that it met your approval, would
6 you have made some kind of documentation on the permit
7 that was on-site?"

8 Answer: "It would have been signed off that day both
9 on the permit and also on our electronic system."

10 "And did you do that?"

11 "No, because the system was not complete. Also I was
12 waiting for some information to come from our technical
13 specialist in Olympia about the connectors they were using
14 because they were not listed.

15 "And under state law, if they are not - equipment
16 used in the State of Washington is required to be listed.
17 The exception would be if there is no equipment of that
18 standard available, then they are allowed to use whatever
19 is typically available. And these were 3M products, so
20 I knew there wasn't a problem with them. They simply
21 weren't listed. And because of their size, there is
22 no listed products for that size, so they would be
23 allowed --"

24 "Okay."

25 "-- but I didn't know that until later.

1 "You have heard testimony today that on the day in
2 July that you were on-site, the project was almost
3 completed. To your knowledge, is there any provision that
4 allows for you to conduct a final inspection when a
5 project is almost completed?"

6 And Mr. Boespflug's answer is "No."

7 So there was -- from interpretation of the testimony
8 that in the inspector's mind that he did give final
9 inspection but that didn't happen until October 11, 2013,
10 and it didn't happen in July when the work was being
11 performed because when the inspector left, the work was
12 not complete and there was also question about whether or
13 not the connectors they were using would be provable by
14 the Department.

15 Which is from my perspective is a concern for both
16 the Department and for -- certainly for Potelco -- the
17 inspector could not make final approval of the
18 installation until that was secured.

19 BOARD MEMBER BURKE: Did you see a date in here when
20 the Department got back to Potelco and gave them the
21 approval on -- I didn't see it. So I'm just asking.
22 Because I think that's a really important date.

23 CHAIRPERSON PREZEAU: So I believe -- looking again
24 at Electrical Board packet page 135, starting at line 15,
25 again, this is Mr. Boespflug. It says here "... that

1 inspection request was made, (and) inspection complete on
2 10-11-2013. That documentation was put on the system that
3 day, uploaded that evening, so it is documented on our
4 electronic system (and) typically stays there for up to
5 seven to 10 years."

6 So the final inspection was performed and completed
7 on October 11, 2013, which if I remember correctly --

8 BOARD MEMBER BURKE: The permit was in July.

9 CHAIRPERSON PREZEAU: Yeah, no, the work was
10 performed in July.

11 BOARD MEMBER BURKE: So what was the time frame that
12 the Department took to get back to Potelco to prove they
13 did?

14 BOARD MEMBER PHILLIPS: Could you repeat your
15 question? I didn't hear it.

16 BOARD MEMBER BURKE: My concern is that you have to
17 request an inspection within three days. But did the
18 Department get back to Potelco within three days? Because
19 if they didn't, then there's nothing here that shows us
20 that. Then there's -- like I said, there's a problem for
21 the Department and for Potelco.

22 CHAIRPERSON PREZEAU: Well, I think that there is a
23 presumption that -- we certainly heard Mr. Flynn cite
24 296-46B-901, subsection (9) about requests for inspection.
25 And I have it in front of me. "Respects for inspections

1 must be made no later than three business days after
2 completion of the electrical/telecommunications
3 installation or one business day after any part of the
4 installation has been energized, whichever occurs first."

5 So the presumption is that the entity performing the
6 work would have to request the inspection, and that -- you
7 know, although, the transcript does seem to indicate that
8 the Potelco employees may have assumed that that
9 inspection happened -- final inspection happened.

10 Certainly -- although the -- Mr. Boespflug did not
11 document the final inspection -- the only permit that was
12 posted on site. And I would only assume that if Potelco
13 had requested -- had formally requested an inspection to
14 occur no later than three business days after completion
15 or one business day after the installation has been
16 energized, whichever happens first, that the question
17 regarding the listed connections if there was -- the
18 Department had an answer -- then it would have been
19 furnished when that inspection was requested. But that's
20 a presumption.

21 BOARD MEMBER BURKE: Okay, I would agree with that.

22 CHAIRPERSON PREZEAU: Don.

23 BOARD MEMBER BAKER: So I believe that Potelco
24 received an inspection that day. That inspector stopped
25 by there randomly when he saw that truck. And the

1 evidence shows that he did perform somewhat of an
2 inspection because he looked at the cable, he looked at
3 the connectors. He had enough information to make notes
4 and had enough information to go back and do some research
5 on that. So whether it was a formal or informal or not, I
6 think that inspector did perform an inspection, and I
7 believe that Mr. Boespflug probably did tell them to go
8 ahead and energize it. So as far as, you know, not
9 requesting an inspection within three days of completion
10 or 24 hours of energizing, I think maybe Potelco might be
11 clean on that. Because the inspector -- regardless -- I
12 mean, the formal process is that you pull a permit, you do
13 the work, you call in on-line electronically and request
14 the inspection. The inspector logs that and schedules it
15 and he comes out.

16 This is a little bit different because the inspector
17 stopped by on his own accord. But they can do that.

18 So I believe Potelco did receive an inspection that
19 day. Whether it was formal or informal, they received an
20 inspection. There's no requirement to receive a final
21 inspection within three days of completion or within 24
22 hours of energizing; it just says "receive an inspection"
23 or "call to request an inspection." So finally -- this is
24 part of the equation. And if the inspector had to check
25 with his supervisors to find out if a particular cable or

1 particular termination was acceptable, maybe he was
2 preparing for that final. But the record doesn't say
3 that, but maybe he was expecting at some point there would
4 be a formal inspection and he would go back out. But the
5 record doesn't indicate that he did go back out. He did
6 go back out. He gave a final without going back out to
7 the site.

8 So this is a tough one. But I do believe that they
9 received an inspection that day. I don't believe it was
10 planned. I don't think it was on the inspector's schedule
11 that day. But I believe once he get to that site, he
12 walked over there and he inspected what they were doing.
13 And I believe the crew was safe in assuming that they
14 received an inspection.

15 CHAIRPERSON PREZEAU: Even in absence of the permit
16 actually being notarized as being -- the work being
17 inspected?

18 BOARD MEMBER BAKER: I've had inspections several
19 times where the inspector didn't sign my permit.

20 BOARD MEMBER SCHMIDT: One statement that I found in
21 the inspector's statement that kind of follows along the
22 same line is he said --

23 CHAIRPERSON PREZEAU: Where are you at?

24 BOARD MEMBER SCHMIDT: I'm sorry. I'm on page 161.
25 And approximately halfway through the inspector's

1 statement, it says, "They were at the time engaged in
2 installing the cable connections at each end. The
3 electrical permit (EP2258211) was in a baggie hanging on
4 the transformer door. I instructed the linemen that since
5 they (should) be done that day a request should be made
6 for (an) inspection and I would return and sign the
7 electrical work permit (and) so leave the permit on the
8 door. I confirmed Marty Brewer's phone (number),
9 maintenance staff of White River School district ...
10 installation was completed on 7/17/2013."

11 And the one part I have a little bit of -- why I'm
12 leaning toward this is he said "I would return and sign"
13 the inspection, which would lead me to believe in my
14 experience that he obviously felt that the installation
15 was proper and had inspected it. Otherwise, he wouldn't
16 have stated that he would sign it.

17 CHAIRPERSON PREZEAU: So Alice has a question.

18 BOARD MEMBER PHILLIPS: I guess here's where I'm
19 stuck with following your theories. The "reg" says -- and
20 this is the request for inspections -- "Requests for
21 inspections must be made no later than three business days
22 after completion" So I guess -- what I'm looking at
23 is why would I request an inspection prior to it being
24 completed? So I could --

25 BOARD MEMBER: Let me --

1 BOARD MEMBER PHILLIPS: Let me finish. I could pull
2 a permit and two weeks later get an inspection on
3 something that was -- I mean, the whole point of these
4 inspections is to make sure that the system is installed
5 correctly and to code.

6 And I also have issue with anyone in any of our
7 industries making assumptions. Because that results in
8 injury and death. And I don't care if it's a permit being
9 pulled or an inspection. Because if we make assumptions
10 on those, you make assumptions on other things.

11 So I really have an issue with the assumption that
12 the inspection was made. That's like saying, "I assumed
13 that that was de-energized and grounded.

14 BOARD MEMBER BAKER: I'll speak to that real quick.

15 I'm not assuming an inspection was made. The record
16 indicates that there was an inspection made because he
17 took down the information on the wire and terminations.
18 And he followed up on that later with his supervisor. So
19 I know he performed an inspection. It wasn't a formal
20 one, though.

21 And as far as why you would request an inspection
22 prior to completion of work? We do that all the time.

23 In this particular case, you could request an
24 inspection because you have an open transformer and you
25 need to get that inspector there to see that open

1 transformer before you button it up and close it.

2 Oftentimes they won't come in and open those transformers
3 up and look in there.

4 So you would request that inspection the day of the
5 work. We do that with load bank tests oftentimes. We get
6 them out there when we're doing our load bank test so they
7 can see those terminations during that load bank test. If
8 we're doing lighting retrofit jobs, we have the inspector
9 come out during that lighting retrofit project so that he
10 can get up on the lift, see what type of ballasts and
11 lamps we're using.

12 So having an inspection prior to completion is normal
13 in our industry.

14 BOARD MEMBER WARD: Let me read this a little
15 differently. It says that --

16 CHAIRPERSON PREZEAU: Where are you at?

17 BOARD MEMBER WARD: I'm sorry. Back to the same
18 page, on page 161, that same sentence.

19 "I instructed the linemen that since they would be
20 done that day a request should be made," which is the
21 first step. And then he'd return to sign the electrical
22 work permit. So he wouldn't come back until that request
23 was made.

24 And that's consistent with the transcript also.

25 BOARD MEMBER LEWIS: Comment.

1 CHAIRPERSON PREZEAU: Janet.

2 BOARD MEMBER LEWIS: But if you go up to the very
3 second sentence, to point out, the inspector admits "I was
4 there to inspect progress" So he was there making an
5 inspection. It may not have been the final inspection or
6 be okay to energize, but he does admit he was there to
7 inspect progress. You know, he wasn't called to inspect,
8 but he was there to inspect.

9 CHAIRPERSON PREZEAU: Yeah, because it further goes
10 on to say, "I was not there on request but assumed that
11 the service would be off and the transformer service door
12 would be open so that I could check the UL listing mark on
13 the new cable."

14 Rod.

15 BOARD MEMBER BELISLE: I think this is a case which
16 is a matter of communication. I mean, I think he did make
17 his inspection. He took down notes. He checked things.
18 He evaluated. He said it looked good. He told them it's
19 okay to energize.

20 I know if that was my job site, before he left there,
21 I would have said, "So are you going to come back if I
22 call for an inspection, or do you want to sign it off
23 right now?"

24 I mean, this is kind of one of those cases that you
25 can't assume because the catsup's on the table, you know,

1 you're good.

2 If I sat at a table at a restaurant and the waitress
3 come and picked up all my cups and said, "Thanks, guys;
4 have a great day" and didn't leave me a check, I don't
5 assume that it's free.

6 I still have to ask, you know, "Do I pay you?" or
7 whatever.

8 I think they didn't communicate. I think that
9 inspector left there clearly in his mind with the
10 expectation that he would get a phone call and he would
11 have an answer to the listing on the terminations and he
12 would come back or maybe he wouldn't, depending on his
13 comfort level. But that phone call never came until the
14 inspector came back, checked the record and proved that
15 phone call never came. I don't think they did it with
16 intent to circumvent the system, but I think it was an
17 error. Clearly there was no inspection. And I know in my
18 world, if that inspector doesn't sign the inspection
19 permit or he doesn't sign on the blueprint for cover, it
20 doesn't happen. I mean, if it's not in writing, it didn't
21 happen. And that's a real dilemma.

22 But again, I don't think it was real clear that the
23 process was followed. It wasn't real clear who should be
24 doing that. And this might be a small lesson that they
25 need to kind of tune up that part of the business model.

1 CHAIRPERSON PREZEAU: Other thoughts?

2 BOARD MEMBER BURKE: I just think you also have to
3 consider the fact that the inspector was doing his due
4 diligence and going off trying to figure out these
5 terminations and there's nothing here that shows that he
6 contacted Potelco and said, "Okay, it's all good. We can
7 go for final." I think that that's a big part of this
8 puzzle.

9 BOARD MEMBER BELISLE: Yeah. And I thought about
10 that. I guess I kind of assumed he went back, found out
11 they were okay and said, "Okay, well, when they call for a
12 final, I'm going to sign it off then."

13 And he didn't need to call them --

14 BOARD MEMBER BURKE: Communication.

15 BOARD MEMBER BELISLE: Huh?

16 BOARD MEMBER BURKE: Communication.

17 BOARD MEMBER BELISLE: Yeah, it is communication. He
18 didn't need to call them to say, "Hey, you guys are good.
19 Go ahead and energize" because he knew it was already
20 energized frankly, whether they were listed or not.

21 Yeah, I think that would have happened had that call
22 came in that afternoon.

23 BOARD MEMBER BURKE: I don't know. And I agree that
24 the three-days inspection was performed within the
25 confines of the rule. The final didn't happen until

1 October, but the inspection occurred. I mean, he said
2 that he went there to inspect that project and that work.
3 So I think --

4 Like Don said, formal or informal, the inspection
5 happened. He was there specifically to inspect that work.
6 He even testified to that. And he put it in his notes on
7 the permit.

8 CHAIRPERSON PREZEAU: So, you know, again, reading
9 from the inspector's notes on Board packet page 161, it's
10 clear that Mr. Boespflug in his statement says, "I was
11 there to inspect progress on the replacement of the new
12 15,000 volt primary line feeding the school's transformer.
13 I was not there on request but assumed that the service
14 would be off and the transformer service door would be
15 open so that I could check the UL listing mark on the new
16 cable. The electrical contractor involved, Potelco Inc."
17 -- and it lists its license number -- "had obtained
18 electrical work permit" -- which is listed -- "on (July
19 16) 2013 for the work. Potelco's crew had already
20 installed the cable from the utility connection into the
21 transformer. They were at that time engaged in installing
22 the cable connections at each end." And we've read this
23 before. "The electrical permit ... was in a baggie
24 hanging on the transformer door. I instructed the linemen
25 that since they would be done that day a request should be

1 made for inspection and I would return and sign the
2 electrical work permit so leave the permit on the door."

3 So, you know, I hear Don's, you know, statements
4 about -- you know, and the inspector even uses the term "I
5 was there to inspect progress." But he was not there on
6 request. So Potelco, Inc., through any of its -- you
7 know, through its administrator or through any of its
8 agents, did not actually ever request for an inspection,
9 which is not what the -- it's not what the WAC says,
10 right? The WAC says that, you know, request for
11 inspection must be made.

12 And I certainly understand the potential confusion
13 that could have led Potelco to assume that the inspector
14 had actually performed a progress inspection. But my
15 trouble is -- I agree with Rod -- is that if you go by the
16 inspector's statement, "I instructed the linemen that
17 since they would be done that day a request should be made
18 for inspection and I would return and sign the electrical
19 work permit so leave the permit on the door." It
20 indicates to me -- now, I know that that's the inspector's
21 statement. The testimony at the hearing -- you know, I
22 believe -- I think clearly from Mr. Boespflug that he --
23 his testimony indicates that he clearly articulated that.
24 I don't know that the folks that were doing the work on
25 behalf of Potelco that day were clear. I don't think that

1 that's clear in the transcripts.

2 But I also -- the other thing that I'm wrestling with
3 is just because an inspector -- Potelco not through any of
4 its agents actually ever requested an inspection at any
5 time. And Mr. Boespflug, you know, we just read the
6 testimony, you know, had other inspections in the area and
7 stopped because he saw the Potelco truck. He also
8 indicated that he was aware of this work because it
9 involved 15,000 volt primary and because he figured he
10 would have access to the de-energized transformer with the
11 door open, that it would be easier for the inspector to
12 inspect the installation and it's safer to do so in a
13 de-energized state. But I don't think anywhere in this
14 record does it indicate that Potelco ever requested an
15 inspection at any time until after it was brought to their
16 attention that no formal inspection was actually rendered,
17 which just goes to Rod's point of it's not in writing, I
18 don't believe that it exists.

19 The other piece that you could weigh is that Potelco
20 has the ability through its administrator or agents to
21 determine remotely whether or not the inspector actually
22 made the inspection, right? You can go on-line and review
23 a permit number and review whether or not the inspection
24 was certified by the inspector. And that didn't happen
25 either.

1 Bobby.

2 BOARD MEMBER GRAY: You know, I -- I mean, I agree
3 with Rod. This is really an unfortunate case of
4 miscommunication. I think you have two good sets of
5 people that had good intentions, but because somehow they
6 miscommunicated and that created this problem.

7 I also think it's a matter of timing. Had the
8 inspector not left immediately on vacation, it's likely he
9 would have followed up and said, "Hey, I didn't hear from
10 you. Were you going to call" and so on. And we can
11 anticipate all those things. But it's unfortunate.

12 But here is one question that I have is: Mr. Flynn
13 stated that the rules do not require any particular
14 method. It doesn't require a formal request. It doesn't
15 require a phone call. It doesn't require on-line. And I
16 never heard that rebutted from the Department. So I'll
17 take that as true that there is no specific method that's
18 required for a permit holder to request that inspection.

19 So I can easily see how the people on the job thought
20 they were requesting that final inspection when the
21 inspector said, "Okay, you're almost done. Leave the
22 permit here. I'll be back to sign that." I could see how
23 that miscommunication could have taken place. And so I'm
24 reluctant to hold either one of those two groups
25 accountable.

1 But I do think what you said at the end of your
2 statement there is correct. There is an entity that is
3 obligated to ensure that it's closed. And that's the
4 administrator. There should have been a method, and
5 clearly there wasn't, for that administrator to account
6 for any open permit and make sure they were closed in a
7 timely manner, and that didn't happen. So in my mind, I
8 can't see holding the contractor accountable for what
9 happened on the job as a miscommunication. But I can see
10 holding the administrator accountable for not following up
11 with his or her duty to ensure that that took place.

12 Thank you.

13 CHAIRPERSON PREZEAU: Don.

14 BOARD MEMBER BAKER: So I agree with you. I think
15 that the formal request didn't take place, the inspection.
16 And you're right about the administrator responsibility.
17 And the method for him to follow up on that is L & I has a
18 great on-line site that you can go to to see your permit.
19 You can see if any inspections have taken place and if
20 there's any open corrections. So the administrator had
21 the ability to do that. He didn't need to communicate
22 with his field. He could go on-line anytime and check the
23 status of that permit.

24 I don't think it's -- I don't think I can support the
25 citation for the failure to call for an inspection. I

1 think I can probably support the citation for the
2 administrator failure to close out that permit, though.
3 Because I believe that they received an inspection the day
4 that inspector stopped by there. So they did get an
5 inspection within three days. Although they didn't
6 request it, I think this is much on the Department's side
7 for failing for the inspector -- I don't think it's
8 equitable. I think the Department has a little bit on
9 them as well as Potelco.

10 BOARD MEMBER CUNNINGHAM: I'm not sure where it is in
11 the transcript, but it sounds like the inspector --
12 (inaudible)

13 BOARD MEMBER BAKER: Yeah, I read where he had a
14 relationship with the facilities manager.

15 BOARD MEMBER CUNNINGHAM: (Inaudible). He comes by
16 on his own accord -- (inaudible) -- to take the
17 opportunity to inspect a transformer when it's open. And
18 I think it's unclear whether or not any direct
19 communication occurred between the electrician and the
20 inspector that that was the inspection. So I think
21 Potelco was reasonably safe to assume, even though you
22 shouldn't be assuming things, to Alice's point, that they
23 were performing an inspection.

24 So I agree with you that the citation for failure to
25 request is kind of a moot point. The inspection happened.

1 It happened before it was ever requested.

2 The second citation for the failure to execute the
3 laws, I would think that the administrator would have
4 found out from the electrician that the inspector had been
5 there that day and that he had performed an inspection.
6 "Did you get it signed? Why wasn't it signed?" And
7 follow through. So --

8 BOARD MEMBER BURKE: What's timely too? Because the
9 whole thing was signed off in two months. And so -- I
10 mean, I understand what you're timely about timely and
11 that we would have done things differently. But a
12 permit's good for a year. You know, you need to have the
13 final within a year. If you had a final in two months
14 while there's a question on his terminations, I have a
15 hard time saying that's timely or untimely, either way. I
16 think that's really timely for signing off a permit, so I
17 am not in support of fining the administrator either for
18 not having it signed off in a timely manner.

19 That's where I'm coming from.

20 BOARD MEMBER CUNNINGHAM: So is your point that the
21 second citation for the failure to fulfill your
22 responsibilities doesn't occur because he has the whole
23 life of that permit -- (inaudible)

24 BOARD MEMBER BURKE: Or -- I wouldn't say -- yes,
25 possibly an argument for that. But two months out of the

1 12 months of the life of the permit is pretty timely in
2 our world from my experience. So -- I mean, I wish I
3 could sign all my permits off in a month or two, you know,
4 on a final.

5 CHAIRPERSON PREZEAU: So while I generally appreciate
6 the discussion, I'm reminded by 296-46B-901, subsection
7 (9) which is "Requests for inspections must be made no
8 later than three business days after completion of the
9 electrical/telecommunications installation or one business
10 day after any part of the installation has been energized,
11 whichever occurs first."

12 Now, I'm certainly understanding that Mr. Boespflug,
13 you know, went there and did a investigation, inspection,
14 whatever you want to call it. But I don't know that that
15 relieves Potelco or any other electrical contractor and/or
16 administrator of their responsibility to make an actual
17 request for the inspection as stipulated in the WAC.

18 I recognize that there can be some assumptions made,
19 right? But I don't think there's anywhere in this record
20 that indicates that anyone from Potelco at any time ever
21 actually made a request. And the fact that the inspector
22 did not sign off on the permit when he was there, and from
23 his inspector's statement indicating that he instructed
24 them that, you know, you have to call for -- you have to
25 request the inspection.

1 Again, whether or not it was clearly understood by
2 the parties he was speaking to of Potelco, I still don't
3 necessarily believe that alleviates -- if it's not in
4 writing, I don't -- I would not assume -- if I was doing
5 electrical work, I would not assume -- if I don't have the
6 inspector's statement, I don't have it signed off on the
7 permit or if it's not been signed off in the system, then
8 how am I supposed to assume that the inspection was
9 complete?

10 BOARD MEMBER BAKER: And Dominic, that's kind of
11 where I'm coming from on Potelco's side is I know from my
12 history that inspectors are really good about saying "Call
13 it in." They do a great of it, you know.

14 And last thing I want to do in a case like this to
15 discourage an inspector from stopping by a site, because I
16 think that's a real benefit to the industry when they stop
17 by and, you know, are being proactive.

18 But they do a really good job of saying, "Hey, make
19 sure you call it in." Because they work off an electronic
20 record. And that's where Potelco failed. They failed to
21 actually make that request.

22 I don't think the three days or 24 hours is an issue.
23 But they should have made the request sooner than two
24 months. It should have been done more timely than that.

25 CHAIRPERSON PREZEAU: Well -- and the actual request

1 for inspection was only made after Mr. Boespflug notified
2 Mr. Lampman that there was no actual inspection, formal
3 inspection completed.

4 Rod.

5 BOARD MEMBER BELISLE: Yeah, I mean, I agree with
6 Don. I don't think we should ever discourage inspectors
7 from doing the right thing. I mean, this inspector I
8 believe did the right thing. He showed up. He saw an
9 opportunity to do his job in the safest manner, to do the
10 best job he could, to not have to inconvenience somebody
11 to hold up this job. I mean, that guys deserve an award.
12 Let alone the fact, he took a vacation, came back -- I
13 mean, I can take a weekend and come back, and I don't
14 remember what I did. He took a vacation, came back, and
15 then followed up on one of the last jobs he did and
16 actually made a phone call to make sure it got completed
17 because it hadn't. Had he not done that, this might show
18 up on our agenda a year from now because it takes that
19 long for that permit to expire and it would have been an
20 unclosed permit.

21 I mean, I clearly think Lampman didn't do his duty as
22 an administrator. No question. He never called for an
23 inspection in the transcript. He couldn't tell you who
24 really should have called or might have called or usually
25 calls. I mean, it was so vague as to what the process

1 was.

2 I have several notes in here when there was
3 questioning, and everybody on the crew for Potelco said,
4 "I don't recall. I don't recall. I can't remember." Yet
5 the inspector has verbatim notes saying, "Leave it hanging
6 on the transformer. I'll come back and sign it." I mean,
7 it's no question in my mind what the inspector's
8 intentions were which was to do a good job, to help these
9 guys out, to get the power back on to that school in a
10 timely manner. And yet we still have to follow the rules.

11 So the rule is call me when you're done.

12 I mean -- I don't know. Maybe I'm wrong. But I
13 think when you finish a one- or two-day job, to expect to
14 have two months to call it in, that's not complying with
15 the rules. It's clear; three days after the completion of
16 work. And we've had the Department tell us very clearly
17 when is the completion of work. It's whenever that job is
18 done. Whenever that permit says is done. And clearly
19 they were done that afternoon, and they walked away and
20 didn't go back again.

21 So -- I mean, I think without question Lampman did
22 not fulfill his duty.

23 I could be persuaded to agree that the inspection was
24 made, you know. He didn't need to drive back out there.
25 I think he did the contractor a courtesy by everything he

1 did, frankly.

2 CHAIRPERSON PREZEAU: Okay.

3 So not to draw things out, but I also agree with what
4 Don said, what Rod said about, you know, the inspector
5 being courteous to the contractor in this case and
6 performing an assessment of the work that had been done
7 to that point.

8 I still, you know -- I would never want to discourage
9 that. I still do not believe that a request was every
10 made by Potelco for an inspection, that the WAC indicates
11 I think going off of the inspector's statement that we've
12 read from multiple times, indicated that not only did he
13 not sign the permit that day indicating that final
14 inspection was done; the work was not complete. And I
15 also -- and there was never a request for inspection made
16 by Potelco at any time, whether three days following the
17 completion or one business day following energizing,
18 whichever comes first. That request never happened.

19 Bobby.

20 BOARD MEMBER GRAY: I'm sorry, I can't help myself.
21 I won't belabor; I promise.

22 But clearly in our minds -- because we do this. This
23 is what we do for a living. We know that inspection did
24 not -- or that request did not take place because we've
25 learned how to communicate with those inspectors.

1 These folks don't do that on a regular basis. Most
2 of their work is outside the scope of what would be
3 required for a permit.

4 BOARD MEMBER BELISLE: That's true.

5 BOARD MEMBER GRAY: So I believe based on the
6 testimony from the contractor personnel they believed they
7 did request a permit. Now, did they ask --

8 CHAIRPERSON PREZEAU: Request a permit or request --

9 BOARD MEMBER GRAY: I'm sorry. Request for an
10 inspection. I think they think through that informal
11 discussion they had with the inspector that they did, in
12 fact, have an understanding that they had requested an
13 inspection and that it would finally take place, that they
14 had the approval to energize it. So I think in their
15 mind, they think they did request it.

16 So that's all I'll say on that.

17 CHAIRPERSON PREZEAU: Alice.

18 BOARD MEMBER PHILLIPS: The only point I have to that
19 is Mr. Langberg said that he was an outside electrician
20 when his card had expired. So wouldn't he have some
21 knowledge of final inspections?

22 BOARD MEMBER GRAY: He would --

23 BOARD MEMBER BURKE: The 0177. That's a different --

24 BOARD MEMBER PHILLIPS: What's that?

25 BOARD MEMBER BURKE: Different discussion.

1 CHAIRPERSON PREZEAU: That's outside the --

2 BOARD MEMBER PHILLIPS: I didn't hear that comment.

3 BOARD MEMBER BELISLE: It's not in the transcript.

4 BOARD MEMBER PHILLIPS: The bottom line is he says in
5 the transcript that he was a licensed electrician and his
6 card is --

7 BOARD MEMBER BURKE: Expired.

8 BOARD MEMBER PHILLIPS: -- expired. So you would
9 assume -- there we use that word again -- that he would
10 know something about getting inspections if he was an
11 inside electrician.

12 CHAIRPERSON PREZEAU: Don.

13 BOARD MEMBER BAKER: So I'm not arguing that they
14 failed to request an inspection. They did. They failed
15 to request -- they didn't request one.

16 But -- you know, I was talking to Larry earlier. You
17 know, we have to look at the intent of the law. And the
18 intent isn't that everyone requests inspections. The
19 intent is that you get an inspection. And they did get an
20 inspection.

21 So if you look at the heart and the intent of the
22 law, the law is to get an inspection so you're not
23 creating a hazard for the general public.

24 And they did receive that inspection. That's why I
25 believe we can't uphold this. I think we have to look

1 past the word "request" in this particular case because
2 the inspector stopped by informally and provided that
3 inspection.

4 CHAIRPERSON PREZEAU: So following your argument,
5 then, that would render WAC 296-46B-901, subsection (9)
6 moot because it reads, "Request for inspections must be
7 made no later than three business days after completion of
8 the electrical/telecommunication installation or one
9 business day after any part of the installation has been
10 energized, whichever" --

11 BOARD MEMBER BAKER: I'm trying to do that. I'm
12 trying apply something from the common sense department
13 here.

14 CHAIRPERSON PREZEAU: So here's -- so --

15 BOARD MEMBER BAKER: Which is hard to do. I get it;
16 I know.

17 CHAIRPERSON PREZEAU: I completely -- I completely
18 understand that, right? And several Board members have
19 used the term to describe the situation as being
20 unfortunate. This is not the first time, and it probably
21 won't be the last time that an appeal has come before this
22 body that you wish looked different than this, right?
23 Wished that there weren't assumptions made, wished that
24 there weren't -- that there was better communication. And
25 we've even had previous Board members struggle with this

1 very -- a different case, but similarly wanting to find
2 some leniency because of the situation.

3 The problem that I have with that is then you're
4 making interpretations that are inconsistent with the rule
5 and the law.

6 And, you know, the rule says -- Mr. Flynn, you know,
7 argues that the WAC does indicate that request must be
8 made, which doesn't give you any leeway, right? to
9 determine it's not "may"; it "must" be made. And I don't
10 know that -- well, I don't believe that you can find
11 anywhere in the record that a request was ever made
12 following completion of the work or by energizing the
13 system.

14 And we don't get to -- this Board's responsibility is
15 to apply the rule and law as it is written. Right? And
16 sometimes it is -- and even in situations that you wish
17 would have happened differently.

18 BOARD MEMBER SCOTT: A question.

19 CHAIRPERSON PREZEAU: Randy.

20 BOARD MEMBER SCOTT: Can you apply leniency in
21 application of the fine?

22 CHAIRPERSON PREZEAU: So Randy's question is: Can
23 you apply leniency in the application of the fine?

24 And we've had this question before. And I very much
25 want Kevin's ears to perk up. But it is my understanding

1 that our regularly assigned assistant attorney general for
2 the Board will tell you that you have to follow the
3 citation schedule that is written. Right? So you have to
4 follow the citation schedule -- if you affirm the
5 citations, you have to follow the citation schedule in
6 rule.

7 ASSISTANT ATTORNEY GENERAL ELLIOT: And that kind of
8 goes back to the statement I made earlier on one of our
9 last cases was the Board has to follow the WAC's. So you
10 can't deviate from those. You can't set those aside. You
11 can't hold them for naught. You have to follow them. So
12 that applies to penalties and to substantive issues as
13 well.

14 BOARD MEMBER BURKE: It does not define "request"
15 either. I agree with what you're saying; you can't remove
16 the word "request" out of the WAC rule. That's part of
17 the rule.

18 But to Don's point, I think that they thought they
19 did request the inspection that day. So, you know, it
20 doesn't say you have to do it via phone or e-mail or
21 Internet or whatever.

22 CHAIRPERSON PREZEAU: Rod.

23

24 Motion

25 ///

1 BOARD MEMBER BELISLE: Because I want to go home
2 tonight, I will make a motion that we affirm the ALJ's
3 Proposed Order 6.1 and 6.2.

4 BOARD MEMBER: Second that.

5 BOARD MEMBER BELISLE: It's on page 20 -- no -- 29,
6 excuse me, of the Board packet.

7 CHAIRPERSON PREZEAU: Okay. So it has moved and
8 seconded to affirm the ALJ's order 6.1 and 6.2.

9 BOARD MEMBER PHILLIPS: Second.

10 CHAIRPERSON PREZEAU: I believe that we may also need
11 to consider a few other actions. One is the fact that the
12 citations listed by the ALJ in this proposed order are
13 grammatically incorrect. And additionally, as we have
14 done in the other appeals today and historically to make a
15 good record, I think that we need to address at some point
16 the other portions of the ALJ's Order Summary, Findings of
17 Fact, Conclusions of Law.

18 BOARD MEMBER LEWIS: Madam Chair, can you point out
19 where the citations are incorrect?

20 CHAIRPERSON PREZEAU: So the citations are incorrect
21 through the body of the proposed order, beginning on the
22 first page, if you look at OAH docket number, and then
23 it's referred to as the agency number, and then all
24 through this proposed order, the Department's citations
25 there is one -- the ALJ refers to the citations

1 incorrectly. They have erroneously -- the second letter
2 of the citation throughout the body of the order is an "M"
3 as in "man" and it should be a "B" as in "boy." Proposed
4 citation ending in 792 and 793.

5 BOARD MEMBER LEWIS: There's a question over there.

6 CHAIRPERSON PREZEAU: Oh, sorry. Bobby.

7 BOARD MEMBER GRAY: Madam Chair, thank you.

8 Personally I'd like to see these broken out into two
9 different actions because I'm in favor of one and not in
10 favor of the other. Would that be practical or possible?

11 CHAIRPERSON PREZEAU: Well -- so -- here's what I
12 think we may want to consider doing. There is a motion
13 and it's been seconded. It's before this body, and it's
14 discussion on the motion. And we can handle this a couple
15 of different ways from my perspective.

16 We can vote on that motion that has been seconded, an
17 up or down vote. Or we can -- the maker of the motion
18 could withdraw their motion and we could go through and
19 address the typo and walk through the pieces -- the
20 individual pieces of the proposed order.

21 BOARD MEMBER GRAY: I guess I wouldn't be opposed
22 to voting on it the way it is, and if it doesn't receive
23 enough negative votes, then it wouldn't be necessary
24 to

25 CHAIRPERSON PREZEAU: Okay. So the motion in front

1 of us that has been seconded is to affirm the Proposed
2 Order 6.1, "The Department's Non-Compliance Citation
3 (Number)" -- which currently contains the typo --
4 "EMOES00792 is affirmed and Appellant Potelco, Inc., is
5 liable for the corresponding civil monetary penalty in the
6 amount of \$250.00."

7 And 6.2 "The Department's Non-Compliance Citation
8 (Number)" -- again -- "EMOES00793 is affirmed and
9 Appellant Jeff Lampman is liable for the corresponding
10 civil monetary penalty in the amount of \$100.00."

11 That is the motion in front of the Board.

12 Janet.

13 BOARD MEMBER LEWIS: I thought you said those are the
14 incorrect citations.

15 BOARD MEMBER BELISLE: They are.

16 CHAIRPERSON PREZEAU: They are incorrect.

17 BOARD MEMBER BELISLE: I'll take a friendly amendment
18 to change that "M" to a "B."

19 BOARD MEMBER PHILLIPS: Second.

20 CHAIRPERSON PREZEAU: So the motion before the Board
21 is to affirm the citations and has amended the record to
22 reflect the proper citation and affirm both citation
23 ending in 792 and 793 and affirm both corresponding civil
24 monetary penalties.

25 Does everybody understand what the motion is?

1 in the Department's brief corresponding to the Proposed
2 Order which is -- begins on Electrical Board packet page
3 6, but if you look on Electric Board packet page 7, the
4 relief that is being requested by the Department, I'm
5 reading verbatim from this, reads as follows -- is
6 everybody there?

7 "The Department respectfully requests the Electrical
8 Board strike Conclusion of Law ... 5.10 and replace it
9 with the following language in its final order." Quote,
10 "The statutory requirement of strict conformity contained
11 in RCW 19.28.010(1) addresses technical requirements and
12 does not require strict liability for an electrical
13 administrator."

14 I would like to request Mr. Mills to explain to this
15 body why you are specifically seeking that relief.

16 ASSISTANT ATTORNEY GENERAL MILLS: I can do that. I
17 did address it to some extent in this -- in my oral
18 argument. But the issue here is that the ALJ specifically
19 made two inconsistent findings. He both found Mr. Lampman
20 had committed a violation by the preponderance of the
21 evidence, and then he also went on a discussion in the
22 conclusion of law finding, strict liability. The issue of
23 strict liability is something that Potelco raised during
24 the hearing, and that's probably why the ALJ referenced
25 it. The idea of strict liability is that Potelco had --

1 if Potelco's violation occurs, then regardless of whether
2 there is a preponderance of the evidence standard met as
3 the factual findings, then it would follow naturally that
4 Mr. Lampman was also liable for the penalties.

5 And so our -- my request -- and I think it was
6 addressed by the questions of the Board. The Board
7 members talked quite a bit about Mr. Lampman's
8 responsibilities and there was evidence going on about
9 his responsibilities.

10 So it sounds to me from what I've heard from the
11 questioning of the Board that the Board is not finding
12 Mr. Lampman strictly liable.

13 CHAIRPERSON PREZEAU: So just taking that one step
14 further, Mr. Mills, if you would look at Board packet page
15 28, and specifically Conclusions of Law 5.10, I would like
16 you to read for me what you would -- if this Board adopts
17 your or accepts your request for relief, I would like you
18 to read for me what you believe Conclusion of Law 5.10
19 would then say.

20 ASSISTANT ATTORNEY GENERAL MILLS: So what I was
21 proposing was that you strike the entire Conclusion of Law
22 and replace it with the language that I proposed in the
23 brief which was "The statutory requirement of strict
24 conformity contained in RCW 19.28.010(1) addresses
25 technical requirements and does not require strict

1 liability for an electrical administrator."

2 CHAIRPERSON PREZEAU: I just wanted -- thank you. I
3 just wanted to understand if that's -- exactly that,
4 right? So your request for relief is to strike the ALJ's
5 language that exists in its entirety in 5.10 and replace
6 it with what you have quoted in your brief.

7 ASSISTANT ATTORNEY GENERAL MILLS: Yes.

8 CHAIRPERSON PREZEAU: So let's make this fairly easy.
9 The Chair would love to entertain a motion that corrects
10 the typo throughout the proposed order that erroneously
11 substitutes an "M" where it should be a "B" as in "boy" in
12 both citations ending in 792 and in 793.

13

14 Motion

15

16 BOARD MEMBER BURKE: So moved.

17 BOARD MEMBER PHILLIPS: So moved.

18 CHAIRPERSON PREZEAU: So it has been moved to replace
19 -- to correct that grammatical -- that typo throughout the
20 body of this proposed order. Is there a second?

21 BOARD MEMBER BELISLE: Second.

22 CHAIRPERSON PREZEAU: So moved and seconded to make
23 that simple correction.

24 Is there discussion on that motion? All those in
25 favor signify by saying "aye."

1 THE BOARD: Aye.

2 CHAIRPERSON PREZEAU: Opposed? Okay, great. Motion
3 carries.

4

5 Motion Carried

6

7 CHAIRPERSON PREZEAU: So the next question would be
8 what's the Board's -- the Chair would love to entertain a
9 motion regarding the balance of the proposed order
10 regarding advice from counsel and the Department's request
11 for relief, if the Board wants to entertain that.

12 Rod.

13

14 Motion

15

16 BOARD MEMBER BELISLE: Okay, I would make a motion
17 that we strike the Conclusion of Law 5.10 in its entirety
18 and replace it with the proposed language from the
19 Department stating "The statutory requirements of strict
20 conformity contained in RCW 19.28.010 (1) addresses
21 technical requirements and does not require strict
22 liability for an electrical administrator."

23 CHAIRPERSON PREZEAU: Okay. So the motion is to
24 strike the ALJ's Conclusion of Law 5.10 and substitute --
25 or put in place "The statutory requirement of strict

1 conformity contained in RCW 19.28.010 (1) addresses
2 technical requirements and does not require strict
3 liability for an electrical administrator."

4 Is there a second?

5 BOARD MEMBER PHILLIPS: Second.

6 CHAIRPERSON PREZEAU: So it has been moved and
7 seconded -- do I need to read it again? Or is everybody
8 -- are there questions or discussion on the motion?

9 Seeing none, all those in favor signify by saying
10 "aye."

11 THE BOARD: Aye.

12 CHAIRPERSON PREZEAU: Opposed? Motion carries.

13

14 Motion Carried

15

16 CHAIRPERSON PREZEAU: So it would probably be and
17 make for a good record, the Chair would entertain a motion
18 to approve the Findings of Fact and the balance of the
19 Conclusions of Law 5.1, 5.2, 5.3, 5.4, 5.5, 5.6, 5.7, 5.8,
20 5.9, 5.11, 5.12, 5.13, 5.14, 5.15.

21

22 Motion

23

24 BOARD MEMBER PHILLIPS: So moved.

25 BOARD MEMBER BELISLE: Second.

1 CHAIRPERSON PREZEAU: Did you say second?

2 BOARD MEMBER BELISLE: (Nodding affirmatively.)

3 CHAIRPERSON PREZEAU: So it's been moved and seconded
4 to adopt the Findings of Fact and all unaltered
5 Conclusions of Law 5.1, 5.2, 5.3, 5.4, 5.5, 5.6, 5.7, 5.8,
6 5.9, 5.11, 5.12, 5.13, 5.14, 5.15.

7 Discussion or questions on the motion? Seeing none,
8 all those in favor please signify by saying "aye."

9 THE BOARD: Aye.

10 CHAIRPERSON PREZEAU: Opposed? Motion carries.

11

12 Motion Carried

13

14 CHAIRPERSON PREZEAU: So the Board has made its
15 decision.

16 And Mr. Mills being the prevailing party, have you
17 prepared a proposed order?

18 ASSISTANT ATTORNEY GENERAL MILLS: I do have a
19 proposed order, but speaking with counsel before the
20 meeting that we'd prefer to meet and provide a proposed
21 order with all your alterations.

22 CHAIRPERSON PREZEAU: Okay. So please be advised
23 that if you do not reach -- if you reach agreement -- okay
24 -- if you -- please be advised that if you do not reach an
25 agreement today, this matter will be automatically set for

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

10 Is that -- Mr. Flynn, do you understand the process?

11 MR. FLYNN: Yes.

12 CHAIRPERSON PREZEAU: Mr. Mills?

13 ASSISTANT ATTORNEY GENERAL MILLS: Yes.

14

15 Item 4.d. Potelco Inc. & Jeff Lampman

16

17 CHAIRPERSON PREZEAU: Okay. It looks like you don't
18 get to go anywhere just yet. Right? Because now we are
19 under agenda item 4.d, which is Potelco, Inc. and Jeff
20 Lampman. And these are for appeal of citations ending in
21 394, 395 and 396.

22 Since we have the same prospective advocates that
23 were just here for the last appeal, do you -- I will ask
24 you if you want me to read through my script or do we --
25 do both advocates understand the rules of engagement as we

1 just went through them? Is that true?

2 ASSISTANT ATTORNEY GENERAL MILLS: We do.

3 MR. FLYNN: Yes.

4 BOARD MEMBER BAKER: (Inaudible.)

5 CHAIRPERSON PREZEAU: Don, if you want me to read it
6 again, I'll read it again.

7 But since I believe that all parties including the
8 Board understand the rules of engagement, and again,
9 Mr. Flynn, since you are the appealing party and have the
10 burden or proof, I will give you 15 minutes to present
11 your case please.

12 MR. FLYNN: So it's nice to see you all again. This
13 one won't be quite so long. I don't think there is as
14 much in dispute.

15 There was a work site that a Potelco crew did some
16 electrical work for and did not request a permit because
17 -- did not pull a permit. At least there wasn't one
18 pulled. There wasn't a request made. And we'll just get
19 that out that we're not disputing those facts. But I will
20 give you some quick background about what happened.

21 A apple packing operation in Eastern Washington was
22 doing some renovations, expanding a plant. They needed to
23 move some power lines around. And they contracted with
24 Segalini to do most of the work. There was some work that
25 Segalini thought was outside of its scope of expertise.

1 Segalini had some experience with Potelco before. So they
2 contacted a Potelco crew, described what they needed done,
3 asked if they could do it.

4 The general foreman of the crew -- and the point of
5 contact at the time, his name was Dave Woolery, he had
6 worked for several -- for a number of years. He testified
7 that 90 plus percent of Potelco's work is done on the
8 other side of the meter which basically means it doesn't
9 come under the electrical rules that we're here to talk
10 about today.

11 So Woolery didn't have pretty much any experience
12 with doing that type of work. More focused on the
13 high-voltage stuff for utilities. When I say he didn't
14 have experience doing that type of work, he didn't have
15 experience with the regulations required for it but, you
16 know, obviously he had replaced bulbs and lights.

17 So he got in contact with Mr. Lampman who is the
18 electrical administrator we discussed in the previous
19 appeal. And Mr. Lampman told him they needed to pull a
20 permit.

21 He listened to kind of what was going on and goes,
22 "Okay. You know, that sounds fine. Pull a permit."

23 Mr. Woolery said, "Okay." And he went to Segalini
24 and said, "Yeah, I've been told we need a permit for this
25 work."

1 Someone at Segalini said, "Don't worry about it.
2 We've pulled one. You can just work under our permit."

3 That was unfortunately enough for Mr. Woolery. He
4 said, "Okay."

5 He did the work shortly after that conversation. And
6 the background for that is it's a refrigerated storage
7 plant, and they couldn't have their apples or other
8 produce warm for very long, so they wanted the work done
9 quickly.

10 Mr. Woolery unfortunately didn't follow up with
11 Mr. Lampman. Nothing happened essentially until the
12 Department inspector goes to check on the work done by
13 Segalini. And the permit asked, well, who did this
14 portion of the work and found it was Potelco. And then
15 we got to where we are here.

16 Potelco got a citation for not getting a permit
17 and not getting an inspection for the work. And then
18 Mr. Lampman again got a citation individually.

19 At the hearing, the Department inspector said it is
20 the Department's practice that every single time an
21 employer gets a citation, that the administrator has to
22 get one as well. So the Department inspector basically
23 testified that in his mind it's a strict liability
24 statute.

25 And in the hearing we just had, my understanding is

1 that this Electrical Board determined it's not a strict
2 liability statute, which means you need to point to some
3 specific things that Mr. Lampman failed to do to find him
4 liable for not ensuring Potelco followed the rules. And
5 because this is a new hearing, I'll go very briefly over
6 some of the things he does.

7 He does training. He does periodic updates. He gets
8 newsletters. In addition to the periodic e-mails,
9 basically he gets newsletters from the Department; he
10 sends those around to certain managers who are involved.
11 And most importantly what he does is he works as a
12 contract manager. Because as I mentioned, Potelco rarely
13 does this. So it just doesn't come up that often.

14 But by being the electrical administrator and the
15 contracts manager, he gets to see the type of work coming
16 in the door and identify which projects fall under these
17 electrical laws, so which ones, you know, need permits,
18 request inspection and follow all the other rules.

19 He was aware of this as the contract manager. He
20 told Mr. Woolery, "Okay, fine, go pull the permit."

21 Unfortunately -- and what he testified is he didn't
22 even know Mr. Woolery went and did the work. He did the
23 work without ever following up.

24 Mr. Lampman didn't realize it until they got the
25 citation because he did the work without a contract, which

1 is not normal. For Potelco, they don't do work without a
2 formal written contact. And Mr. Woolery on his own here,
3 you know, given the rush and time decided to go and do
4 that.

5 So Mr. Lampman was in a position to ensure that the
6 work was done according to the laws and even told,
7 "Mr. Woolery, hey, one of the things you need to do, make
8 sure you get a permit."

9 He couldn't do any more because he didn't realize any
10 more work was being done. He thought Mr. Woolery was
11 going to go and contact Segalini or Blue Bird who was the
12 company expanding. And then he assumed or thought they
13 were going to contact him somehow so they could get a
14 formal contract put together.

15 So unfortunately, that one slipped through the cracks
16 again because there was just no written contract. So it
17 happened in a manner that normally does not. And he had
18 no way to supervise that work, which happened without his
19 knowledge. And so there's no specific fact that nothing
20 specific he did or failed to do that he should have. And
21 so Potelco contends it's not appropriate to issue a
22 citation to Mr. Lampman to make sure the work was proper.

23 As far as Mr. Woolery, it was an unfortunate
24 circumstance. And I would just like to mention that the
25 Office of Administrative Hearings said, "Well, you know,

1 as a line foreman, Mr. Woolery just should have known.
2 And, you know, whether he should have known or not, that
3 doesn't appear to be the case because he worked primarily
4 behind the meter as they call it in the field, and it
5 doesn't come under this jurisdiction with the same rules.

6 So I would just like to note that from his
7 perspective, it was probably reasonable to think he could
8 work under the permit of Segalini even though we do know
9 the law says that's not what you're allowed to do. But
10 more importantly, the fact is that Mr. Lampman should not
11 have been issued a citation personally when he was
12 prepared to make sure things went right. He just never
13 got the opportunity.

14 That's all for me, unless you have any questions.

15 CHAIRPERSON PREZEAU: Thank you, Mr. Flynn.

16 Mr. Mills.

17 ASSISTANT ATTORNEY GENERAL MILLS: As I understand
18 it, Potelco is still disputing all three of the citations,
19 so I will address all three of the citations.

20 In September 2013, Potelco performed electrical work,
21 replacing two 12.4 kilovolt lines at a packing operation.
22 The testimony was that Mr. Woolery contacted Jeff Lampman,
23 and he requested a contract for the work to be performed.

24 Woolery also testified that he talked to Joe
25 Segaline, and Segaline confirmed he had pulled a permit to

1 cover the work.

2 When Mr. Segaline testified, he disputed that
3 conversation. It should also be noted that the permit
4 itself pulled by Segalini could not have covered the
5 high-voltage work. It's a different scope.

6 After discussions with the owner and Segalini and
7 Westermann, the inspector tried to get in touch with
8 Lampman and he was unable to do so.

9 The permit was eventually pulled some six days after
10 the work had actually been completed.

11 Addressing and specifically again the strict
12 liability standard here, it is true that Mr. Westermann
13 testified that it was his understanding it was Department
14 policy that when there was a -- that when there is a
15 citation for the contractor, that they should also issue a
16 citation for the administrator. But at the hearing
17 itself, Mr. Lampman was called to testify. He was given
18 an opportunity to address the various things that he did
19 to make sure that Potelco was in compliance. And based on
20 that testimony, he failed to do so.

21 In this record he also acknowledged that he didn't
22 have a system in place for retaining permits for specific
23 job sites. He attributes the fact that a permit was not
24 pulled because he didn't know how much work had been done
25 yet. There had already been conversation with Mr. Woolery

1 that the work was going to be done. So he was aware that
2 the work was going to be done. It was incumbent on him to
3 determine whether or not the permit had been pulled.

4 On the training, the same -- we agreed to apply the
5 same stipulation here as we referenced in the previous
6 appeal. And that stipulation was that there was a video
7 that contains a presentation to Potelco employees provided
8 by the Department of Labor and Industries on August 31,
9 2010, addressing state electrical laws, and including
10 obtaining electrical permits and requesting inspections
11 for the type of work at issue in this appeal.

12 Again, this was the only training that was in the
13 record that was provided to the employees that addressed
14 electrical laws.

15 Potelco argues that only -- that 90 percent of their
16 work is line work and utilities; therefore, they don't --
17 they don't just have much experience with. But that still
18 leaves 10 percent of their work with doing regular
19 electrical work. It's a large company. They do a lot of
20 work in the state of Washington. And that's part of the
21 record.

22 So you can still assume that 10 percent of work -- of
23 their work is a fair amount of work. But it doesn't
24 relieve Mr. Lampman of his responsibility to ensure that
25 the work is done properly.

1 Based on that, the Department is requesting that all
2 three of the citations be affirmed, and that this Board
3 adopt the Initial Order with its findings of fact and
4 conclusions of law.

5 CHAIRPERSON PREZEAU: Mr. Flynn.

6 MR. FLYNN: I'll just try to correct a few things in
7 the record.

8 Potelco did testify that it does more than 90 percent
9 of its work -- (inaudible), but it's not 10 percent that
10 it does inside work; it does other work as well. It does
11 less than 1 and 2 percent.

12 On Electrical Board packet, page 78, starting at with
13 line 7, Mr. Woolery testifies -- he's asked: "Okay. What
14 percentage of Potelco's work is spent working for
15 utilities and what (percent) is spent (working) for
16 private companies?"

17 "I would say over 90 - maybe higher - 90 percent
18 utility work and probably less than one or two percent
19 maybe of the inside work let's call it."

20 And the inside work is what he refers to as this work
21 that requires permits and these other requirements. So
22 there's 8 or 9 percent or work that's done for -- that's
23 other type of work, but it's not 10 percent of Potelco's
24 time spent on inside work. It's very, very little.

25 I believe I heard the Department argue that Segaline

1 testified that he did not tell Mr. Woolery he can work
2 under the permit, but Mr. Segaline didn't testify at the
3 hearing. So I'm not sure where that's coming from. But
4 I don't remember any testimony. And I'm pretty sure there
5 is none that Segaline contradicted that fact. And I
6 don't know how much it changes anything, but I think the
7 only evidence is that Mr. Woolery was told that by Mr.
8 Segaline.

9 More importantly to what Mr. Lampman does. There
10 was some -- the Department sort of indicated that, oh, no,
11 Mr. Lampman knew the work was going on, so he should have
12 done something more or could have done something more.

13 And I will read his testimony briefly. Electrical
14 Board packet page 101. It's Mr. Lampman testifying, and
15 it makes it very clear he had no idea this work was going
16 on -- (inaudible).

17 He was asked about -- the Department's inspector
18 called him and told him about it. And that's the first
19 time he learned about it.

20 And he was asked, "What was your reaction to this
21 call?"

22 "I was a little shocked. I didn't even know we had
23 done the work yet. I was embarrassed, shocked, a little
24 angry." I mean, he had no idea what was going on.

25 He was asked, "What happened here in this particular

1 situation where you didn't end up knowing the work was
2 done? Why did that happen here?"

3 He admits there was a communication breakdown between
4 Mr. Woolery and himself.

5 But onto 79. Potelco had done some work previously
6 in the same area that he also didn't know about, but it
7 was normal Potelco work that didn't need permits and that
8 sort of thing. And Mr. Lampman was concerned about that
9 when he talked to Mr. Woolery.

10 So we told him on page 79, starting at line 17, "So
11 ... we talked again. 'Well, we still need to get a
12 contract for this work.'"

13 And this work is referring to what's about to happen
14 at the Blue Bird plant.

15 "'This is separate from the pole work that you have
16 got scheduled that you are going to do for them in the
17 future if we ever get a contract signed.'"

18 So what he was saying, "Hey, if you are ever going to
19 do that, we got to get a contract for it. But if we're
20 going to get a contract for it, I've already told you sort
21 of what the requirements are. Get a permit, et cetera."

22 So after that conversation, there was only a few days
23 before he got the call about work had been done, which he
24 didn't know about, and the requirements weren't followed
25 like they should have been. But in that situation where

1 he had reached out to Mr. Woolery and specifically told
2 him about the requirements and said, "Don't start work
3 until we get a contract with the relevant entities,
4 whether it's Segalini or the customer number one, make
5 sure we get a contract. And then working with the
6 contract, we're going to outline what we're going to do,
7 and part of that's going to be getting permits, getting
8 inspections, et cetera."

9 So really there is nothing here that Mr. Lampman
10 could have done that he didn't other than -- I can't think
11 of anything. But it happened without him knowing.

12 CHAIRPERSON PREZEAU: Don.

13 BOARD MEMBER BAKER: But he's still responsible,
14 right? Right?

15 MR. FLYNN: So I'll just ask. Are you saying it's
16 strict liability then? Because I think you just held in
17 the previous hearing it's not strict liability, which
18 means you got to point to something that he should have
19 been able to do differently. Otherwise, if something goes
20 wrong, he's strictly liable.

21 BOARD MEMBER BAKER: As a contractor, you know, we
22 are responsible for having an electrical permit anytime
23 our employees are doing an installation. And that permit
24 has to be posted on-site prior to doing any work.

25 Nowhere in your argument did I hear contrary to that.

1 Nowhere in here did I see contrary to that.

2 MR. FLYNN: I don't disagree with you. I mean,
3 referring specifically to the like strict liability for
4 Mr. Lampman.

5 BOARD MEMBER BAKER: How much -- what percentage of
6 inside work versus line work did you do? It doesn't
7 matter. You're still responsible to adhere to the
8 guidelines and the rules and regulations in the state of
9 Washington.

10 MR. FLYNN: Certainly, yeah. It doesn't how much --
11 you got to follow the rules. And we're not saying you
12 don't.

13 But I am saying that for Mr. Lampman, his -- the
14 citation for him personally is for failing to ensure that
15 the rules were followed.

16 And he talked about -- I said in the very beginning,
17 we admit those rules weren't followed.

18 But the question is: Well, what does he have to do
19 for ensuring. And if the thing that -- the only reason
20 he's getting a citation is because they weren't insured,
21 that's strict liability. But you guys just held it's not
22 strict liability. Which means, you have to say, okay,
23 what, Mr. Lampman, could you have done personally or
24 different? He talked to the guy and said, "Get a permit.
25 Don't work until there's a contract." It happened anyway.

1 What was it on him as a, you know, individually?

2 Where did he go wrong I would ask?

3 CHAIRPERSON PREZEAU: So -- go ahead, Rod.

4 BOARD MEMBER BELISLE: Well, I mean, to that point, I
5 just looked up the definition of "ensure." And everything
6 in there is guarantee, assure, cinch, you know, it goes on
7 and on.

8 You know, my thought is, in my world, if I'm the
9 administrator in that company, I'll take out the permits.
10 That's how I would ensure that it gets done.

11 And I think that's what most contractors do is they
12 identify an administrator within the company, and that
13 person has the responsibility to ensure that a permit is
14 pulled, the ratio and supervision is used, the
15 inspections, all of that stuff.

16 And it seems to me he's an administrator in title
17 only. Right? He's not doing the duty. He's not ensuring
18 that the duties of the administrator are being fulfilled.

19 Now, if he had four e-mails in here that said,

20 Mr. Gardner or whoever, did you pull a permit?

21 Mr. Gardner, can I get a copy of the permit? You know,
22 if there -- we get that. We get packets that have
23 documentation that says this guy did do everything he
24 could; it was somebody else. I don't have that here. So
25 to me, we don't have to prove that he did or didn't

1 ensure. You have to prove he did ensure, and you haven't
2 done that.

3 MR. FLYNN: I appreciate that.

4 I would like to just mention that testimony is
5 evidence. In a court of law, I don't have to prove you
6 drive a red car only by showing a picture of your car. If
7 you testified "The car I drive is red," unless someone
8 brings in some evidence to dispute it, that is evidence.
9 And he did testify that he talked to Mr. Woolery. And I
10 don't think there's any dispute -- and Mr. Woolery agrees.

11 And I also do agree with you, though, that no, one
12 thing you could do, you could pull the permit on your own.
13 If you want to ensure stuff is done right, do it yourself.

14 Here where it's really unfortunate from Mr. Lampman's
15 point of view is they didn't even -- he wouldn't even
16 needed to get to that step because there was no contract
17 for the work yet. They don't start anything up until
18 there's a written contract. And that's what you told him.

19 So before we get those details -- you know, I'm not
20 going to go pull a permit for something that I don't have
21 the details spelled out in the contract yet. That, from
22 his perspective.

23 BOARD MEMBER BURKE: On page 3 of the notice of
24 appeal, just FYI, it says on whether there's a contract or
25 not a contract, he's strictly saying that he's appealing

1 because he was relying on the assurances of another
2 contractor. And I think every contractor in here knows
3 that he can't do that. And that's not part of pulling
4 permits. That's not what we do.

5 So while I appreciate the fact he's waiting for a
6 contract; he's a businessman, that -- he doesn't even
7 speak to it in his appeal. He's saying that it should be
8 vacated because Potelco reasonably relied on the
9 assurances of another contractor, Seg -- Segalini -- I
10 should know the name by now. But I think that that's
11 where you could look at Mr. Lampman and say that he did
12 not do his due diligence and do his job as a administrator
13 also because he relied on another contractor which the
14 laws clearly state you can't do that.

15 MR. FLYNN: I would like to address that. That one
16 was for -- that's coming from like Mr. Woolery's point of
17 view. That's the contractor, not the administrator. If
18 you look down --

19 BOARD MEMBER BURKE: It's all applicable, though, to
20 the case.

21 MR. FLYNN: Right. But Mr. Lampman is appealing --
22 Mr. Lampman has taken all reasonable steps to ensure
23 compliance. That's why -- there's two appeals here.
24 One's for the contractor, and one's for the electrical
25 administrator. So a reasonable electrical administrator,

1 Mr. Lampman is telling us he thought he took all
2 reasonable steps just to clarify that.

3 CHAIRPERSON PREZEAU: So my couple of thoughts.

4 In the proposed order identifies David Woolery as a
5 general foreman for Potelco, which I think is consistent
6 with the record. So -- I also just to put a WAC on your
7 comments, Dominic, 296-46B-901, which is -- addresses
8 electrical work permits and fees, it says in here under
9 296-46B-901, subsection (3), "Two or more entities may
10 never work under the same permit."

11 So regardless of the conversation between -- it was
12 Mr. Woolery and a representative of Segalini Electric who
13 asked him if he had a -- if Segalini Electric had pulled a
14 permit for the work -- the scope -- the Segalini scope of
15 work, great, which we know is true, because that's what
16 caused the inspector to come out to the job site in the
17 first place was to inspect the work of Segalini Electric.
18 But 296-46B-901, subsection (3) clearly states "Two or
19 more entities may never work under the same permit."

20 And then Mr. Flynn, to your argument about strict
21 liability and your exhibits of the training that
22 Mr. Lampman as the administrator provided -- and if you
23 give me a minute, I'll -- so I am specifically looking at
24 Electrical Board packet page 159 and 160, which 160 has a
25 photocopy picture of the CD, right? the safety

1 presentation, which the testimony I believe actually
2 indicates it was more than just safety practices; it was
3 about inspections and permits. And there are 14 people
4 that signed in on this provided exhibit and which I
5 believe was submitted to demonstrate Mr. Lampman's desire
6 to ensure that his folks at Potelco were educated on the
7 appropriate electrical rules and laws. There are 14 out
8 of the -- or 14 people signed in on this. And I believe
9 the transcript indicates that Potelco employs 800 people,
10 and 14 are signed in on this. And Mr. Woolery is not one
11 of them. And neither is Mr. Lampman. And neither is
12 anybody else that is involved in this appeal, that's
13 involved in this work.

14 I also find it somewhat interesting that this exhibit
15 covers a training that happened three years prior to this
16 installation. And if that is the appellants proving of
17 Mr. Lampman ensuring that his folks understand the rules
18 of engagement, I find that to be less than satisfactory.

19 So with regard to the strict liability, you know, I
20 don't -- I am not impressed by the exhibit and what it
21 demonstrates that Mr. Lampman -- this is the only piece of
22 evidence -- I mean, I recognize that his testimony
23 indicates that he also forwards the Electrical Currents
24 newsletter that is published by the Department. And
25 typically that publication in addition to providing

1 examples of ugly installations and other pieces also
2 routinely covers information regarding permits,
3 inspections and rule development and other pieces.

4 But those are my thoughts.

5 MR. FLYNN: Were you asking me a question?

6 CHAIRPERSON PREZEAU: No. I was just making a
7 statement.

8 Any other questions or concerns at this moment?

9 So yeah, if -- I don't want to tell folks what to do,
10 but the Chair would entertain a motion to adopt the
11 Findings of Fact and Conclusions of Law of the Initial
12 Order as put forward by the administrative law judge.

13

14 Motion

15

16 BOARD MEMBER PHILLIPS: So moved.

17 CHAIRPERSON PREZEAU: Oh, wait.

18 So counsel has recognized that on page 19 of the
19 Electrical Board packet there is another typo, which is in
20 Conclusions of Law 5.16. It repeats the citation number
21 ending in 395.

22 BOARD MEMBER BELISLE: It sure does.

23 CHAIRPERSON PREZEAU: It should -- 5.16 should read:
24 "Citation number EWESE396, because 395 is referenced in
25 Conclusion of Law 5.15.

1 Motion

2

3 BOARD MEMBER PHILLIPS: Can we do that all in one?
4 I'll make a motion that we accept Conclusions of Law 5.1,
5 5.2, 5.3, 5.5 -- oops, let me back up -- 5.4, 5.5, 5.6,
6 5.7, 5.8, 5.9, 5.10, 5.11, 5.12, 5.13, 5.14, 5.15, and
7 then correct the typo in 5.16 from EWESE395 to EWESE396.

8 BOARD MEMBER BELISLE: Second.

9 CHAIRPERSON PREZEAU: Okay, it's been moved and
10 seconded to affirm conclusions of law -- all the
11 conclusions of law with the exemption of 5.16. And 5.16
12 is only modified to correct what was presumed to be a
13 typo, to reflect the correct citation number ending in
14 396.

15 Discussion on the motion? Questions? Seeing none,
16 all those in favor please signify by saying "aye."

17 THE BOARD: Aye.

18 CHAIRPERSON PREZEAU: Opposed? Motion carries.

19

20 Motion Carried

21

22 CHAIRPERSON PREZEAU: I would also love to entertain
23 a motion regarding the findings of fact.

24

25

Motion

1 BOARD MEMBER LEWIS: Yes. I'd like to make a motion
2 to adopt all of the findings of fact in section 4 which
3 includes 4.1 through 4.20 without modification.

4 BOARD MEMBER BELISLE: Second.

5 CHAIRPERSON PREZEAU: It's been moved and seconded to
6 affirm findings -- all findings of fact listed in section
7 4 from 4.1 to 4.20. It's been moved and seconded.

8 Discussion on the motion? Questions? Seeing none,
9 all those in favor please signify by saying "aye."

10 THE BOARD: Aye.

11 CHAIRPERSON PREZEAU: Opposed. Motion carries.

12

13 Motion Carried

14

15 CHAIRPERSON PREZEAU: Okay. So Mr. Mills -- so
16 the Board has made its decision, Mr. Mills being the
17 prevailing party.

18 Have you prepared a proposed order?

19 ASSISTANT ATTORNEY GENERAL MILLS: I think we could
20 do it by hand.

21 CHAIRPERSON PREZEAU: So the Board still has work to
22 do. So if the parties would like to adjourn to the lobby
23 and see if the terms of the order can be agreed upon.
24 Please do not leave today until you let us know. If you
25 have -- people need additional time before you reach an

1 agreement.

2 And in the event that you are unable to reach an
3 agreement on the proposed final order, then please be
4 advised that this matter will automatically be set for
5 presentment at the next regularly scheduled Board meeting,
6 right? And if an agreed order has not been received by
7 that date, the parties will be expected to file their
8 proposed orders and appear and advise why their proposed
9 order best reflects the Board's decision. And hopefully
10 this will not be necessary.

11 Janet.

12

13 Motion

14

15 BOARD MEMBER LEWIS: Madam Chair, do we need to have
16 on the record that we affirm number 6, the initial order,
17 6.1? Or have we done enough?

18 CHAIRPERSON PREZEAU: So Kevin says we probably
19 should.

20 BOARD MEMBER BELISLE: I'll second that.

21 CHAIRPERSON PREZEAU: So I'm assuming that your
22 question is actually phrased in --

23 BOARD MEMBER LEWIS: A motion.

24 CHAIRPERSON PREZEAU: -- the form of a motion, and
25 the motion being to affirm Initial Order 6.1 "The

1 Department of Labor and Industries action is affirmed."

2 And I hear that, Rod, you seconded that.

3 BOARD MEMBER BELISLE: That's correct.

4 CHAIRPERSON PREZEAU: So the motion in front of the
5 Board is to affirm Initial Order 6.1.

6 Any questions or discussion? Seeing none, all those
7 in favor please signify by saying "aye."

8 THE BOARD: Aye.

9 CHAIRPERSON PREZEAU: Opposed? So moved.

10

11 Motion Carried

12

13 CHAIRPERSON PREZEAU: So gentlemen, if you are able
14 to agree on the proposed final order, let us know. If you
15 want to adjourn to the lobby or whatever.

16 I would -- I know that we still have two more agenda
17 items that involve Department discussion and the Board.
18 And I also am curious to provide some relief to those that
19 may have asked to address the Board in public comments.
20 And I don't have the comment sheet.

21 So Beth, you're telling me that -- so the only person
22 that has signed in to speak to address the Board is Jean
23 Schiedler-Brown which was in the Segalini Electric matter.

24 So as I said, I just wanted to provide relief to
25 anyone in the room today that wanted to offer public

1 comment to the Board so they don't have to stay along with
2 the rest of us, if there is anyone that wanted to do that.

3 Okay. Super.

4 So help me out here. We still have the Secretary's
5 Report and some other pieces. Do we want to take a quick
6 break?

7 BOARD MEMBER BELISLE: Five minutes.

8 CHAIRPERSON PREZEAU: Or do you want to keep on
9 trucking?

10 THE COURT REPORTER: A break.

11 CHAIRPERSON PREZEAU: You want to take a break? So
12 let's take a 10-minute break and come back at 20 minutes
13 after.

14 (Recess taken. AAG Elliot
15 departed the proceedings.)

16 CHAIRPERSON PREZEAU: It is now 4:23 p.m., and we are
17 back on the record, the July 30, 2015, Washington State
18 Electrical Board meeting.

19 BOARD MEMBER BURKE: Second half.

20 CHAIRPERSON PREZEAU: What?

21 BOARD MEMBER BURKE: Second half.

22 CHAIRPERSON PREZEAU: Second half, yep.

23 BOARD MEMBER PHILLIPS: Third quarter.

24 CHAIRPERSON PREZEAU: I do -- I would like to inform
25 the Board and all interested parties that a final order

1 was reached in the last appeal of citations ending 394,
2 395 and 396.

3 And Kevin before he departed -- because Kevin needed
4 -- had to leave -- he reviewed that final order and
5 believes that, as do I, it is consistent with the actions
6 taken including correcting the ALJ's typo in Conclusion of
7 Law 5.16 because the ALJ had the citation number
8 incorrect.

9 So I am signing this final order, and I am asking
10 Bethany to -- if parties have requested copies of this.
11 Although, I don't know that they're still here. But if
12 you would please make two hard copies of that, return the
13 original and scan it and send the original electronically
14 to me and Kevin. Thank you.

15 Okay. Super.

16

17 Item 5. Secretary's Report

18

19 CHAIRPERSON PREZEAU: So Secretary's Report. Steve.

20 SECRETARY THORNTON: We'll roll right along here.

21 For the budget, the May fund balance was \$7,781,191.
22 That's about 4.8 months worth of operating costs. It runs
23 about \$1,628,344 a month to operate.

24 There are no numbers for June, the end of the
25 biennium. They're still collecting the last charges. It

1 doesn't look like it's going to be anything different than
2 what we expected. They just haven't put the numbers out
3 yet.

4 So customer service-wise, 33,847 permits were sold
5 this quarter. About 91 percent of those were sold
6 on-line. That's about a 1 percent increase from last
7 quarter.

8 95 percent of contractor permits were sold on-line.
9 That's pretty constant.

10 Homeowner on-line permits increased by 3 percent,
11 though. They're up to about 58 percent now.

12 On-line inspection requests increased by 1 percent.
13 They're at 81 percent.

14 During the quarter, 68 percent of all electrical
15 license renewals were on-line. That's about a 2 percent
16 increase.

17 Basically all our stuff is gradually going to
18 electronic and we're getting out of the paper business.

19 As far as the performance measures go, 48-hour
20 inspection requests. Our goal is 94 percent. We were at
21 92 percent. So we didn't meet that number. That number
22 will gradually go down through the summer as we'll see in
23 some of the slide shows later.

24 Number of focused citations, our goal was at 1,052.
25 We had 956. So we missed the goal by about 96.

1 On the compliance portion, our audit team -- It's Jim
2 Reynolds and Kelly Dornan; there's just two of them --
3 they've looked at almost a million hours for CEU's and
4 licensing. Almost 60 percent of those are denied or found
5 to be inaccurate. So there's a lot of stuff that they go
6 through that we find people are not being real honest
7 about.

8 They revoked six ELO1 licenses for fraudulent
9 documentation to take the test. So then we went back and
10 credited them the legitimate hours they had. Some of them
11 ended up with 02's. Some of them are just trainees. But
12 they issued 166 citations in that process.

13 And one CEU provider has been suspended for
14 fraudulent documentation also.

15 So they -- they're doing a lot of work on the paper
16 part of it.

17 And the ECORE team which is Ran Jones, Phil Jordan,
18 Darrin Lyons and Bob Matson, there's just four of them
19 left. Last year, they wrote 2,562 total citations.
20 Almost 1,600 of those were focused. And they continue to
21 catch out-of-state contractors doing work in chain-type
22 stores. I think last month we talked about the Walmart.
23 They ended up issuing 101 citations just in that process
24 alone. And now they're dealing with some people that are
25 doing sign work. They catch -- I think it was last night

1 or last week they did a midnight inspection and found one
2 journeyman and four trainees doing a bunch of work. So a
3 lot of stuff goes on when people know we're not working.

4 CHAIRPERSON PREZEAU: Or they think that you're not.

5 SECRETARY THORNTON: Yeah. Or they think -- yeah.

6 When part of us are not working and the other part are.

7 But yeah, there's only four of them. We have two of those
8 positions vacant.

9 So number of stops per day, the inspectors are doing
10 10.2.

11 Disconnect corrections, we wrote 10,776.

12 Licensing turn-around which is a goal of 3.5 days.

13 They're doing them in about 1.5 days.

14 Turn-around time for plan review, which started out
15 at about anything under three weeks is about 1.1 weeks
16 now.

17 Licensing-wise, this quarter, 6,870 electrical
18 licenses were processed. There was a --
19 telecommunications workers experience was grandfathered.
20 That ended on June 30th. During the open window, 451
21 special affidavits were received. Many applicants waited
22 till the very end and turned them in. It was just like
23 everybody else; they procrastinate till the last

24 Our electronic conversion of paper records to
25 electronic, we started out with eight shelves. We're at

1 about five and a half. So it's about 30 percent
2 completed.

3 So had one testing lab that was in the process of
4 getting approved. That got done yesterday. So the one
5 that's on here that says it's in process has been
6 approved, and they're in an official testing lab now.

7 So that's it other than the slide show.

8 We had the opportunity to make a presentation to the
9 Governor on response times and how that affects you guys,
10 our customers.

11 Dave Woody from Prime Electric went with us as our
12 contractor representative. And so we got a chance to sit
13 down and talk to the Governor.

14 So the rest of this will be up here on the slide
15 show.

16 Last year, we performed 209,000 electrical
17 inspections. That doesn't count the 26 cities that do
18 their own.

19 Inspection response time within 48 hours is
20 considered to be timely.

21 Before the downturn and the recession, we were
22 counting our response times within 24 hours. But then
23 when we cut back staffing-wise, we went back to 48. It's
24 probably about time we started back the other direction
25 and started counting within 24 hours.

1 Timely electrical inspections are something that the
2 contractors and customers need to keep their jobs moving.

3 These two graphs when you look at the upper left one
4 there, it shows that roughly 91 percent of inspections
5 were done within 48 hours. You notice that the response
6 times gradually get worse during the summer. The busier
7 it gets, you know, people on vacations and such. So we
8 have fewer staff to do the inspections. And that didn't
9 hit home to the people we were talking to because they
10 weren't contractors of any sort. They're just people that
11 work for the Governor. But when you go to that bottom
12 graph and you put a number to them and when you told them
13 that 18,000 projects waited for us beyond the 48 hours,
14 that they understood.

15 And this is a -- some graphs we showed that show the
16 gap in the inspection response. 94 is what we want. 91
17 is what we had. It was a 3 percent gap.

18 And our vacancy rate is directly proportional to
19 that. The more vacancies we have, the worse our response
20 times is by far. And we run about an average of 14
21 vacancies a month. We get a report every week, and it
22 runs 11 to 14 vacant positions that we have all the time.

23 We took the vacancies and put them on the map to show
24 regionally how a vacancy affects the response times. So
25 you can see where region 1 has 21 inspectors, one vacancy,

1 and they were at 96 percent within 48 hours. And then if
2 you go on around region 3 had three vacancies but only 19
3 inspectors. So it affected them a little more.

4 All the regions are on there. One of the bigger --
5 when you get east of the mountains, they have more
6 vacancies but also a lot more inspectors in like region 5.

7 Something that stuck out as an oddity to most people
8 is that why are two vacancies here equate to 78 percent of
9 inspection time, but when you only have 13 and you lose
10 two of them, that's a pretty big chunk of your manpower.

11 So that was FY14. And this is where we are today.
12 As you can see, our response times are gradually going
13 down. Like I said, as workload increases and with our
14 vacancy rate and people on vacation and such, it just
15 gradually gets worse.

16 And this is within 24 hours. The other one was
17 within 48 hours.

18 And now that we're working on our hiring and
19 retention, we took the same map that we had the vacancies
20 on and we looked at the number of retirements we're going
21 to have in the next five years, and we added those to
22 these scenarios. So if you look at Region 1, they're
23 fully staffed right now. But they're going too have seven
24 retirements in the next five years. So they're going to
25 hire seven people. Region 3 is going to hire seven in the

1 next five years. Region 2 has two vacancies and six
2 retirements. So they're going to hire eight. Central
3 office, which is the E CORE positions I just talked about
4 being vacant, they have two vacancies and three
5 retirements. They're going to hire five. Region 4's
6 going to hire 10. Region 5's going to hire 14. And
7 Region 6 is going to hire five.

8 So you can see that we're looking at a lot of people
9 to hire in the future, and right now we're having a hard
10 time filling the 14 we've got.

11 So if you look at the projections through 2019, we're
12 projected to be up to about 146 inspectors when we were
13 at 141 in 2008 with the turn-down.

14 If you look at the total number of inspectors that we
15 have right now, the red portion, the 59, that's how many
16 guys have been here. Number of staff leaving since FY10
17 is 59. 42 is the projected number of retirements we're
18 going to have. So that's only going to leave us with the
19 blue section, 33 people in five years that have eight
20 years or more experience. And that's the group that I'll
21 say is targeted by cities to hire -- you know, those are
22 our more experienced inspectors that they like to hire
23 away to go work for them.

24 So if you take into account the 42 that are going to
25 retire, the 23 we're supposed to hire if the economy keeps

1 going and the 14 vacancies that we have right now, that's
2 almost 90 people we're going to have to hire in the next
3 five years. And that's going to be pretty hard to do.

4 So somehow we have to figure out how we're going to
5 protect those 33 that we have there so that they're still
6 here to be the history part of the program so that people
7 know how we got where we're at today.

8 So what are we doing about it? We have put together
9 a hiring and retention committee, which is what Jose' was
10 talking about this morning. We sent out a survey to all
11 of the inspectors. We had 86 of them respond. We put all
12 of their answers on a board and tried to organize them
13 into different categories. And then we broke those
14 categories down and used the Lean process to try and find
15 out what some of our bigger problems were and what we were
16 going to do to try and solve them. And the main
17 categories were workload, marketing and perception, and
18 compliance.

19 So we put together work groups. The workload group
20 has Trent Harris is leading it, and it's going to look at
21 increased manpower, support for inspectors, policy review,
22 better technology, and IT expectations.

23 The marketing and image group is run by Gary Gooler.
24 And we're going to look at strategies and partnering to
25 try and get a better applicant pool for our hiring. We'll

1 look at hiring people with what we call soft skills which
2 is the ability to talk to people in the field without
3 causing too much trouble.

4 And then develop an outreach program to do some
5 outreach to the electricians and see if we can't get ahold
6 of the ones that want to become inspectors.

7 The compensation and promotions committee, it's
8 headed by Bob Thomas. And that committee is working on
9 putting together a package for increased pay and some
10 stuff for the inspectors. They're going to deal with
11 maybe some assignment pay, some -- deal with HR, review
12 supervisors' workloads, develop program leads and
13 supervisors. And that is probably the biggest committee
14 right now because it deals with compensation which is
15 always first and foremost on the inspectors' minds.

16 And I would like to mention two people that put a lot
17 of work into the slide shows for the Governor's
18 presentation and for what we're right now for hiring and
19 retention. And Larry Vance, has done a lot of the stuff
20 for these slide shows. And Wayne Molesworth right here,
21 Wayne (pointing to), he's the person that heads up the two
22 committees, one for elevator, one for electrical that's
23 looking at the hiring and retention problems. They've
24 done a lot of work on this. A lot of people involved in
25 keeping this show headed in the right direction.

1 Do you have any questions?

2 CHAIRPERSON PREZEAU: Bobby.

3 BOARD MEMBER GRAY: Did you say Gary Gooler is
4 leading the team for social skills?

5 SECRETARY THORNTON: For image, yes, yes.

6 CHAIRPERSON PREZEAU: I like to refer to those as
7 essential skills.

8 SECRETARY THORNTON: Yeah.

9 CHAIRPERSON PREZEAU: They're historically called
10 soft skills, but I think --

11 SECRETARY THORNTON: If Gary can make that work, --

12 CHAIRPERSON PREZEAU: -- they should be rebranded.

13 SECRETARY THORNTON: -- anybody can.

14 CHAIRPERSON PREZEAU: So I have two thoughts or two
15 questions for you, Steve.

16 Would it be possible to e-mail the Board members this
17 presentation so that they have the numbers?

18 SECRETARY THORNTON: Yes.

19 CHAIRPERSON PREZEAU: Would that be an acceptable
20 request?

21 SECRETARY THORNTON: Yep.

22 CHAIRPERSON PREZEAU: And then the second question
23 that I have is -- and I'm not going to get this 100
24 percent correct -- but it is my understanding that
25 currently there are requirements -- minimum requirements

1 for an applicant for an inspector position to even be
2 considered. Right?

3 SECRETARY THORNTON: Yes.

4 CHAIRPERSON PREZEAU: And I believe they are
5 something like this, but I'm not -- this is the part I'm
6 not going to get 100 percent right. That applicants for
7 inspector positions and I think ECORE positions, they
8 require those individuals to have at least an EL01
9 license. They have to have that license for at least four
10 years?

11 SECRETARY THORNTON: Correct.

12 CHAIRPERSON PREZEAU: And then is there any other
13 requirement to --

14 SECRETARY THORNTON: No. Those are the minimums.

15 CHAIRPERSON PREZEAU: Oh, those are the minimums.

16 SECRETARY THORNTON: Yeah.

17 CHAIRPERSON PREZEAU: So, you know, I'm not -- I
18 certainly applaud the Department's strategy of trying to
19 increase the qualified applicant pool, but I'm curious if
20 there have been any internal discussions regarding those
21 minimum qualifications and whether or not it would make
22 any sense if you -- it would be possible to expand your
23 pool of qualified applicants if we modified -- considered
24 modifying those minimum qualifications.

25 And, you know, I don't really -- I'm not looking for

1 an answer; I'm just saying I think we all understand why
2 those minimum qualifications are there because having an
3 EL01 license means that you presumably have an
4 understanding and a fluency in all the other
5 subspecialties that are -- subspecialties, and that you
6 would have had an opportunity to had at least four years
7 of experience.

8 SECRETARY THORNTON: Right.

9 CHAIRPERSON PREZEAU: I just wonder if maybe we could
10 look at things slightly differently, which is perhaps, you
11 know, being creative, I think roughly 30 percent of any
12 jurisdiction's electrical industry is residential. Is it
13 possible maybe that -- again, I'm not looking for an
14 answer; I'm just -- I'm offering it for consideration. Is
15 it possible then that maybe we -- the Department could
16 consider somebody with a residential journeyman's -- a
17 specialty journeyman's certificate and four years of
18 experience that would maybe potentially qualify them to
19 help with 30 percent of that, assuming that's an accurate
20 number, 30 percent of that -- of those installations like
21 the residential installations so that -- it certainly
22 would hamstring the Department to some extent in terms of
23 assigning workload. But I just offer it as potentially
24 another way to solve this problem of instead of looking at
25 it the way we've historically looked at it with trying to

1 solve it with requiring qualified applicants having an
2 EL01 license with -- (inaudible) -- maybe break it down
3 and recognize that not all of the work that's being
4 inspected requires an EL01 license.

5 SECRETARY THORNTON: And we're -- we have looked at
6 that. It's not a real popular scenario. We're looking at
7 some other ways to lighten the load on the inspectors, a
8 lot of what they do. Leads and supervisors also are
9 paperwork oriented where you don't have to have the
10 license. So we're looking at getting some people to do
11 that portion to free up the inspectors to do what they
12 were hired to do and take some of the other things off of
13 their plate.

14 So we're looking at it more from that point of view
15 than we are from lightening up the qualifications.

16 Like you said, it's a scheduling nightmare if only
17 Joe is here and he's the residential guy.

18 So I don't see that as an option, but it's certainly
19 something that's out there.

20 CHAIRPERSON PREZEAU: Yeah, I mean, I just -- you
21 know, I hadn't given it a whole lot of thought until just
22 now. So it's just an option.

23 BOARD MEMBER CUNNINGHAM: Do you have any statistics
24 about the overall labor pool that you're trying to draw
25 from? Is it growing? Is it staying stagnant? Is it

1 shrinking?

2 SECRETARY THORNTON: We're drawing from the same pool
3 as everybody else is. And it's -- right now it's kind of
4 a who wants to pay him the most is where he's going to go.
5 So that leaves us way, way behind as far as that goes. So
6 we have to go about it a little different way and promote
7 it not from a money standpoint, but from a what can you do
8 for the industry? Do you like to help people? There's
9 more to life than money, especially when you get to be 40.

10 CHAIRPERSON PREZEAU: Well, and I think Dylan, your
11 question, though, is maybe trying to understand if the
12 universe of EL01 license holders is remaining static,
13 getting larger or getting smaller. Is that more
14 specifically your question?

15 And I don't know if you know that statistic off the
16 top of your head.

17 MR. VANCE: There's about 15,000 EL01's in the state,
18 somewhere around in there. And it's -- it's pretty
19 static.

20 BOARD MEMBER CUNNINGHAM: In that population of
21 appropriately licensed individuals, do you have statistics
22 about their age, you know, the histogram of their ages
23 relative to your inspector pool? Because you've got a --
24 to use Tracy's term -- you've got a universe of a certain
25 finite size of people to draw from. And if the inspector

1 pool is a reasonably accurate reflection of the age
2 distribution of the workforce as a whole, you're trying to
3 pick off only those few individuals who will probably take
4 less pay and have some other reason why they're going to
5 do this path.

6 SECRETARY THORNTON: Well -- yeah. And the other
7 part of it is is the job has changed a lot over the years.
8 Now you have to be about half a computer person, a typist
9 and write a citation statement that will stand up here.

10 And so our expectations have actually grown as far as
11 the pool goes. We're trying to pick the guys that keep
12 your doors open too, the guys with good interpersonal
13 skills and want to work too. So we're all kind of
14 competing for the same group.

15 I know the apprenticeship groups as a whole say they
16 don't have very many apprentices out there, so I have to
17 assume that the work group is getting older just like ours
18 is. And then when we had the layoffs, we had to -- you
19 know, we laid off all of the younger guys; kept the older
20 ones. Well, now, we're feeling the other side of that.
21 They're all getting retirement age at the same time.

22 CHAIRPERSON PREZEAU: Janet.

23 BOARD MEMBER LEWIS: I don't think that comment about
24 apprentices apply to at least the Local 46 Puget Sound
25 Electrical Apprenticeship. We're taking in over 100 every

1 year. So there are lots of apprentices up there.

2 SECRETARY THORNTON: Oh, okay.

3 CHAIRPERSON PREZEAU: Yeah, I mean, I think
4 anecdotally, you know, you talk about the universe of, you
5 know, what's the age demographics within that 15,000 or so
6 person universe of EL01 license holders. I would be
7 surprised if the age demographics are dramatically
8 different than what you see in this proposal -- or in this
9 presentation.

10 BOARD MEMBER SCHMIDT: Have you looked at out of
11 state, looking at recognizing licenses and experience from
12 other states?

13 SECRETARY THORNTON: And I don't know that we've
14 specifically looked at that, no. Right now we've been
15 just concentrating on what we have right now and trying to
16 do a better job of outreach to the people that are here.

17 BOARD MEMBER BAKER: On that line, there's a lot of
18 electricians years ago went down to Oregon, worked at an
19 Intel project. I know there's over 700 guys on the books
20 down there in Local 48. So you could ask some 01
21 Washington guys down there sitting on the books.

22 SECRETARY THORNTON: Could have, yeah.

23 CHAIRPERSON PREZEAU: Okay. Any other questions for
24 Steve on the Secretary's Report, whether it has to do with
25 finances or --

1 Wayne.

2 MR. MOLESWORTH: Well, I did want to --

3 CHAIRPERSON PREZEAU: State your name for the court
4 reporter.

5 MR. MOLESWORTH: Oh, I'm sorry. Wayne Molesworth,
6 project manager for --

7 THE COURT REPORTER: Spell your last name.

8 MR. MOLESWORTH: M-O-L-E-S-W-O-R-T-H.

9 THE COURT REPORTER: Thank you.

10 MR. MOLESWORTH: Sorry.

11 Is that we really would appreciate your support.
12 We're not just looking at the soft stuff, but we want to
13 make sure that we make it attractive for our candidate
14 pool. Because our candidate pool is so small that it's
15 going to be hard to even attract the people we've
16 attracted in the past.

17 One of the reasons they're going through this project
18 is because we realize that in order to have the right kind
19 of personnel out there that can inspect your jobs, treat
20 your people with respect, understand the code, we have to
21 get those better-qualified people out there. And in order
22 to do that, we have to make this an attractive situation.

23 So we would love to hear comments from you guys about
24 how to do that. We've already presented some stuff about
25 wages to the state HR who's the ones that actually make

1 the determination about our wages and that type of thing.

2 As the State is concerned, we haven't kept up with
3 the wages probably the way we should have throughout the
4 years. I've been here 24 hours. And I was an electrical
5 inspector for 17 of those. And so, you know, we've kind
6 of gone -- you know, we always are looking for that guy
7 that I say has the public service gene. And -- because I
8 gave up a superintendent's job at over 100,000 a year to
9 go to work for \$55,000 so I could stay at home with my
10 kids. So, you know, that's always great. But we're not
11 just able to find that person right now without the
12 attractive of coming to work for us as well. We don't
13 want to take your good guys from you, but we want you to
14 give them to us.

15 CHAIRPERSON PREZEAU: I was wondering where you were
16 going with that.

17 MR. MOLESWORTH: But -- yeah. But we'd love your
18 support because this is going to go -- we're going to take
19 some steps. We're going to push back on State HR pretty
20 hard probably. We've love the support of the Board
21 because I think you would agree we want the best people
22 representing the state out there, to be fair with you, to
23 understand the code and understand the installations
24 they're looking at, and to make sure that it makes your
25 job in here a little bit easier when they're out there

1 doing their job.

2 So that's just kind of what I wanted to say. It's a
3 big project. It's going to go on for a while. But I
4 would appreciate any input that you might have.

5 CHAIRPERSON PREZEAU: Well, I welcome the -- I
6 appreciate the invitation, right?

7 One of the things that this body has made this
8 observation on the record many times, and that is the
9 tools that the Department gives the inspector certainly
10 helps make their job easier, but the success of the
11 program genuinely rises and falls on the caliber and
12 quality of the human beings doing their job, whether
13 that's in ECOPE or whether that's the traditional
14 electrical inspectors, the audit division, the whole --
15 like the whole enchilada.

16 And we have -- I think this program is a model of
17 success, and its most significant contributor to that are
18 the people that are in those roles, right?

19 So I think we all recognize that going forward
20 looking at your presentation and understanding, you know,
21 that we are going to -- as the program is going to need to
22 hire 90 people in the next five years and protect those 33
23 people that have eight years of experience or more, those
24 are pretty dramatic numbers. I want to make sure that we
25 continue -- are able to continue or are able to attract

1 the most qualified applicants without watering down the
2 requirements. Because it's those requirements that have
3 gotten us to this place, right? So I understand that.

4 SECRETARY THORNTON: Any other questions?

5 CHAIRPERSON PREZEAU: Any more questions for the
6 secretary?

7 So agenda -- thank you, Steve.

8

9 Item 6. DOSH Legislation Proposal

10

11 CHAIRPERSON PREZEAU: So I thought I heard the rumor
12 that agenda item 6 is maybe happening but it may be
13 something different than maybe what is listed on the
14 agenda.

15 Mr. Mutch?

16 MR. MUTCH: The agenda item talks about a DOSH
17 proposal. It's not really a DOSH proposal.

18 So this is a proposal that the agency is considering
19 that was brought forward by someone in the collections
20 unit of field -- or fraud prevention and labor standards
21 division.

22 So if you are a contractor and you have employees,
23 you have to, of course, have a workers' compensation
24 account. You have to pay industrial insurance premiums
25 for your employees.

1 The construction contractors statute allows the
2 collections unit if a contractor refuses to pay their
3 industrial insurance premiums, they could suspend the
4 contractor's license temporarily until that account is
5 brought current.

6 They don't have a method in RCW 19.28 to do the same
7 for electrical contractors. In RCW 19.28, we have the
8 ability to deny renewals for contractors that owe citation
9 penalties that won't pay their citation penalties. So
10 when it comes renewal time, we can deny a renewal if they
11 don't bring their debts current. But there's no provision
12 in RCW 19.28 to allow denial of a renewal for other
13 departmental debt, workers' compensation premiums.

14 So this proposal is being considered by the agency to
15 request the legislature next session to amend RCW 19.28 to
16 allow the workers' compensation -- well, actually any debt
17 that's owed to the Department, it would allow the
18 suspension of a contractor's license until that debt is
19 paid. And it would also expand the denial of renewals to
20 include other types of changes to a contractor's license,
21 assignment of administrators, you know, so that if a
22 contractor that's competing against you chooses not to pay
23 his industrial insurance premiums or not to pay citations,
24 they can continue to operate until their renewal time
25 comes up currently. So this proposal would allow the

1 Department to suspend the contractor until their premiums
2 are paid.

3 So, you know, the Electrical Board has the role of
4 advising the agency. And one of the questions that's
5 going to be asked from folks in our agency that are going
6 to make these decisions is what do the stakeholders think
7 of these proposals.

8 So I would welcome comments that you may have from
9 the Board. So we're talking about debt that is owed to
10 the Department that is not paid but the contractor
11 continues to operate legally until their next renewal
12 cycle and changing the RCW to allow a suspension of the
13 contractor's license until the debt is paid. So that's
14 what the proposal is.

15 CHAIRPERSON PREZEAU: Dominic.

16 BOARD MEMBER BURKE: I was just going to say I think
17 it's a great idea at first blush at it. But I think you
18 really have to define what happens with any monies that
19 are in dispute or, you know, go down that whole process.
20 Because the dispute with the state can take far longer
21 than up to your renewal period.

22 So -- but I think it's a good idea. I think it would
23 help a lot of us who are, you know, doing legitimate
24 business and trying to do away with the underground
25 economy. I would tread lightly. I would be interested as

1 a contractor to see the language in there regarding
2 anything in dispute.

3 MR. MUTCH: So we have some language in there
4 regarding what's called a final judgement. So after the
5 appeal process to the ALJ goes through, they have the
6 ability to appeal to the Board. Then they have the
7 ability to appeal to the superior court. If they don't
8 appeal, if they lose their appeals all the way through,
9 then it becomes a final judgement. So only when the debt
10 becomes a final judgment is when it would be due, and
11 that's when the suspension or non-renewal would take over.

12 So as far as industrial insurance premiums, I mean,
13 if it's proven that -- and I don't know their law as well.
14 But it would also have to be judged to be final and due
15 before we would be able to suspend.

16 BOARD MEMBER BURKE: I don't think that there's a
17 longstanding problem of, you know, premiums being an
18 issue. But if there were, I would just caution people, be
19 careful what you sign up for.

20 CHAIRPERSON PREZEAU: So my first thought is how
21 frequently is this a problem?

22 BOARD MEMBER BELISLE: That was my thought.

23 MR. MUTCH: So it's not that big of a problem for
24 citations because, of course, when renewal time comes up,
25 we deny their renewal until they pay.

1 Right now there are -- for fiscal year '15, we sent
2 to collections 106 contractors. Of those, I went through
3 and looked for the active contractors that are still in
4 business. There are 17 construction contractors that are
5 still in business even though they're in collections and
6 still operating. And there are only seven electrical
7 contractors that are still in business and operating even
8 though they've been sent to collections for debt.

9 That's just for citations.

10 Now, I don't have those numbers for industrial
11 insurance premiums. But it's kind of a small portion of
12 the total. But this would allow us to suspend those
13 contractors if they're -- if they haven't paid their
14 debts.

15 CHAIRPERSON PREZEAU: And so what I'm hearing you
16 say, Rod, is it would be for debt owed to the Department.
17 So that is specifically as you indicated civil penalties
18 potentially if this language isn't moved forward, that
19 would extend to workers' compensation insurance premiums.

20 MR. MUTCH: Right.

21 CHAIRPERSON PREZEAU: And -- but Employment Security
22 is a different department. So it would only be -- if you
23 had the ability to expand it, it would only be for
24 workers' comp premiums --

25 MR. MUTCH: Correct.

1 CHAIRPERSON PREZEAU: -- and the civil penalties in
2 final judgement.

3 MR. MUTCH: Yep.

4 So that's the proposal. Kind of finalizing some of
5 the wording in the RCW.

6 One thing that I've found, if you're construction
7 contractor and you get behind on your workers' comp
8 premiums, they have the ability to suspend the
9 construction contractors. We don't have the ability to
10 suspend a construction contractor who's violated RCW
11 19.28. So we want to add that in as well.

12 So a big majority of our violations are unlicensed
13 electrical contractors. They may be licensed as
14 construction contractors, but we have no ability to deny
15 renewals or suspensions to a construction contractor. So
16 we want to expand that to include construction contractors
17 as well.

18 CHAIRPERSON PREZEAU: Any other thoughts for Rod?

19 So I'm really appreciative of the fact that we're
20 having this conversation and it's July and, you know, the
21 legislative session's until January. So even though it is
22 first blush, right? we have some time to -- the Board
23 members, the stakeholders have some time to reflect on
24 this so that we can -- if the Department decides to move
25 forward, there's an opportunity for stakeholders to weigh

1 in, right? so we can produce the best product or decide if
2 there is going to be one.

3 All right. Thank you, Rod.

4

5 Item 7. Certification/CEU Quarterly Report

6

7 CHAIRPERSON PREZEAU: Okay. So Larry Vance,
8 Certification and CEU Quarterly Report.

9 MR. VANCE: Madam Chair, members of the Board, I had
10 a report included with your packet. It's the exam report.
11 It's by -- statistics by attempt. It's the same report
12 we've had for the last several meetings.

13 In reviewing it, there hasn't been any substantial
14 changes in the pass rate. The pass rate for journey level
15 electricians exam, first time pass rate is around 47
16 percent. Yeah, 47.99. We'll call it 48 percent. It's 24
17 percent for the residential examination. Those were the
18 two that there has been some proposals for apprenticeship
19 programs for those two.

20 And it's always interesting that on an examination
21 that is an open-book examination where you can bring in
22 essentially all the answers and more, that on the
23 residential exam that only -- less than 25 percent can
24 pass that on the first attempt.

25 If you look at the second attempt, on the

1 residential, it actually goes down. Only 20 percent pass
2 on the second attempt. If you look at the 01 journey
3 level examination, it actually goes up a little bit.
4 Because I think that those folks all of a sudden
5 understand that they're going to have to review the
6 material and get more familiar with it. So for the year
7 period that this report covers, it was almost 60 percent
8 on the second attempt. So it shows that it's possibly
9 likely that people can take the examination, and then all
10 of a sudden they understand that I need to understand
11 where I can reference this material; it's an open-book
12 test. So they actually -- I think that they actually
13 apply themselves and get familiar with the material, and
14 then they're able to pass the examination.

15 But with only 96 hours of schooling and over 8,000
16 hours, unfortunately they don't know it until too late.
17 You know, they take an examination, half of them fail it,
18 and then they study. Well, for that 8,000 hours, they've
19 been making electrical installations without that
20 knowledge possibly, and that's a little bit concerning.

21 Other than that, I really don't have much more to
22 offer as far as the exam report.

23 Do you have any questions?

24 BOARD MEMBER BELISLE: If I recall, you guys have now
25 moved to the 2014 exam content; is that correct?

1 MR. VANCE: That is correct, yes. Yes. 2014 anyone
2 that's -- Rod, correct me if I'm wrong -- if it's after
3 July -- after application after July 1.

4 MR. MUTCH: Applications that are approved after July
5 1st.

6 MR. VANCE: July 1st they're on the 2014 code cycle
7 -- they're on the 2014 code exam.

8 Anyone that applied prior to that is finishing out on
9 the 2008.

10 So not real extreme differences in the examinations,
11 but they are just a little -- they're a little different.

12 CHAIRPERSON PREZEAU: So Larry, I'm trying to wrap my
13 brain around something. And I'm looking at the 03
14 electricians examination history on page 5, the top of
15 page 5. And when I -- and maybe it's that I'm approaching
16 this incorrectly. But when I look at this, in the first
17 attempt one person passed and ten failed, right? So a
18 total number of people in this report for this year that
19 took that examination was 11, right?

20 MR. VANCE: (Nodding affirmatively.)

21 CHAIRPERSON PREZEAU: And then the -- if you look at
22 all of these attempts of this universe of 11 people in the
23 year, I think only two of them passed -- successfully
24 passed the test; is that correct?

25 MR. VANCE: During this period, yes. And this is

1 just a window of time. So, I mean, the next attempt they
2 could all pass. So it's ...

3 CHAIRPERSON PREZEAU: So the other nine poten --
4 there is the potential for the other nine in this universe
5 that didn't pass the exam during this window of time, it
6 is possible that since this snapshot was taken, those
7 folks have passed the exam or have not passed the exam; we
8 don't know.

9 MR. VANCE: Yeah, it is possible.

10 The 03 is a big -- it's actually a big specialty.
11 It's like the -- (inaudible) -- or general journey level
12 electrician. If you go to Eastern Washington it's, you
13 know, a thousand horsepower bunson burner, it's mixed up.
14 And it's a small industry. And this number of people
15 taking the exam reflects that.

16 CHAIRPERSON PREZEAU: Okay. Any other questions for
17 Mr. Vance?

18 Great. Thank you very much, Larry. I appreciate
19 that.

20

21 Item 8. Public Comment(s)

22

23 CHAIRPERSON PREZEAU: So I believe that you probably
24 have the public comment sign-in sheet over there?

25 MS. RIVERA: Yeah.

1 CHAIRPERSON PREZEAU: No, that's fine.

2 So I'm just -- like last -- I know we did this
3 already, but in good faith, again, we still have -- I
4 called for public comment once. I'm going to call for --
5 give the opportunity for public comment twice. Three
6 times. It doesn't look like anybody wants to sign in.
7 Nobody else signed in other than what we -- what I read
8 into the record earlier. But again, just want to make
9 sure we give folks access.

10 That being the case, it doesn't look like anybody
11 else wants to address the Board. We have finished our
12 agenda.

13 The Chair would love to --

14 Yes, Steve.

15 SECRETARY THORNTON: One last -- the three people
16 that were here last month, we have been back in touch with
17 two of those parties. We met with them, the Oregon people
18 on the licensing issue, we've met with them twice.
19 They're back now trying to see if they can't get things
20 lined up to reciprocate back and forth across the river.
21 But we have been in touch with those people.

22 CHAIRPERSON PREZEAU: Very good.

23 So the folks that had entered in the record and had
24 public comment, the Department continues to work with them
25 to resolve issues to the best of your ability.

1 SECRETARY THORNTON: Yes.

2 CHAIRPERSON PREZEAU: Very good.

3

4 Motion to Adjourn

5

6 BOARD MEMBER PHILLIPS: I make a motion we adjourn.

7 BOARD MEMBER WARD: Second.

8 CHAIRPERSON PREZEAU: Okay. So motion to adjourn.

9 All those in favor please signify by saying "aye."

10 THE BOARD: Aye.

11 CHAIRPERSON PREZEAU: Opposed?

12

13 Motion Carried

14

15 CHAIRPERSON PREZEAU: We are adjourned.

16 (Whereupon, at 5:15 p.m.,
17 proceedings adjourned.)

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